Filing # 9848626 Electronically Filed 02/03/2014 05:07:35 PM

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IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF APPELLATE PROCEDURE **CASE NO: 14-**

THREE-YEAR 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 three-year cycle report of the Appellate Court Rules Committee under Florida Rule of Judicial Administration 2.140(b). All rule and form amendments have been approved by the full Committee and, as required by Rule 2.140(b)(2), reviewed by The Florida Bar Board of Governors. The voting records of the Committee and the Board of Governors are shown on the Table of Contents (*see* Appendix A).

The proposed amendments were published for comment in the July 1, 2013, edition of The Florida Bar *News* and posted on The Florida Bar's website (*see* Appendix D-1–D-7). The Committee received several comments (*see* Appendix G). Based on the comments received, the Committee further amended Rule 9.141(b)(2)(C)(i) and removed part of the proposed language. The language that was removed in response to the comments would have resolved a district split and expressly provided that if an inmate files an optional brief in an appeal from the summary denial of a motion for post-conviction relief, any claim that was not included in that optional brief would be considered waived. The Committee instead decided not to address or resolve the existing district split. The Committee also revised committee notes for Rules 9.110 and 9.147. The Committee approved these measures at its meeting on September 27, 2013 (*see* Appendix F-108–F-116). The additional amendments were published in the November 1, 2013 edition of The Florida Bar *News* and posted on The Florida Bar's website (*see* Appendix D-8–D-9). The additional amendments were also approved by The Florida Bar Board of Governors. The voting record of the Board of Governors is shown on the Table of Contents (*see* Appendix A).

This report contains:

Appendix A:	Table of Contents
Appendix B:	Rules in legislative format
Appendix C:	Rules in 2-column format
Appendix D:	Publication Notices
Appendix E:	Letters requesting consideration of rule changes
Appendix F:	Appellate Court Rules Committee minutes
Appendix G:	Comments received by the Committee

The proposed amendments and reasons for change are as follows:

RULE 9.020. DEFINITIONS

John Mills and John Hamilton both proposed amendments to this rule. John Mills proposed an amendment to eliminate the provision in Rule 9.020, Definitions, stating that post-judgment motions are abandoned upon the filing of a notice of appeal (*see* Appendix E-91–E-96). He proposed that new language be modeled after Rule 4(a)(4)(B) of the Federal Rules of Appellate Procedure, which provides that the appeal be held in abeyance until the disposition of any post-judgment motion (*see* Appendix E-90-E-96). John Hamilton proposed an amendment removing the provision stating that a premature notice of appeal constituted an abandonment of any pending motions by the appellant that otherwise had the effect of postponing rendition of an order (*see* Appendix E-50). The Committee agreed with Mr. Hamilton's recommendation and proposes amending Rule 9.020(i)(1) to clarify that "the final order shall not be deemed rendered as to any existing party until the filing of a signed, written order disposing of the last of such motions." The Committee proposes amending Rule 9.020(i)(3) to clarify that the appeal shall be held in abeyance until the disposition of any post-judgment motion. Furthermore, the Committee's proposed amendment to subdivision (j) substitutes "withdrawn" for "abandoned" (*see* Appendix F-53–F-56).

The Committee also proposes creating a definition of "signed" that is consistent with Florida Rule of Judicial Administration 2.515(c), Signature of Attorneys and Parties. As many of the Rules of Appellate Procedure refer to "signed" documents, a new definition referring to Rule of Judicial Administration 2.515(c), Signature of Attorneys and Parties, would provide guidance on the subject (*see* Appendix F-107).

RULE 9.100. ORIGINAL PROCEEDINGS

The Committee reviewed Rule 9.100, Original Proceedings, and determined that, in its current form, it may be confusing. The Committee proposes reorganizing Rule 9.100 to clarify who can be named as parties in an original proceeding. The Committee proposes moving the list of parties from subdivision (c) to subdivision (b), which is titled "Commencement; Parties." Furthermore, the Committee determined that the use of "exception" in the subdivision titles may be misleading. The Committee proposes removing the term "exception" from the title of subdivisions (c), (d), and (e). Additionally, the Committee proposes adding "Review of Prisoner Disciplinary Action" to the title of subdivision (c) to more clearly explain the contents of the subdivision (*see* Appendix F-94–F-96).

John Hamilton brought an issue concerning petitions for writs of prohibition and orders to show cause to the Committee's attention. According to the current rule, after a writ of prohibition is filed and the court issues an order to show cause, there is an automatic stay of the proceedings. However, courts are avoiding the automatic stay by requiring a "response," instead of by issuing an "order to show cause." To clarify the practice, the Committee proposes two options for amending Rule 9.100(h) (*see* Appendix E-1–E-2). The first option received the most Committee votes, 20, and specifies that if the Court is requiring a response to a petition, it must do so only through an order to show cause, which creates an automatic stay of the proceedings in the lower tribunal when a writ of prohibition is being sought. The second option the Committee proposes would provide the Court with the choice of requiring a response to a petition either through an order to show cause or through an order directing the respondent to file a response to the petition. The second option was supported by 9 Committee votes. There were 8 Committee members who voted not to approve either option, but to leave the subdivision as it currently exists (*see* Appendix F-97–F-104).

The Committee's proposed amendment to Rule 9.100(e)(3) clarifies that in mandamus or prohibition proceedings, the litigant opposing the requested relief has the responsibility to respond after entry or an order pursuant to Rule 9.100(h). The amendment to subdivision (e)(3)will conform the rule to the Committee's proposed changes to Rule 9.100(h) (*see* Appendix F-104–F-105).

RULE 9.110. APPEAL PROCEEDINGS TO REVIEW FINAL ORDERS OF LOWER TRIBUNALS AND ORDERS GRANTING NEW TRIAL IN JURY AND NON-JURY CASES

H. Michael Muniz brought to the Committee's attention an inconsistency between Rule 9.110(b), and Rule 9.140(c)(3), Appeal Proceedings in Criminal

Cases (*see* Appendix E-3). Under Rule 9.110(b), a party has 30 days after rendition in which to file a notice of appeal, whereas the State only has 15 days after rendition to file a notice of appeal. As Rule 9.110(b) is a more general rule, the Committee proposes amending 9.110(b) to clarify that notices of appeal filed by the State in criminal cases must follow Rule 9.140(c)(3), Appeal Proceedings in Criminal Cases, instead of Rule 9.110(b) (*see* Appendix F-3–F-4).

Committee Member John Hamilton raised a concern about appellate review of "partial final judgments" pursuant to Rule 9.110(k) (*see* Appendix E-8). Currently, the rule does not indicate the limitations on the types of orders that are appealable under subdivision (k). Other than orders that dispose of an entire case as to any party, orders are appealable under subdivision (k) only if they concern an independent portion of the case. The Committee proposes amending Rule 9.110(k) to more clearly define a final partial judgment as one involving claims unrelated to still-pending claims (*see* Appendix F-11–F-12).

Mr. Hamilton also raised a concern regarding Rule 9.110(*l*). He noted that "the decisions from the district courts of appeal are unclear on the question of whether a relinquishment of jurisdiction is necessary for the effective rendition of a final order when a notice of appeal has been filed prematurely" (*see* Appendix E-8). The Committee proposes amending subdivision (*l*) to add a reference to Rule 9.020(i), Definitions, at the outset, specifying that the lower court retains jurisdiction to render a final order, and modifying the last sentence in the subdivision to permit the appellate court to extend the time for the lower court to render the final order (*see* Appendix F-53–F-57).

John Hamilton suggested to the Committee that subdivision (n) of Rule 9.110, be deleted and its contents transferred into new stand-alone rule in an effort to more clearly define the procedure for reviewing a final order dismissing a petition for judicial waiver of parental notice of termination of pregnancy (*see* Appendix E-4). The Committee agreed and now proposes new Rule 9.147, "Appeal Proceedings to Review a Final Order Dismissing a Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy" (*see* Appendix F-88 to F-94). The new rule will break the contents of subdivision (n) into 7 subdivisions. The committee notes are updated accordingly regarding subdivision (*l*), and will also provide guidance on where to find former subdivision (n) (*see* Appendix F-115–F-116).

In 2011, two reports were filed to amend subdivision (n) of Rule 9.110.The first report filed with the Court concerned electronic filing and added

"electronically" to the subdivision. In the interim, between the submission of the electronic filing report and the release of Court's opinion, the Committee filed an out-of-cycle report to amend subdivision (n) to track a statutory change. The amendment conforming this subdivision to the statutory language was effective on March 1, 2012 (*see In re Amendments to Florida Rule of Appellate Procedure 9.110,* 84 So. 3d 224, 225 (Fla. 2012)). When the electronic filing opinion was released in the Fall of 2012, it did not reflect the amendments from the Court's preceding opinion (*see In re: Amendments to the Florida Rules of Civil Procedure, the Florida Rules of Judicial Administration, the Florida Rules of Criminal Procedure, the Florida Probate Rules, the Florida Small Claims Rules, the Florida Rules of Juvenile Procedure, the Florida Rules of Appellate Procedure, and the Florida Family Law Rules of Procedure – Electronic Filing*, 102 So. 3d 451, 481 (Fla. 2012)). A report to clarify Rule 9.110(n) is currently before the Court in case number SC13-2386. The Committee proposes amending new Rule 9.147 to reflect amendments from both opinions.

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

Thomas J. Sasser, on behalf of the Family Law Section of The Florida Bar, asked the Committee to consider amending Rule 9.130, to permit immediate interlocutory appeals from orders determining the enforceability of prenuptial agreements and postnuptial agreements (*see* Appendix E-6 to E-7). The Committee agreed and proposes amending Rule 9.130(a)(3)(C)(iii) to divide the contents into subdivisions (a)(3)(C)(iii)a. and (a)(3)(C)(iii)b. for clarity, and the terminology regarding "time sharing under a parenting plan" brings the rule into conformance with current family la. See, e.g. §61.13(2), Fla. Stat. Proposed new subdivision (a)(3)(C)(iii)c. to Rule 9.130 will allow interlocutory review to determine if a marital agreement is invalid in its entirety (*see* Appendix F-8–F-10 and F-87–F-88). The proposed amendment to Rule 9.130(a)(3)(C)(iii)c. will reduce delay and unnecessary litigation when a prenuptial or postnuptial agreement has been held invalid.

The Committee's proposed revision to Rule 9.130(a)(3)(C)(vi), and suggested deletion of Rule 9.130(a)(6), were also suggested by John Hamilton (*see* Appendix E-8–E-9). Subdivision (a)(3) lists the types of nonfinal orders that are subject to immediate appeal. Subdivision (a)(3)(C) enumerates various appealable nonfinal orders that "determine" a specific issue. As orders certifying a class and orders denying class certification are both appealable, the Committee proposes

deleting subdivision (a)(6) and rephrasing (a)(3)(C)(vi) to consolidate the two avenues of review (*see* Appendix F-20–F-22).

Mr. Hamilton also proposed amending Rule 9.130(a)(4), to more accurately represent the orders being addressed by the subdivision and clearly define the manner in which those orders are appealable (*see* Appendix E-10). The Committee agreed with Mr. Hamilton's proposal and proposes that subdivision (a)(4) be amended to clarify that an order disposing of a motion that suspends rendition is reviewable, but only in conjunction with, and as a part of, the review of the final order. Additionally, the following sentence has been deleted from Rule 9.130(a)(4): "Other non-final orders entered after final order on authorized motions are reviewable by the method prescribed by this rule." Its deletion clarifies that non-final orders entered after a final order are no more or less reviewable than the same type of order would be if issued before a final order. Non-final orders entered after a final order remain reviewable as part of a subsequent final order or as otherwise provided by statute or court rule. This amendment resolves conflict over the language being stricken and the different approaches to review during post-decretal proceedings that have resulted. *See, e.g., Tubero v. Ellis*, 469 So. 2d 206 (Fla. 4th DCA 1985) (Hurley, J., dissenting). This amendment also cures the mistaken reference in the original 1977 committee note to "orders granting motions to vacate default" as examples of non-final orders intended for review under the stricken sentence. An order vacating a default is generally not reviewable absent a final default judgment. *See, e.g., Howard v. McAuley*, 436 So. 2d 392 (Fla. 2d DCA 1983). Orders vacating final default judgments remain reviewable under Rule 9.130(a)(5). Essentially, this amendment will delay some courts' review of some non-final orders entered after a final order until rendition of another, subsequent final order. But the amendment is not intended to alter the Court's ultimate authority to review any order (*see* Appendix F-40 and F-42).

The Committee proposes a rewording of Rule 9.130(b), as well as an amendment to the subdivision to conform to the Committee's proposed restructuring of subdivision (a) and the accompanying deletion of subdivision (a)(6) in Rule 9.130 (*see* Appendix F-60).

Mr. Hamilton suggested that the Committee review Rule 9.130(f) to determine whether the language clearly explained when lower tribunals can enter a final order during reviews pursuant to Rule 9.130 (*see* Appendix E-13). The Committee reviewed the matter and determined that confusion has been created by this subdivision. The Committee proposes adding language to the last sentence of

subdivision (f) to specify that the lower tribunal can enter a final order with leave of the appellate court (*see* Appendix F-57–F-59).

Currently Rule 9.130, does not expressly authorize cross-appeals. As at least one appellate court has expressly held that cross-appeals can be brought in appeals from non-final orders, Mr. Hamilton proposed adding language regarding cross-appeal to Rule 9.130 (*see* Appendix E-10), The Committee agreed and proposes a new subdivision (g) of Rule 9.130 , which would expressly authorize cross-appeals. The Committee also proposes a renumbering of the remaining subdivisions (*see* Appendix F-12).

The committee notes for Rule 9.130 are updated accordingly.

RULE 9.140. APPEAL PROCEEDINGS IN CRIMINAL CASES

Mr. Hamilton identified an inconsistency in the use of "court" and "appellate court" in the rules set (*see* Appendix E-15). Mr. Hamilton proposed the uniform use of the term "court" in place of "appellate court." Because the term "court" is already a reference to the reviewing appellate court under the definition set forth in Rule 9.020(c), Definitions, the "appellate" adjective is redundant and could lead to confusion, and the rules, in any event, use the differentiating adjective "lower tribunal" when referring to the trial court. *See* Rule 9.020(e). To avoid confusion, the Committee proposes removing the word "appellate" from the phrase "appellate court" throughout the rules set for consistency, and in this Rule, from subdivisions (d)(1)(E), (f)(1), (f)(6)(A), and (f)(6)(B) (*see* Appendix F-85–F-86).

RULE 9.141. REVIEW PROCEEDINGS IN COLLATERAL OR POST-CONVICTION CRIMINAL CASES

The Honorable Chris W. Altenbernd shared his concerns with Rule 9.141(b)(2) with the Committee. His concern is that the rule contains no scope of review informing the Court, or the appellant, which issues the Court must, or may, review (*see* Appendix E-42). The Committee proposes amending the title to Rule 9.141(b)(2) and (b)(3) to specify that review pursuant to subdivision (b)(2) arises when there has been a summary grant or denial of "all claims raised in a motion" without any evidentiary hearing on any claim and that review pursuant to subdivision (b)(3) arises when there has been a grant or denial following an evidentiary hearing "on one or more claims" (*see* Appendix F-27–F-29).

William J. Sheppard brought a frequent conflict between Rule 9.141(b)(2)(C) and Rule 9.210(b)(3), Briefs, and to the Committee's attention. Mr. Sheppard is concerned that Rule 9.210(b)(3)'s requirement for citations to the volume and page of the record or transcript, and Rule 9.141(b)(2)(C)'s 15-day time period in which to file a brief, create a trap as the record is generally unavailable within the 15-day time period. Mr. Sheppard is concerned that this has been a particular problem for pro se litigants. Mr. Sheppard is also concerned that some practitioners denounce the filing of a brief in an appeal from a summary denial of a Rule 3.850, "Motion to Vacate, Set Aside, or Correct Sentence" claim, even though filing a brief is specifically allowed by the rule (*see* Appendix E-43–E-45).

In response to these concerns, and to clearly delineate the procedure, the Committee proposes dividing Rule 9.141(b)(2)(C) into subdivisions (i) and (ii) and creating headings for subdivisions (b)(2)(A)–(b)(2)(D). In Rule 9.141(b)(2)(C)(i), the Committee proposes changing the filing date for an initial brief from 15 days after the filing of the notice of appeal to 30 days after the filing of the notice of appeal to allow more time for the record to become available. The Committee also proposes amendments to clarify when an "answer" or "reply" is required in collateral or post-conviction criminal cases and to allow a court to request a response from the appellee (*see* Appendix F-66–F-75).

Mr. Hamilton identified an inconsistency in the use of "court" and "appellate court" in the rules set (*see* Appendix E-15). Mr. Hamilton proposed the uniform use of the term "court" in place of "appellate court." Because the term "court" is already a reference to the reviewing appellate court under the definition set forth in Rule 9.020(c), Definitions, the "appellate" adjective is redundant and could lead to confusion, and the rules, in any event, use the differentiating adjective "lower tribunal" when referring to the trial court. *See* Rule 9.020(e). To avoid confusion, the Committee proposes removing the word "appellate" from the phrase "appellate court" throughout the rules set, including subdivisions (c)(3) and (d)(3) for consistency of Rule 9.141, and removing the phrase "appellate court" from subdivision (c)(1) as superfluous (*see* Appendix F-85–F-86).

RULE 9.142. PROCEDURE FOR REVIEW IN DEATH PENALTY CASES

Committee member John Hamilton identified the issue of the Rule's incorrect use of the term "court" rather than the correct term "lower tribunal" to the Committee (*see* Appendix E-15). Under the definitions set forth in Rule 9.020, the term "court" refers to the reviewing appellate court, and the term "lower tribunal"

refers to the trial court. *See* Rule 9.020(c), (e). To avoid confusion, the Committee proposes amending the title of subdivision (d)(2)(A) (*see* Appendix F-85–F-86).

RULE 9.145. APPEAL PROCEEDINGS IN JUVENILE DELINQUENCY CASES

John Hamilton identified a grammar issue in Rule 9.145(c)(1)(B) to the Committee (*see* Appendix E-48). The Committee proposes removing "and/" to clarify the rule (*see* Appendix F-75–F-76).

RULE 9.146. APPEAL PROCEEDINGS IN JUVENILE DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES AND CASES INVOLVING FAMILIES AND CHILDREN IN NEED OF SERVICES

Committee member John Hamilton identified the inconsistent use of the terms "court" and "lower tribunal" to the Committee (*see* Appendix E-15). Under the definition set forth in Rule 9.020(c), Definitions the term "court" is a reference to the reviewing appellate court, but that term does not encompass the lower court, which is instead referenced by the term "lower tribunal." Rule 9.020(e). To avoid confusion, the Committee proposes amending Rule 9.146(c)(2) to include the lower tribunal to clarify that both the reviewing court and the lower tribunal may issue a stay (*see* Appendix F-85–F-86).

The proposed changes also include substituting the term "documents" for "papers" in subdivision (e), to address electronic filing and to conform to Florida Rule of Judicial Administration 2.516, "Service of Pleadings and Document," (*see* Appendix F-107).

Mr. Hamilton suggested that "issuance of a written opinion" be included in Rule 9.146(g)(6) (*see* Appendix E-51 to E-52). The Committee proposes adding "issuance of a written opinion" to the list of motions that do not permit a response, unless requested by the court (*see* Appendix F-15–F-19). This amendment would conform to proposed amendments in Rule 9.330 and Rule 9.331 regarding the issuance of a written opinion.

RULE 9.147. APPEAL PROCEEDINGS TO REVIEW A FINAL ORDER DISMISSING A PETITION FOR JUDICIAL

WAIVER OF PARENTAL NOTICE OF TERMINATION OF PREGNANCY

Committee member John Hamilton suggested to the Committee that subdivision (n) of Rule 9.110 be deleted and that a new stand-alone Rule 9.147, "Appeal Proceedings to Review a Final Order Dismissing a Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy," be created in its place (*see* Appendix E-4–E-5). The Committee agreed and, in an effort to more clearly define the procedure for reviewing a final order dismissing a petition for judicial waiver of parental notice of termination of pregnancy, now proposes new Rule 9.147 (*see* Appendix F-88–F-94). The Committee proposes creating subdivision (a) which discusses the applicability of the Florida Rules of Civil Procedure in these proceedings. The Committee also proposes reorganizing and dividing the contents of Rule 9.110(n) into the following subdivisions: fees, record, disposition of appeal, briefs and oral argument, confidentiality of proceedings, and procedure following reversal. These subdivisions virtually mirror the current language in Rule 9.110(n), with the exception of subdivisions (d) and (g). Subdivision (d), Disposition of Appeal, refers to the minor as the "appellant" and changes the reference from the "district court of appeal" to the "court." Subdivision (g), Procedure Following Reversal, also refers to the minor as the "appellant" and is amended to provide that the clerk shall furnish the appellant a certified copy of the decision or the clerk's certificate, without charge, for delivery to the minor's physician. The Committee also proposes a Committee Note to indicate the origin of the rule (*see* Appendix F-115–F-116).

RULE 9.160. DISCRETIONARY PROCEEDINGS TO REVIEW DECISIONS OF COUNTY COURTS

John Hamilton proposed amendments to Rule 9.160(e)(1) to the Committee. His concern is that the rule, as written, may be confusing. The Committee is proposing an amendment to subdivision (e) to clarify that the decision to certify is within the absolute discretion of the county court (*see* Appendix F-85–F-86).

RULE 9.180. APPEAL PROCEEDINGS TO REVIEW WORKERS' COMPENSATION CASES

The Honorable Thomas Sculco, ad hoc subcommittee member of the workers' compensation practice subcommittee, recommended the amendment of Rule 9.180(b)(3) to the committee. Judge Sculco questioned whether the Committee should amend Rule 9.180(b)(3) to conform to the e-mail procedures

now authorized by section 440.25(4)(e), Florida Statutes (*see* Appendix E-53–E-54). The Committee agreed that the change was necessary and proposes amending subdivision (b)(3) to reflect the move to electronic service and electronic filing (*see* Appendix F-30–F-31).

The proposed amendments to this rule also include substituting the term "documents" for "papers" in Rule 9.180(e)(2) to conform to Florida Rule of Judicial Administration 2.516, "Service of Pleadings and Documents," (*see* Appendix F-107).

Committee member Wendy S. Loquasto raised the question of whether subdivision (f) of Rule 9.180 should be amended to require that the record on appeal in workers' compensation cases include motions for rehearing, orders on those motions, and trial memoranda (*see* Appendix E-55–E-59). The Committee agreed that these items should be included in the record to provide for a more complete record on appeal and proposes adding trial memoranda, as well as any motions for rehearing, the responses to such motions, and the orders on motions for rehearing, to the list of documents that shall be contained in the record (*see* Appendix F-31–F-32).

Wendy S. Loquasto also raised the question of whether subdivision (g) of Rule 9.180 should be amended to address situations in which a petition for insolvency is filed but later withdrawn before it is ruled upon, and the effect of that withdrawal on the deadline for depositing the estimated cost of the record and the commencement of the 60-day period for the preparation of the record (*see* Appendix E-55–E-59). The Committee proposes amending and consolidating subdivisions (g)(3)(G)–(g)(3)(H) to delineate the procedure for situations in which a petition for insolvency is filed, but withdrawn before being ruled upon (*see* Appendix F-32–F-33). Subdivisions (g)(3)(I)–(g)(3)(J) are renumbered accordingly.

RULE 9.190. JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

Committee member John Hamilton noticed an inconsistency in subdivision (a) of Rule 9.190 (*see* Appendix E-60). In its current form, the subdivision states that "[j]udicial review of administrative action shall be governed by the general rules of appellate procedure." The Committee proposes amending subdivision (a) to conform it to other applicability subdivisions throughout the rules set, and state that "except as specifically modified by this rule," review "shall be as in civil cases" (*see* Appendix F-105–F-106).

RULE 9.200. THE RECORD

John Hamilton suggested that the Committee consider amending Rule 9.200(a)(4) to clarify that the parties must notify the clerk of the lower tribunal, not the clerk of the reviewing court, if they plan to rely on a stipulated statement instead of the record (*see* Appendix E-61). The Committee agreed and proposes adding "of the lower tribunal" to subdivision (a)(4) to avoid any confusion (*see* Appendix F-106).

Mr. Hamilton identified the inconsistent use of "court" and "appellate court" in the rules set (*see* Appendix E-15). Mr. Hamilton proposed the uniform use of the term "court" in place of "appellate court." Because the term "court" is already a reference to the reviewing appellate court under the definition set forth in Rule 9.020(c), Definitions, the "appellate" adjective is redundant and could lead to confusion, and the rules, in any event, use the differentiating adjective "lower tribunal" when referring to the trial court. *See* Rule 9.020(e). To avoid confusion, the Committee proposes removing the word "appellate" from the phrase "appellate court" throughout the rules set, including subdivisions (b)(3), for consistency (*see* Appendix F-85–F-86).

The Committee also approved a committee note to further explain subdivision (a)(1) and elucidate which items are considered "exhibits that are not physical evidence" (*see* Appendix F-50–F-51).

RULE 9.210. BRIEFS

Paul S. Cherry shared his concerns regarding Rule 9.210(b) with the Committee. Mr. Cherry feels that the rule is confusing and does not conform to current case law or to the Supreme Court's operating policies and procedures (*see* Appendix E-62–E-63). The Committee reviewed Rule 9.210 and proposes several clarifying amendments to improve the organization of the rule. First, the Committee proposes moving the sentence on headings and subheadings from (a)(3) to subdivision (a)(2) to consolidate the parts of the rule addressing the layout of text on a page. Additionally, the Committee opines that subdivision (a)(2) should more clearly set forth the font size requirements for footnotes and quotations. The Committee proposes that subdivision (a)(2) be amended to clarify that footnotes and quotations must be in the same size font as the text in the body of the brief. The Committee recommends amending Rule 9.210(a)(5) to indicate that the signature block for the brief's author should not be included in the computation of the brief's length, as the signature block is not argument and is more comparable to

the table of contents and certificates of service and compliance (*see* Appendix F-76–F-84).

The Committee further proposes amending Rule 9.210(b)(1) to require that the table of contents list the sections of the initial brief, headings and subheadings identifying the issues for review, and the page on which the sections appear to codify the current preferred practice. In subdivision (b)(5), the Committee proposes that citation to appropriate authorities also be required, in addition to the currently required argument on each issue and applicable standard of review to codify the current preferred practice. In subdivisions (b)(7)–(b)(8), (c), and (d), the Committee recommends requiring that certificates of service and certificates of compliance for computer-generated briefs be included in all types of briefs. These certificates are currently required in Rule 9.210(a)(2) and (a)(5), but the Committee wants to include them in the brief-content subdivisions of the rule to clarify that these certificates are required in initial briefs, answer briefs, reply briefs, and cross-reply briefs. In subdivision (c), the Committee proposes adding that the statement of the case and of the facts need not be included in the answer brief if the appellant's statement is satisfactory. Additionally, the Committee proposes amendments to subdivisions (d) and (e) to include a table of contents and a table of citations in reply and cross-reply briefs for consistency and to codify the preferred current practice (*see* Appendix F-76–F-84).

RULE 9.300. MOTIONS

Committee member John Hamilton identified an issue concerning Rule 9.300(b) and the tolling of time after the filing of an initial brief. Mr. Hamilton pointed out that an "order of this nature [Rule 9.300(b)] can occur after the initial brief is filed, but before the answer brief is filed. For example, such an order could be entered in the context of a supplementation of the record following the filing of the appellant's initial brief. In instances of that nature, it seems to me that the appellee should get the same extension-of-time benefit that the appellant would have received if the order had been entered before the appellant's brief had been filed" (*see* Appendix E-50–E-52). The Committee agrees with Mr. Hamilton's concerns and is proposing an amendment to Rule 9.300(b) to allow for an extension of time with respect to a brief other than the initial brief (*see* Appendix F-15).

The Committee proposes three new motions that do not toll time under Rule 9.300(d). The first, suggested to the Committee by Roy D. Wasson, concerns motions relating to sanctions under Rule 9.410 (*see* Appendix E-64–E-65). Mr.

Wasson suggests adding motions for sanctions to the list of non-tolling motions as such motions typically are not ruled upon until the case is decided on the merits. The Committee agreed and proposes adding motions for sanctions to subdivision (d) (*see* Appendix F-84).

John Hamilton suggested that motions under proposed new Rule 9.147, Appeal Proceedings to Review a Final Order Dismissing a Petition for Judicial Waiver of Parental Notice of Termination of Pregnancy, be added to the list of motions that do not toll time. Due to the time-sensitive nature of such proceedings, the Committee proposes that such motions be added to the list of motions that do not toll time under Rule 9.300(d) (*see* Appendix F-90–F-94).

The third amendment to subdivision (d) is based on a concern from Gwendolyn Powell Braswell, who identified an inconsistency between Rule 9.300(d), "Motions," and Rule 9.700(d), "Mediation Rules," (*see* Appendix E-66–E-67). Currently, under Rule 9.300(d), a motion under Rule 9.700(b), that is filed more than 30 days after the filing of the notice of appeal, will toll the appellate time schedules until the disposition of such motion. This is inconsistent with the tolling provisions of Rule 9.700(d), "Mediation Rules." The Committee proposes that motions for mediation filed more than 30 days after the notice of appeal be added to the list of motions that do not toll time under Rule 9.300(d) (*see* Appendix F-25–F-27). This proposed amendment would conform Rule 9.300(d) with Rule 9.700(d). The list in subdivision (d) is renumbered to reflect these three new subdivisions.

RULE 9.310. STAY PENDING REVIEW

Committee member John Hamilton identified a conflict concerning whether the language of Rule 9.310(a) authorizes a trial court to stay a money judgment pending appeal upon terms other than those set forth in Rule 9.310(b)(1) (*see* Appendix E-11). Mr. Hamilton suggests that a split between the District Courts of Appeal was created in *Platt v. Russek*, 921 So. 2d 5 (Fla. 2d DCA 2004). The conflict concerns whether the language of rule 9.310(a) authorizes a trial court to stay a money judgment pending appeal upon terms other than those set forth in subdivision (b)(1). The Third and Fourth District Courts of Appeal have expressly said no. *See, e.g., Caruso v. Caruso*, 932 So. 2d 457, 458 (Fla. 4th DCA 2006); *Mellon United Nat'l Bank v. Cochran*, 776 So. 2d 964 (Fla. 3d DCA 2000); *Campbell v. Jones*, 648 So. 2d 208, 209 (Fla. 3d DCA 1994); *Proprietors Ins. Co. v. Valsecchi*, 385 So. 2d 749, 751-752 (Fla. 3d DCA 1980). In *Platt*, the Second District Court of Appeal said yes. The Committee voted to submit two options to

the Court. The first option, which is the Committee's preferred option, would amend Rule 9.310(b)(1) to require a mathematically-calculated supersedeas bond to obtain a stay (*see* Appendix F-22–F-25). The second option would also amend Rule 9.310(b)(1), but by adding new subdivisions (A) and (B) and by granting a trial court discretion to stay the execution of a judgment on grounds other than the posting of the otherwise-prescribed mathematically-calculated supersedeas bond (*see* Appendix F-37–F-39).

RULE 9.320. ORAL ARGUMENT

John Hamilton suggested that the deadline for filing a request for oral argument should be changed to a fixed number of days after the reply brief has been served (*see* Appendix E-51). This would give the litigants the opportunity to base the decision on whether to request oral argument on the argument in the parties' last brief, instead of automatically requesting oral argument when it may not be necessary. Additionally, in its current form, the rule does not apply to original proceedings and other proceedings that are commenced by the filing of a petition and in which briefs are not filed. The Committee proposes amending Rule 9.320, Oral Argument, by creating subdivisions (a), (b), and (c) to add a fixed number of days for the service of the request for oral argument, to allow a procedure for requesting oral argument in proceedings commenced by petition, and to identify the different procedure that governs appeals of final orders in dependency or termination of parental rights cases (*see* Appendix F-29–F-30).

RULE 9.330. REHEARING; CLARIFICATION; CERTIFICATION

This recommendation from John Hamilton addresses Rule 9.330 (*see* Appendix E-51–E-52). Rule 9.330 does not appear to authorize a stand-alone motion for a written opinion that is not coupled with a request for rehearing, clarification, or certification; rather, the rule provides that a motion for rehearing, clarification, or certification "may include a request that the court issue a written opinion," Rule 9.330(a). The Committee proposes adding a "motion for . . . issuance of a written opinion" to the list of motions that may be filed independently under subdivision (a) (*see* Appendix F-15–F-16). The proposed amendment would allow for an independent request for a written opinion, and clarify that the request for written opinion is not required to be paired with motions for rehearing, clarification, or certification.

The Committee also proposes requiring an e-mail address in the signature block of subdivision (a) to conform to the electronic service and electronic filing

requirements in Florida Rules of Judicial Administration 2.516, "Service of Pleadings and Documents," and 2.525, "Electronic Filing."

RULE 9.331. DETERMINATION OF CAUSES IN A DISTRICT COURT OF APPEAL EN BANC

In his recommendation, John Hamilton, raised a question as to whether the language of Rule 9.331(d)(1) should authorize rehearing en banc when the issue in a case is of "exceptional importance," even if the case itself may not be of exceptional importance (*see* Appendix E-52). The Committee reviewed the issue and decided that some matters that are worthy of en banc review do not receive that review because the underlying case is not of "exceptional importance." The Committee proposes amending Rule 9.331(d)(1) and (d)(2) to expressly include issues of exceptional importance as a ground for moving for rehearing en banc (*see* Appendix F-17–F-18).

Additionally, the Committee proposes requiring an e-mail address in the signature block of Rule 9.331(d)(2) to conform to the electronic service and electronic filing requirements in Florida Rules of Judicial Administration 2.516, Service of Pleadings and Documents, and 2.525, Electronic Filing. The Committee approved this matter through an e-mail vote.

RULE 9.340. MANDATE

Committee member John Hamilton suggested that, with the amendment of Rule 9.330(a), Rehearing; Clarification; Certification, a timely filed motion for the issuance of a written opinion should be included in Rule 9.340(b), among the motions that extend the time for issuance of a mandate (*see* Appendix E-52). The Committee agreed and proposes amending Rule 9.340(b) to include motions for the "issuance of a written opinion" (*see* Appendix F-18–F-19). The Committee's proposed amendment will conform Rule 9.340(b) to the proposed amendments to Rule 9.330(a).

RULE 9.350. DISMISSAL OF CAUSES

Former Committee Liaison Krys Godwin shared a concern regarding the Court's continuing jurisdiction following the filing of a notice of dismissal before a decision on the merits has been rendered. (*see* Appendix E-68–E-70). The Committee proposes adding subdivision (d), "Automatic Stay," to Rule 9.350, to clarify that the filing of a stipulation for dismissal or a notice of dismissal

automatically stays the affected portion of the proceedings, pending further order of the Court (*see* Appendix F-46–F-47). The amendment is intended to limit any further litigation regarding matters that are settled or may be voluntarily dismissed, until the court determines whether to recognize the dismissal. Committee notes are also updated accordingly.

RULE 9.400. COSTS AND ATTORNEYS' FEES

John Hamilton identified the issue of how costs are to be taxed in appellate proceedings that are resolved without the issuance of a mandate. In his memorandum, Mr. Hamilton noted that "[t]his provision governs the taxation of appellate costs. It provides, in pertinent part, that '[c]osts shall be taxed by the lower tribunal on motion served within 30 days after issuance of the mandate,'Rule 9.400(a). But lots of appellate proceedings are resolved without the issuance of any mandates." (*see* Appendix E-11). Because mandates are not issued in all proceedings, the Committee proposes amending Rule 9.400(a) so that the deadline for a motion to tax costs is triggered by rendition of the Court's order, an event that occurs in all cases and proceedings. Because rendition of an order occurs earlier than the issuance of a mandate, the Committee proposes amendments to subdivision (a) to increase the number of days to serve the motion to 45 days after rendition of the court's order, instead of within 30 days of the issuance of the mandate. Additionally, the Committee proposes amending Rule 9.400(a)(2) to include charges for the preparation of any hearing or trial transcripts necessary to determine the proceedings. Oftentimes the transcript is not initially included in the record. This proposed amendment would conform Rule 9.400(a)(2) with Rule 9.200(b), The Record. The Committee also proposes amending subdivision (a) to prohibit the lower tribunal from taking further action on costs, if an order has been entered to stay the issuance of or to recall the mandate (*see* Appendix F-39–F-40).

Mr. Hamilton also brought to the Committee's attention the issue of whether motions for attorneys' fees can be filed in original writ proceedings, not just in appeals (*see* Appendix E-12). It has generally been the practice of the district courts of appeal to deem the attorneys' fees provisions of Rule 9.400(b) applicable to both appeals and original proceedings, but the express language of Rule 9.400(b) does not appear to contemplate that a motion for attorneys' fees can be filed in an original proceeding, in which no "brief" is ever due. The Committee proposes amending subdivision (b) to allow for motions for attorneys' fees in appeals and original proceedings alike. The Committee is of the opinion that the proposed amendment will clarify any confusion caused by the decision in *Advanced Chiropractic and Rehabilitation Ctr. v. United Auto. Ins. Co.*, 103 So. 3d

869 (Fla. 4th DCA 2012). The Committee further proposes restructuring subdivision (b) so that the requirement that motions for attorneys' fees "shall state the grounds on which recovery is sought" applies in both appeals and original proceedings (*see* Appendix F-62–F-63).

RULE 9.410. SANCTIONS

Thomas W. Young, a former Committee member, has concerns regarding the certificate of service requirements in Rule 9.410(b) (*see* Appendix E-71–E-73). The Committee proposes several amendments to Rule 9.410(b)(2)–(b)(4) to distinguish between the initial certificate of service (which memorializes when service of the motion is initially made on the party from whom sanctions are sought but the motion is not filed with the court) and the certificate of filing and final service (which memorializes the service that accompanies the ultimate filing of the motion) and their respective uses (*see* Appendix F-44–F-46). The Committee further proposes amending the rule to modify the deadline for filing the motion for sanctions from 30 days after service of the motion to 45 days after the initial service of the motion. As the rule is currently written, a party potentially has 26 days (including mailing days) to withdraw an objectionable filing or argument, and if the party fails to do so, the moving party could have only four days to file the motion for sanctions. The Committee concluded that that time period is too short.

The Committee also proposes the additional requirement of an e-mail address in the signature block of subdivision (b)(4) to comply with the requirements of Florida Rules of Judicial Administration 2.516, Service of Pleadings and Documents, and 2.525, Electronic Filing, and a clarification expressly requiring that the date of service be listed on the certificate.

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

Bar Liaison Ellen Sloyer identified an incorrect rule reference in subdivision (a)(1). The Committee agreed that the reference to Rule of Judicial Administration 2.516, Service of Pleadings and Documents, was incorrect and proposes correcting the electronic filing reference in subdivision (a)(1).

Joshua R. Heller expressed concern that the Department of Corrections created an inmate mailing system, complete with date stamp, but the rules do not require its use (*see* Appendix E-74 to E-75). The Committee proposes completely

rewriting subdivision (a)(2) to conform Rule 9.420 to *Thompson v. State*, 761 So. 2d 324 (Fla. 2000), and the federal mailbox rule adopted in *Haag v. State*, 591 So. 2d 614 (Fla. 1992). The proposed amendment clarifies that an inmate is required to use the institutional system designed for legal mail, if there is one, to receive the benefits of the mailbox rule embodied in this subdivision (*see* Appendix F-49–F-50). Committee notes are updated accordingly.

The proposed amendments to this rule also include substituting the term "documents" for "papers" in subdivision (b)(1) to conform to Florida Rule of Judicial Administration 2.516, "Service of Pleadings and Documents," (*see* Appendix F-107).

RULE 9.430. PROCEEDINGS BY INDIGENTS

John Hamilton identified the inconsistent use of "court" and "appellate court" in the rules set (*see* Appendix E-15). Mr. Hamilton proposed the uniform use of the term "court" in place of "appellate court." Because the term "court" is already a reference to the reviewing appellate court under the definition set forth in Rule 9.020(c), the "appellate" adjective is redundant and could lead to confusion, and the rules, in any event, use the differentiating term "lower tribunal" when referring to the trial court. *See* Rule 9.020(e). To avoid confusion, the Committee proposes removing the word "appellate" from the phrase "appellate court" throughout the rules set, including subdivisions (c)(1) and (d) for consistency (*see* Appendix F-85–F-86).

RULE 9.600. JURISDICTION OF LOWER TRIBUNAL PENDING REVIEW

Kristen M. Fiore and Katherine E. Giddings asked the Committee to review Rule 9.600 and to consider clarifying the jurisdiction of the lower tribunal to remedy clerical mistakes (*see* Appendix E-89). The Committee proposes amendments to Rule 9.600(a) to provide that, pending review, certain clerical mistakes may be corrected by the lower tribunal without leave of the reviewing court if the clerical mistakes arise from an oversight or omission and the record has not yet been docketed. Thereafter, leave must be obtained from the reviewing court (*see* Appendix F-42–F-44). This amendment will also conform the rule to Florida Rule of Civil Procedure 1.540, "Relief from Judgment, Decrees, or Orders."

RULE 9.720. MEDIATION PROCEDURES

Lawrence H. Kolin has concerns regarding the conflict between Florida Rule of Civil Procedure 1.720, Mediation Procedures, and Rule 9.720, Mediation Procedures (*see* Appendix E-84–E-85). The Committee proposes two new subdivisions to Rule 9.720 that would mirror subdivisions in Rule 1.720 (*see* Appendix F-47–F-49). Proposed subdivision (f) defines "a party or its representative having full authority to settle" (*see* Appendix F-47). Proposed subdivision (g) requires each party to file a written notice identifying who will be attending the mediation conference, and whether those individuals have the appropriate authority to settle as required by this rule (*see* Appendix F-48). These amendments make the rule consistent with the 2011 amendments to Florida Rule of Civil Procedure 1.720(c) and (e), Mediation Procedures. Committee notes are updated accordingly.

RULE 9.800. UNIFORM CITATIONS SYSTEM

In Rule 9.800(c)(3), the Committee proposes updating the citations for opinions not published in the Florida Law Weekly, correcting citation inaccuracies, and deleting outdated references to jury instructions for robbery and workers' compensation rules under Rule 9.800(i) (*see* Appendix F-34–F-36). The Committee proposes amending subdivision (i) to reflect the updated numbering system of the criminal jury instructions (*see* Appendix F-34 to F-36). Robert J. Hauser identified the absence of a rule citation for the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violence Predators (*see* Appendix E-87). The Committee proposes adding a new citation form for the Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violence Predators under subdivision (i) (*see* Appendix F-34–F-36).

RULE 9.900. FORMS

Committee member John Hamilton suggested that a companion form is needed to implement the proposed new subdivision (g) in Rule 9.130, Proceedings to Review Non-final Orders and Specified Final Orders (*see* Appendix E-87). The Committee proposes separating subdivision (c) into two new subdivisions, and creating a notice of cross-appeal of non-final order (*see* Appendix F-60–F-62). The Committee proposes additional amendments to subdivision (a), (b), proposed (c)(1), (d), (e), and (f) to reference the correct subdivisions in Rule 9.020, Definitions.

Pursuant to the Court's direction in *In re Implementation of Committee on Privacy and Court Records Recommendations—Amendments to the Florida Rules*

of Civil Procedure; the Florida Rules of Judicial Administration; the Florida Rules of Criminal Procedure; the Florida Probate Rules; the Florida Small Claims Rules; the Florida Rules of Appellate Procedure; and the Florida Family Law Rules of Procedure, 78 So. 3d 1045, issued on November 3, 2011, the Committee also reviewed all of its rules for consistency with the privacy amendments and decided that no amendments are necessary.

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

Respectfully submitted on February 3, 2014.

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I certify that a copy of the foregoing was furnished by e-mail, on February 3, 2014, to:

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CERTIFICATE OF COMPLIANCE

I certify that these rules were read against *West's Florida Rules of Court – State* (2013 Revised Edition). The items below were corrected in Appendix B.

In Rule 9.100(f)(4), there is a space before the period at the end of the sentence (*see In re Amendments to the Florida Rules of Appellate Procedure*, 685 So. 2d 773, 789 (Fla. 1996)).

Rule 9.140(c)(1)(I), does not reflect the terminology change to "intellectually disabled" adopted in the Court's opinion in SC13-1492 (*see In re Amendments to Florida Rule of Appellate Procedure 9.140*, 123 So. 3d 53 (Fla. Sept. 26, 2013)).

In the Committee Note for Rule 9.141, regarding the 2000 Amendment, post-conviction should have a "-", but it does not in paragraphs 1, 3, and 4 (*see In re Amendments to the Florida Rules of Appellate Procedure*, 780 So. 2d 834, 875 (Fla. 2000)).

In Rule 9.190(e)(2)(C), the end of the first sentence has two periods. The Court removed one of the periods when the subdivision was amended in 2005 (*see In re Amendments to the Florida Rules of Appellate Procedure* 894 So. 2d 202, 229 (Fla. 2005)).

In Rule 9.210, the Court Commentary the 2000 Amendments, paragraph 2, West has "¿¿" around "either Times New Roman 14−point or Courier New 12−point" instead of "—" (*see In re Amendments to the Florida Rules of Appellate Procedure*, 780 So. 2d 834, 893 (Fla. 2000)).

Rule 9.340(a) does not reflect the Court's amendments regarding mandate in SC13-1670 (*see In re Amendments to the Florida Rules of Judicial Administration and the Florida Rules of Appellate Procedure*, 125 So. 3d 743 (Oct. 31, 2013)).

In Rule 9.900(e), there should be a "*" after Defendant, as there is after Plaintiff (*see In re Amendments to the Florida Rules of Appellate Procedure* 391 So. 2d 203, 210 (Fla. 1980)).

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

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