

**IN THE SUPREME COURT OF FLORIDA**

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

**CASE NO: 13-**

**OUT-OF-CYCLE REPORT OF THE  
APPELLATE COURT RULES COMMITTEE**

Eduardo I. Sanchez, Chair, Appellate Court Rules Committee (“Committee”), and John F. Harkness, Jr., Executive Director, The Florida Bar, file this out-of-cycle report of the Appellate Court Rules Committee under Fla. R. Jud. Admin. 2.140(f). All rule and form amendments have been approved by the full Committee and, as required by Rule 2.140(f), reviewed by The Florida Bar Board of Governors. The voting records of the Committee and the Board of Governors are as follows:

<u>Rule</u>	<u>Committee Vote</u>	<u>Board of Governors Vote</u>
Rule 9.130	43-0	36-0

Because these amendments are the result of a referral from the court, notice of the amendments was not published in *The Florida Bar News* prior to filing this report.

Appendix A:	Rule in legislative format
Appendix B:	Rule in 2-column format
Appendix C:	Referral letter from the Court
Appendix D	Minutes of the June 28, 2013, Appellate Court Rules Committee meeting

The proposed amendments and reasons for change are as follows:

**RULE 9.130. PROCEEDINGS TO REVIEW NON-FINAL ORDERS  
AND SPECIFIED FINAL ORDERS**

In *Keck v. Eminisor*, 104 So. 3d 359 (Fla. 2012) (per curiam), the Supreme Court asked the Committee to “submit a proposed narrow amendment to rule 9.130 addressing the rule change mandated by th[e] decision” that “an order denying

summary judgment based on a claim of individual immunity under section 768.28(9)(a) is subject to interlocutory review where the issue turns on a question of law.” 104 So. 3d at 366; *id.* at 369 (“[W]e request the Florida Bar Appellate Court Rules Committee to submit a proposed amendment that will address the rule change mandated by our decision where an individual defendant who claims immunity under 768.28(9)(a) is denied that immunity and the issue turns on a matter of law.”). In a concurring opinion, a majority of the Court further recommended that the Committee “undertake a comprehensive review of whether the categories of non-final orders in Rule 9.130(a)(3) should be expanded to include the denial of any claim of immunity where the question presented is solely a question of law.” *Id.* at 370.

The Committee proposes two amendments that would create a review process for non-final orders that, as a matter of law, deny a party immunity from suit (*see* Appendix D-3 – D-6).

The first proposed amendment will provide an opportunity to appeal a non-final order in which a party claims immunity from suit under section 768.28(9), Florida Statutes. The second proposed amendment provides an opportunity for review of a non-final order determining that a party is not entitled to an immunity from suit not otherwise specified in the rule.

Respectfully submitted on August 15, 2013.

/s/ Eduardo I. Sanchez

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/s/ John J. Harkness, Jr.

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**CERTIFICATION OF COMPLIANCE**

I certify that these rules were read against *West's Florida Rules of Court – State* (2013 Edition).

I certify that this report was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

/s/ Heather S. Telfer

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