

IN THE SUPREME COURT OF FLORIDA

**IN RE: PROPOSED RULE AMENDMENTS)
TO FLORIDA RULES OF APPELLATE)
PROCEDURE.)**

Case No.: SC08-147

**COMMENTS OF FLORIDA HOME BUILDERS ASSOCIATION
IN SUPPORT OF PROPOSED AMENDMENT
TO RULE 9.310(b)(2) - STAY PENDING REVIEW;**

EXCEPTIONS; PUBLIC BODIES; PUBLIC OFFICERS

The Florida Home Builders Association submits these comments in support of the proposed amendment to Rule 9.310(b)(2) to conform the rule to the Administrative Procedure Act (APA), and particularly Sections 120.68(3) and 120.56(4), Florida Statutes (2007).

1. The Florida Home Builders Association (FHBA) is a not-for-profit corporation and statewide trade industry association composed of more than 18,000 members, substantially all of whom are engaged in the business of development, home building, and the construction industry in Florida. Many of the members of FHBA are required to apply for and to receive various licenses or other regulatory approvals from state agencies. The process for obtaining these approvals can be lengthy and time-consuming, and may involve extensive administrative litigation leading to the entry of a final order by the state agency pursuant to the APA. In some cases, a public body (such as a local government)

may oppose the granting of the requested approval and may be involved in the administrative proceedings merely as a party litigant and not as the governmental body authorized to grant or deny the requested license or approval. A final order by the state agency granting the requested license or approval is subject to judicial review by an adversely affected party. See Section 120.68(1), Florida Statutes. If a public body seeks judicial review of the final order granting the approval, then Rule 9.310(b)(2) currently provides for an *automatic* stay of the final administrative order entered by the state agency pending judicial review—even where the public body is merely a party litigant, and not the governmental body authorized to grant or deny the requested approval..

2. As noted in the report issued by the Appellate Court Rules Committee, Rule 9.310(b)(2) conflicts with Sections 120.68(3) and 120.56(4), Florida Statutes (2007), by granting to certain public bodies and public officers an *automatic* stay of a final administrative order entered by a state agency pending judicial review. The proposed rule amendment would remove this conflict and thus make it consistent with the Legislature's determination that "the filing of the petition [for judicial review] does not itself stay enforcement of the agency decision..." as provided by Section 120.68(3), Florida Statutes.



3. FHBA supports the proposed amendment to Rule 9.310(b)(2) for two reasons. First, FHBA supports the proposed amendment because it eliminates the

conflict between the rule and the APA and thereby gives effect to the Legislature's policy decision as expressed in Sections 120.68(3) and 120.56(4), Florida Statutes.

4. FHBA also supports the proposed amendment because it "levels the playing field" in those cases where the public body is merely another party litigant, and not the governmental body authorized to grant or deny the requested approval. Of course, in such cases a public body or public officer —like any other party to an appeal under the APA — may seek a discretionary stay in accordance with Rule 9.190(e). In addition, the proposed rule change applies only to appeals of final agency action under the APA; it does not affect the automatic stay for public bodies and public officers in other appeals, including those where the public body or public officer seeking review is the governmental body authorized to grant or deny the requested license or approval.

Conclusion


For these reasons, as well and the grounds set out in the Appellate Court Rules Committee's report, FHBA respectfully urges the Court to adopt the proposed amendment to Rule 9.310(b)(2).

 Respectfully submitted,


Keith Hetrick
General Counsel
Florida Home Builders Association
Florida Bar No. 564168
201 East Park Avenue
Tallahassee, FL 32301-1511

CERTIFICATE OF SERVICE

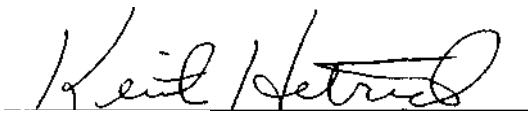
I HERBY CERTIFY that a true and correct copy of the foregoing was provided by electronic mail to Steven L. Brannock, Chair, Appellate Court Rules Committee, Holland & Knight LLP, 100 North Tampa Street, Suite 400, Tampa, Florida 33602, steve.brannock@hkllaw.com and to Lawrence E. Sellers, Jr., Holland & Knight LLP, 315 South Calhoun Street, Suite 600, Tallahassee, FL 32301, lanT.sellers@hkllaw.com; all on this 1st day of April, 2008.



Keith Hetrick

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing complies with the typeface and font size, 14 point Times New Roman, proportionately spaced, as set forth in Rule



Keim Hetrick

92\Q, Fla.R.App.P.