

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF APPELLATE PROCEDURE,
RULE 9.110**

CASE NO. SC11-

**FAST TRACK AMENDMENTS REPORT OF THE
APPELLATE COURT RULES COMMITTEE**

Jamie Billotte Moses, Chair of the Appellate Court Rules Committee (the “Committee”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this fast track report under *Fla. R. Jud. Admin.* 2.140(e), reporting rule changes necessitated by statutory amendments passed by the 2011 Florida Legislature. The proposed amendment has been reviewed and approved by the Board of Governors of The Florida Bar through its Executive Committee with a vote of 11-0, following the committee’s approval by a vote of 27-1.

Because of the emergency nature of this report, the proposals have not been published for comment.

The text of the amendments is attached to this report in both full-page format (Appendix A) and two-column format (Appendix B).

The proposed amendments are the result of Chapter 2011-227 (CS/SB 844), which was approved by the Governor on June 24, 2011, and took effect October 1, 2011 (Appendix C). The matter was referred to the Committee by the court by a letter dated August 1, 2011. (Appendix D, page 6-11.)

The reasoning for the proposed amendments is as follows:

**Rule 9.110(n) Appeal Proceedings to Review Final Orders of Lower
Tribunals and Orders Granting New Trial in Jury and
Non-Jury Cases**

Rule 9.110(n), concerning appeals of orders dismissing petitions for judicial waiver of parental notice of termination of pregnancy, currently requires a district court of appeal opinion to be published within 10 days from the date the notice of appeal is filed. Section 390.01114(4)(b)2, Florida Statutes, was enacted to require a ruling by the appellate court “within 7 days after receipt of appeal.” In response to

this statute, the Committee recommends the pertinent sentence within rule 9.110(n) be amended as follows (Appendix D):

(n) ... The district court of appeal shall render its decision on appeal as expeditiously as possible and no later than ~~107~~ days from ~~the filing of the notice of appeal~~ the transmittal of the record. ...

The subcommittee's report is also included for the Court's reference. (Appendix D, pages 1-5.)

In conjunction with the Committee's voting, one concern was expressed regarding the standard of review that is being established within the statute. Specifically, the statute reads, in pertinent part:

The reason for overturning a ruling on appeal must be based on abuse of discretion by the court and may not be based on the weight of the evidence presented to the circuit court since the proceeding is a nonadversarial proceeding.

§ 390.01114(4)(b)(2), Fla. Stat. In reaction to this sentence, a Committee member raised the concern "that a state statute can [not] limit the due process rights of [] individuals to full judicial review of a court decision impacting constitutionally protected fundamental interests to simply 'abuse of discretion.'" (Appendix E.) The Committee recognized this concern and brings it to the Court's attention, while acknowledging that statutory amendments are outside of the Committee's jurisdiction to review.

The Appellate Court Rules Committee requests that the Court amend the Florida Rules of Appellate Procedure as outlined in this report.

Respectfully submitted on December 15, 2011 by

/s/ Jamie Billotte Moses
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CERTIFICATIONS

I certify that these rules were read against West's *Florida Rules of Court – State* (2011).

I certify that this report was prepared in MS Word using 14 point Times New Roman font.

/s/ Krys Godwin
Krys Godwin
Staff Liaison
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