

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF APPELLATE PROCEDURE
(THREE-YEAR CYCLE)**

Case No. SC11-192

COMMITTEE RESPONSE TO COMMENTS FILED

John G. Crabtree, Chair, Appellate Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file these responses to the comments submitted about the three-year cycle report of the Appellate Court Rules Committee (“Committee”).

All comments were due by April 1, 2011. Four comments were received: three of which initiated amendments to two of the proposed rule changes previously submitted to the court. The required Committee and Board of Governors’ votes are provided in a three-column chart (*see* Appendix A). The proposed rules are attached in the full-page (*see* Appendix B) and two-column (*see* Appendix C) formats, with the original proposed amendments single-underlined and new suggested amendments double-underlined. The reasons for change are as follows:

RULE 9.140. APPEAL PROCEEDINGS IN CRIMINAL CASES

Comments were filed by Harvey Ruvín, Clerk of Courts, Miami-Dade County, regarding the proposed changes to Florida Rule of Appellate Procedure 9.140(f)(1). Mr. Ruvín addressed three areas of concern and has suggested alternative language to the Committee’s proposed amendment.

First, Mr. Ruvín expressed concern regarding a time-period set forth in the proposed amendment. The proposed amendment states:

In cases where the transcripts are filed after a notice from the clerk, the clerk shall prepare and file the record within 20 days of receipt of the transcripts.

Mr. Ruvin suggests that this time-period be increased from 20 days to 50 days because “the Clerk should not have the initial time period shortened to prepare the record due to another parties [sic] delay in filing the necessary transcripts.” The Committee notes that this 20-day period follows the initial 50-day period (*i.e.*, the clerk has 50 days to prepare the record, if the record is not complete because of a delayed transcript, then the clerk files a notice, and once the transcript is filed, then the clerk has an additional 20 days to file the record). Thus, the Committee feels that 20 days is appropriate because – in this scenario – the bulk of the record should have been prepared in the initial 50-day period.

Second, Mr. Ruvin objects to requiring the clerk to serve the delay notice to the parties and the court reporter (*i.e.*, Mr. Ruvin states that the notice need only be filed with the appellate court). Mr. Ruvin explains that “[t]he increased cost of processing notices to all parties will significantly increase our postage costs.” The Committee is sympathetic to Mr. Ruvin’s concern, but the Committee nevertheless feels that the notice should be served on all parties and any court reporters who have failed to file transcripts. Not only is service required to satisfy basic due process concerns, but service on the parties will allow the parties to intervene and determine the reason for the delay, and service on the court reporter will act as a reminder that the transcript is past due and it will identify the court reporter for the appellate court. However, the Committee is hopeful that electronic service will soon be an option, which would substantially eliminate Mr. Ruvin’s postage concern.

Third, Mr. Ruvin has suggested alternative language to the proposed rule. His suggested amendment is indicated by double-underline and the strike-through:

If the designated transcripts have not been filed by the date required for service of the record, the clerk shall file with the appellate court, and serve all parties and any court reporter whose transcript has not been filed, ~~a notice explaining the reason for the delay and that the record is not being served without the transcripts~~a notice of inability to complete the record, listing the transcripts not yet received.

The Committee agrees with Mr. Ruvin’s suggested language.

For the Court’s and Committee’s information, Mr. Ruvin attached to his Comment a form that his office uses to notify the appellate court that a transcript has not been received. The Committee appreciates the form, but suggested a few editorial amendments to Mr. Ruvin in separate correspondence. If the Court would

like to create such a form as part of the rule, the Committee would be happy to submit those editorial corrections.

RULE 9.420. FILING; SERVICE OF COPIES; COMPUTATION OF TIME

Two people, Judge Mark Leban and Michael A. Catalano, submitted comments which raised the same concern and the same proposed resolution. After working through these comments, the Appellate Court Rules Committee recognized the need to clarify the rule and avoid any confusion as to whose obligation it is to comply with the rule, the court or the clerk. Thus, the reference to “the court or, under its direction, the clerk” was deleted and “the clerk of court” was inserted.

RULE 9.170. APPEAL PROCEEDINGS IN PROBATE AND GUARDIANSHIP CASES

Michael R. Rollo, Esquire, submitted a comment in which he raised concerns about proposed new rule 9.170. The General Practice Subcommittee of the Appellate Court Rules Committee met to discuss Mr. Rollo’s comment. After careful consideration, the subcommittee voted unanimously not to revise the proposed rule. The subcommittee was of the opinion that orders disapproving settlements are not orders that contain the requisite finality to be appealable and thus the proposed rule could not be revised as suggested.

Respectfully submitted on April 20, 2011 by

/s/ John Granville Crabtree
John Granville Crabtree
Florida Bar No. 886270
Chair, Appellate Court Rules
Committee
CRABTREE & ASSOCIATES, P.A.
240 Crandon Blvd., Suite 234
Key Biscayne, FL 33149-1624
Telephone (305) 361-3770
jcrabtree@crabtreelaw.com

/s/ John F. Harkness, Jr.
John F. Harkness, Jr.
Florida Bar No. 123390
Executive Director
THE FLORIDA BAR
651 East Jefferson St.
Tallahassee, Florida 32399-2300
(850) 561-5600

CERTIFICATE OF SERVICE

True copies of the Committee Response to Comments were furnished, via U.S. Mail, on the 20th of April 2011, to:

Frances H. Toomey, Attorney at Law
SECOND DISTRICT COURT OF APPEAL
1700 N. Tampa St., Ste. 300
Tampa, FL 33602-2648

Beverly A. Pohl, Attorney at Law
BROAD AND CASSEL
P.O. Box 14010
Fort Lauderdale, FL 33302-4010

Judge Charles A. Stampelos
DIVISION OF ADMINISTRATIVE HEARINGS
1230 Apalachee Pkwy.
Tallahassee, FL 32301-3060

Thomas M. Karr, Attorney at Law
GUNSTER, YOAKLEY & STEWART, P.A.
2 S. Biscayne Blvd., Ste. 3400
Miami, FL 33131-1807

Thomas Hall, Clerk of Court
SUPREME COURT OF FLORIDA
500 S. Duval St.
Tallahassee, FL 32399-1927

Glen P. Gifford, Attorney at Law
Public Defender's Office, 2nd Circuit
301 S. Monroe St., Ste. 401
Tallahassee, FL 32301-1861

Laura Anstead, Attorney at Law
FLORIDA DEPT. OF FINANCIAL SERVICES
200 E. Gaines St.
Tallahassee, FL 32399-6502

John S. Mills, Attorney at Law
203 N. Gadsden St., Ste. 1A
Tallahassee, FL 32301-7637

Paul Regensdorf, Attorney at Law
Sun Sentinel Building
200 E. Las Olas Blvd., Ste. 2100
Fort Lauderdale, FL 33301-2274

Paula F. Kelley, Attorney at Law
KELLEY STIFFLER, PLLC
P.O. Box 2485
Bonita Springs, FL 34133-2485

Judge John Lazzara
DIVISION OF ADMINISTRATIVE HEARINGS
1180 Apalachee Pkwy., Ste. A
Tallahassee, FL 32301-4574

Judge Elizabeth W. McArthur
DIVISION OF ADMINISTRATIVE HEARINGS
1230 Apalachee Pkwy
Tallahassee, FL 32399-0001

Seann Frazier, Attorney at Law
GREENBERG TRAURIG, P.A.
101 E. College Ave.
Tallahassee, FL 32301-7742

Katherine E. Giddings, Attorney at Law
AKERMAN SENTERFITT
106 E. College Ave., Ste. 1200
Tallahassee, FL 32301-7741

Todd D. Englehardt
SNIFFEN & SPELLMAN, P.A.
211 E. Call St.
Tallahassee, FL 32301-7607

Michael Catalano, Attorney at Law
1531 NW 13th Ct.
Miami, FL 33125-1605

Beth C. Weitzner, Attorney at Law
1320 NW 14th St.
Miami, FL 33125-1609

Michael R. Rollo
3 West Garden Street, Suite 354
The Bount Building
Pensacola, FL 32502

Judge Mark King Leban
Eleventh Judicial Circuit
175 N.W. 1st Ave., Suite 2327
Miami, FL 33128-1846

Harvey Ruvlin, Clerk of Court
Dade County Courthouse
73 West Flagler Street, Room 242
Miami, FL 33130

/s/ Krys Godwin
Krys Godwin
Staff Liaison
Appellate Court Rules Committee
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399
(850) 561-5702
Florida Bar No. 2305