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IN THE SUPREME COURT OF FLORIDA

CASE NO. 89,005

FILED
SID J. WHITE
DEC 11 1996
CLERK, SUPREME COURT
By________
Chief Deputy Clerk

AMENDMENT TO FLORIDA RULE OF
APPELLATE PROCEDURE 9.020(a)
AND ADOPTION OF FLORIDA RULE
OF APPELLATE PROCEDURE 9.190
______________________________/

RESPONSE BY THE APPELLATE COURT RULES COMMITTEE
OF THE FLORIDA BAR TO THE COMMENTS DIRECTED
TO THE APPELLATE RULES RELATING TO ADMINISTRATIVE REVIEW

As directed by this Court by order entered November 26, 1996, in the above-styled case, The Florida Bar, through the Appellate Court Rules Committee, files this response to the comments which have been filed with this Court directed to the newly amended rules relating to administrative review procedure.

Maureen M. Matheson has submitted a comment with respect to the amendment to Florida Rule of Appellate Procedure 9.020(a) and the adoption of proposed Florida Rule of Appellate Procedure 9.190, noting the confusion between Florida Rule of Appellate Procedure 9.100 and Florida Rule of Civil Procedure 1.630 which exists in extraordinary writ practice before circuit courts. This concern has been addressed by the Committee in its proposed amendment to Florida Rule of Appellate Procedure 9.100(f) which was adopted by this Court in amendments to the Florida Rules of Appellate Procedure, Case Numbers 87,134 and 86,881 (Fla. Nov. 22, 1996). The purpose of that rule amendment is to clarify that extraordinary

writs in circuit courts which are predicated upon records created elsewhere will proceed pursuant to Florida Rule of Appellate Procedure 9.100. On the other hand, extraordinary writs which will require a record to be developed in the circuit court will proceed pursuant to Florida Rule of Civil Procedure 1.630. The Committee agrees with Ms. Matheson that this area has been one of great confusion and inconsistency, and believes that the problem should be alleviated by the amendment of Florida Rule of Appellate Procedure 9.100(f), which becomes effective January 1, 1997.

Comments to proposed Florida Rule of Appellate Procedure 9.190(b)(3) have been submitted by Eckert Seamans Cherin & Mellot and Metropolitan Dade County. These comments correctly note that in many circumstances review by certiorari is a matter of right following a quasi-judicial administrative action which is not governed by the Administrative Procedure Act. Haines City Community Development v. Hagues, 658 So. 2d 523, 530 (Fla. 1995); City of Deerfield Beach v. Valiant, 419 So. 2d 624, 626 (Fla. 1982). However, this observation addresses an issue of substantive law on the standard to be applied by the circuit court for the issuance of an order to show cause. The observation does not address the constitutional jurisdiction of circuit courts to hear appeals.

Circuit courts have jurisdiction to hear appeals from quasi-judicial administrative action only when provided by general law.

> (b) JURISDICTION.--The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

Art. V, § 5, Fla. Const. An example of such jurisdiction is the appeal of Code Enforcement Board orders pursuant to Chapter 162. § 162.11, Fla. Stat. In the absence of either a constitutional amendment broadening circuit court jurisdiction to appeals when provided by ordinance, or a general law providing review by appeal, the circuit court is restricted to review by certiorari. While an argument could be made that the appellate jurisdiction of the circuit court should be so expanded, a rule amendment cannot take the place of either a constitutional amendment or general law. <u>See Board of County Commissioners of Hillsborough County v. Casa Development Ltd., II</u>, 332 So. 2d 651, 653 (Fla. 2d DCA 1976) (appeal jurisdiction cannot be conferred by special law).

A rule amendment could be made to fashion a separate procedure for this type of certiorari review which would more closely approximate the time deadlines of a plenary appeal. However, the Committee did not undertake this task and did not perceive a need to do so. Because the presentation of the record by appendix places the responsibility for record presentation on the

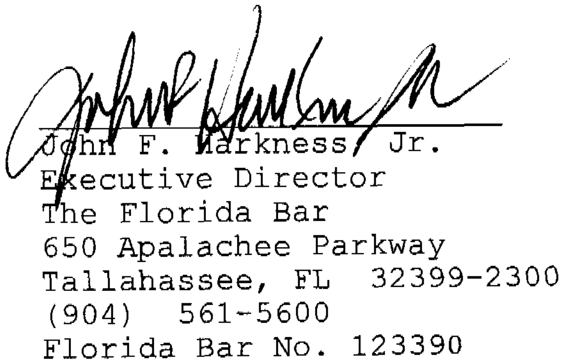
petitioner, reliance on other interested or uninterested parties should not delay a petition. Alternatively, a petitioner may move for an extension of time to file portions of the appendix which are unavoidably unavailable. The time constraints imposed by the jurisdictional time limit to file a petition are inherent in all certiorari practice.

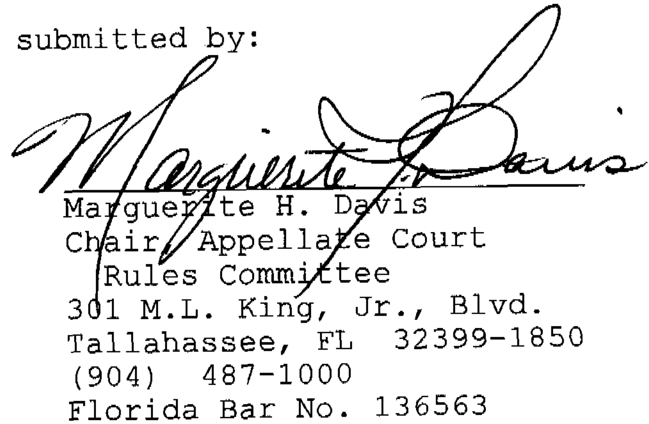
The commentators also make reference to the record provisions of proposed Florida Rule of Appellate Procedure 1.190(c)(4). For all matters which are reviewed by certiorari, the existing Florida Rule of Appellate Procedure 9.100(e) and (g) already provide that no record is to be transmitted, but instead the petition shall be accompanied by an appendix prepared in accordance with Florida Rule of Appellate Procedure 9.220. Therefore, the change wrought by proposed Florida Rule of Appellate Procedure 9.190(c)(4) relates only to review in circuit courts of quasi-judicial administrative action which falls within the constitutional appeal jurisdiction of the circuit court. For the reasons aptly described in Eckert Seamans' comment at paragraph 5, the sense of the Committee was that the litigants should bear the burden of transmitting to the circuit court those portions of the record thought to be necessary. Clerks of many boards which issue such quasi-judicial decisions are not trained or equipped for the preparation of adequate records, or even docketing of documents entered into the record. Allocating this duty to the litigants promotes speed in the presentation of

the necessary record to the court. The transcript of the proceeding will show what evidence was properly received by the tribunal during the hearing.

Wherefore, The Florida Bar Appellate Court Rules Committee requests that this Court reject any of the changes proposed in the comments filed with this Court.

Respectfully submitted by:





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