

# Florida Rules of Appellate Procedure

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(a) **Issuance of Mandate.** Unless otherwise ordered by the court or provided by these rules, the clerk shall issue such mandate or process as may be directed by the court after expiration of 15 days from the date of an order or decision. A copy thereof, or notice of its issuance, shall be served on all parties.

(b) **Extension of Time for Issuance of Mandate.** Unless otherwise provided by these rules, if a timely motion for rehearing, clarification, or certification has been filed, the time for issuance of the mandate or other process shall be extended until 15 days after rendition of the order denying the motion, or, if granted, until 15 days after the cause has been fully determined.

(c) **Entry of Money Judgment.** If a judgment of reversal is entered that requires the entry of a money judgment on a verdict, the mandate shall be deemed to require such money judgment to be entered as of the date of the verdict.

#### Committee Notes

**1977 Amendment.** This rule replaces former rule 3.15. The power of the court to expedite as well as delay issuance of the mandate, with or without motion, has been made express. That part of former rule 3.15(a) regarding money judgments has been eliminated as unnecessary. It is not intended to change the substantive law there stated. The 15-day delay in issuance of mandate is necessary to allow a stay to remain in effect for purposes of rule 9.310(e). This automatic delay is inapplicable to bond validation proceedings, which are governed by rule 9.330(c).

**1984 Amendment.** Subdivision (c) was added. It is a repromulgation of former rule 3.15(a), which was deleted in 1977 as being unnecessary. Experience proved it to be necessary.

### **RULE 9.350. DISMISSAL OF CAUSES**

(a) **Dismissal of Causes When Settled.** When any cause pending in the court is settled before a decision on the merits, the parties shall immediately notify the court by filing a signed stipulation for dismissal.

(b) **Voluntary Dismissal.** A proceeding of an appellant or petitioner may be dismissed before a decision on the merits by filing a notice of dismissal with the clerk of the court without affecting the proceedings filed by joinder or cross-appeal; provided that dismissal shall not be effective until 10 days after filing the notice of appeal or until 10 days after the time prescribed by rule 9.110(b), whichever is later.

(c) **Clerk's Duty.** When a proceeding is dismissed under this rule, the clerk of the court shall notify the clerk of the lower tribunal.

#### Committee Notes

**1977 Amendment.** Subdivision (a) retains the substance of former rule 3.13(a). On the filing of a stipulation of dismissal, the clerk of the court will dismiss the case as to the parties signing the stipulation.

Subdivision (b) is intended to allow an appellant to dismiss the appeal but a timely perfected cross-appeal would continue. A voluntary dismissal would not be effective until after the time for joinder in appeal or cross-appeal. This limitation was created so that an opposing party desiring to have adverse rulings reviewed by a cross-appeal cannot be trapped by a voluntary dismissal by the appellant after the appeal time has run, but before an appellee has filed the notice of joinder or cross-appeal.

Subdivision (c) retains the substance of former rule 3.13(c).

## **RULE 9.360. PARTIES**

**(a) Joinder.** A party to the cause in the lower tribunal who desires to join in a proceeding as a petitioner or appellant shall serve a notice to that effect no later than the latest of the following: (i) within 10 days of service of a timely filed petition or notice of appeal; (ii) within the time prescribed for filing a notice of appeal; or (iii) within the time prescribed in rule 9.100(c). The original and 1 copy of the notice of joinder, accompanied by any filing fees prescribed by law, shall be filed either before service or immediately thereafter in the same manner as the petition or notice of appeal.

**(b) Attorneys, Representatives, and Guardians Ad Litem.** Attorneys, representatives, and guardians ad litem in the lower tribunal shall retain their status in the court unless others are duly appointed or substituted; however, for limited representation proceedings under Florida Family Law Rule of Procedure 12.040, representation terminates upon the filing of a notice of completion titled “Termination of Limited Appearance” pursuant to rule 12.040(c).

### **(c) Substitution of Parties.**

(1) If substitution of a party is necessary for any reason, the court may so order on its own motion or that of a party.

(2) Public officers as parties in their official capacities may be described by their official titles rather than by name. Their successors in office shall be automatically substituted as parties.

(3) If a party dies while a proceeding is pending and that party’s rights survive, the court may order the substitution of the proper party on its own motion or that of any interested person.

(4) If a person entitled to file a notice dies before filing and that person’s rights survive, the notice may be filed by the personal representative, attorney of record, or, if none, by any interested person. Following filing, the proper party shall be substituted.

### **Committee Notes**

**1977 Amendment.** This rule is intended as a simplification of the former rules with no substantial change in practice.

Subdivision (a) is a simplification of the provisions of former rule 3.11(b), with modifications recognizing the elimination of assignments of error.

Subdivision (b) retains the substance of former rule 3.11(d).

Subdivision (c)(1) substantially simplifies the procedure for substituting parties. This change is in keeping with the overall concept of this revision that these rules should identify material events that may or should occur in appellate proceedings and specify in general terms how that event should be brought to the attention of the court and how the parties should proceed. The manner in which these events shall be resolved is left to the courts, the parties, the substantive law, and the circumstances of the particular case.

Subdivision (c)(2) is new and is intended to avoid the necessity of motions for substitution if the person holding a public office is changed during the course of proceedings. It should be noted that the style of the case does not necessarily change.

Subdivision (c)(4) is new, and is intended to simplify the procedure and avoid confusion if a party dies before an appellate proceeding is instituted. Substitutions in such cases are to be made according to subdivision (c)(1).

#### **RULE 9.370. AMICUS CURIAE**

**(a) When Permitted.** An amicus curiae may file a brief only by leave of court. A motion for leave to file must state the movant's interest, the particular issue to be addressed, how the movant can assist the court in the disposition of the case, and whether all parties consent to the filing of the brief.

**(b) Contents and Form.** An amicus brief must comply with Rule 9.210(b) but shall omit a statement of the case and facts and may not exceed 20 pages. The cover must identify the party or parties supported. An amicus brief must include a concise statement of the identity of the amicus curiae and its interest in the case.

**(c) Time for Service.** An amicus curiae must serve its brief no later than 5 days after the first brief, petition, or response of the party being supported is served. An amicus curiae that does not support either party must serve its brief no later than 5 days after the initial brief or petition is served. A court may grant leave for later service, specifying the time within which an opposing party may respond. The service of an amicus curiae brief does not alter or extend the briefing deadlines for the parties. An amicus curiae may not file a reply brief.

**(d) Notice of Intent to File Amicus Brief in Supreme Court.** When a party has invoked the discretionary jurisdiction of the supreme court, an amicus curiae may file a notice with the court indicating its intent to seek leave to file an amicus brief on the merits should the court accept jurisdiction. The notice shall state briefly why the case is of interest to the amicus curiae, but shall not contain argument. The body of the notice shall not exceed one page.

#### **Committee Notes**

**1977 Amendment.** This rule replaces former rule 3.7(k) and expands the circumstances in which amicus curiae briefs may be filed to recognize the power of the court to request amicus curiae briefs.

**2008 Amendment.** Subdivision (d) was added to establish a procedure for an amicus curiae to expeditiously inform the supreme court of its intent to seek leave to file an amicus brief on the merits should the court accept jurisdiction. This rule imposes no obligation on the supreme court to delay its determination of jurisdiction. Thus, an amicus curiae should file its notice as soon as possible after the filing of the notice to invoke discretionary jurisdiction of the supreme court. The filing of a notice under subdivision (d) is optional and shall not relieve an amicus curiae from compliance with the provisions of subdivision (a) of this rule if the court accepts jurisdiction.

#### **RULE 9.400. COSTS AND ATTORNEYS' FEES**

**(a) Costs.** Costs shall be taxed in favor of the prevailing party unless the court orders otherwise. Taxable costs shall include

- (1) fees for filing and service of process;
- (2) charges for preparation of the record;
- (3) bond premiums; and

(4) other costs permitted by law.

Costs shall be taxed by the lower tribunal on motion served within 30 days after issuance of the mandate.

**(b) Attorneys' Fees.** With the exception of motions filed pursuant to rule 9.410(b), a motion for attorneys' fees may be served not later than the time for service of the reply brief and shall state the grounds on which recovery is sought. The assessment of attorneys' fees may be remanded to the lower tribunal. If attorneys' fees are assessed by the court, the lower tribunal may enforce payment.

**(c) Review.** Review of orders rendered by the lower tribunal under this rule shall be by motion filed in the court within 30 days of rendition.

#### Committee Notes

**1977 Amendment.** Subdivision (a) replaces former rules 3.16(a) and (b). It specifies allowable cost items according to the current practice. Item (3) is not intended to apply to bail bond premiums. Item (4) is intended to permit future flexibility. This rule provides that the prevailing party must move for costs in the lower tribunal within 30 days after issuance of the mandate.

Subdivision (b) retains the substance of former rule 3.16(e). The motion for attorneys' fees must contain a statement of the legal basis for recovery. The elimination of the reference in the former rule to attorneys' fees "allowable by law" is not intended to give a right to assessment of attorneys' fees unless otherwise permitted by substantive law.

Subdivision (c) replaces former rules 3.16(c) and (d). It changes from 20 days to 30 days the time for filing a motion to review an assessment of costs or attorneys' fees by a lower tribunal acting under order of the court.

### **RULE 9.410. SANCTIONS**

**(a) Court's Motion.** After 10 days' notice, on its own motion, the court may impose sanctions for any violation of these rules, or for the filing of any proceeding, motion, brief, or other paper that is frivolous or in bad faith. Such sanctions may include reprimand, contempt, striking of briefs or pleadings, dismissal of proceedings, costs, attorneys' fees, or other sanctions.

#### **(b) Motion by a Party.**

**(1) Applicability.** Any contrary requirements in these rules notwithstanding, the following procedures apply to a party seeking an award of attorneys' fees as a sanction against another party or its counsel pursuant to general law.

**(2) Proof of Service.** A motion seeking attorneys' fees as a sanction shall include a certificate of service, pursuant to rule 9.420(d), and a certificate of filing, pursuant to subdivision (4) of this rule.

**(3) Initial Service.** A copy of a motion for attorneys' fees as a sanction must initially be served only on the party against whom sanctions are sought. That motion shall be served no later than the time for serving any permitted response to a challenged paper or, if no response is permitted as of right, within 15 days after a challenged paper is served or a challenged claim, defense, contention, allegation, or denial is made at oral argument. A certificate of service that complies with rule 9.420(d) shall be taken as prima facie proof of the date of service. The certificate of filing should remain undated and unsigned.

**(4) Filing and Final Service.** If the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected within 21 days after service of the motion, the movant may file the motion for attorneys' fees as a sanction, as referenced in subdivision (3), with the court (a) no later than the time for service of the reply brief, if applicable, or (b) no later than 30 days after service of the motion.

The movant shall serve upon all parties a copy of the motion filed with the court. A certificate of service of that copy which complies in substance with the form below shall be taken as prima facie proof of final service.

I certify that a copy of this previously served motion has been furnished to .....(court)..... by .....hand delivery/mail/other delivery source..... and has been furnished to .....(name or names)..... by .....hand delivery/mail/otherdelivery source.....

\_\_\_\_\_  
/s/

\_\_\_\_\_  
Attorney for .....(name of party).....

.....(address and phone number).....

Florida Bar No.: \_\_\_\_\_

**(5) Response.** A party against whom sanctions are sought may serve 1 response to the motion within 10 days of the final service of the motion. The court may shorten or extend the time for response to the motion.

#### Committee Notes

**1977 Amendment.** This rule replaces former rule 3.17. This rule specifies the penalties or sanctions that generally are imposed, but does not limit the sanctions available to the court. The only change in substance is that this rule provides for 10 days notice to the offending party before imposition of sanctions.

**2010 Amendment.** Subdivision (b) is adopted to make rule 9.410 consistent with section 57.105, Florida Statutes (2009).

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

#### **(a) Filing.**

**(1) Generally.** Filing may be accomplished by filing with the clerk; provided that a justice or judge may accept the documents for filing, and shall note the filing date and immediately transmit them to the office of the clerk.

**(2) Inmate Filing.** A document filed by a pro se inmate confined in an institution is timely filed if the inmate places the document in the hands of an institution official for mailing on or before the last day for filing. Such a document shall be presumed to be timely filed if it contains a certificate of service certifying that the inmate placed the document in the hands of an institution official for mailing on a particular date, and if the document would have been timely filed had it been received and file-stamped by the court on that date.

**(b) Service.** All original papers shall be filed either before service or immediately thereafter. A copy of all documents filed under these rules shall, before filing or immediately thereafter, be served on each of the parties.

The lower tribunal, before the record is transmitted, or the court, on motion, may limit the number of copies to be served.

**(c) Method of Service.** If service is required or permitted to be made on a party represented by an attorney, service shall be made on the attorney unless service on the party is ordered by the court. Service on the attorney or party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule shall mean (A) handing it to the attorney or to the party, or (B) leaving it at the attorney's or party's office with the clerk or other person in charge thereof, or (C) if there is no one in charge, leaving it in a conspicuous place therein, or (D) if the office is closed or the person to be served has no office, leaving it at the attorney's or party's usual place of abode with some person of the attorney's or party's family above 15 years of age and informing such person of the contents. Service by mail shall be complete on mailing.

**(d) Proof of Service.** A certificate of service that complies in substance with the appropriate form below shall be taken as prima facie proof of service in compliance with these rules. The certificate shall specify the party each attorney represents.

**(1) Attorney:**

I certify that a copy hereof has been furnished to ....(here insert name or names).... by ....(delivery) (mail).... on ....(date).....

\_\_\_\_\_  
Attorney for ....(name of party)....  
.....(address and phone number)....  
Florida Bar No. ....

**(2) By Pro Se Inmate:**

I certify that I placed this document in the hands of ....(here insert name of institution official).... for mailing to ....(here insert name or names).... on ....(date).....

\_\_\_\_\_  
.....(name)....  
.....(address)....  
.....(prison identification number)....

**(3) By Other Pro Se Litigants:**

I certify that a copy hereof has been furnished to ....(here insert name or names).... by ....(delivery) (mail).... on ....(date).....

\_\_\_\_\_  
.....(name)....  
.....(address)....



.....(phone number).....

**(e) Additional Time After Service by Mail.** If a party, court reporter, or clerk is required or permitted to do an act within some prescribed time after service of a document, and the document is served by mail, 5 days shall be added to the prescribed period.

**(f) Computation.** In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a holiday described below, in which event, the period shall run until the end of the next day that is neither a Saturday, Sunday, nor holiday. If the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. As used in this rule, holiday means

- (1) New Year's Day;
- (2) Martin Luther King, Jr.'s Birthday, the third Monday in January;
- (3) Washington's Birthday, the third Monday in February;
- (4) Good Friday;
- (5) Memorial Day, the last Monday in May;
- (6) Independence Day;
- (7) Labor Day, the first Monday in September;
- (8) Columbus Day, the second Monday in October;
- (9) Veterans' Day;
- (10) General Election Day;
- (11) Thanksgiving Day, the fourth Thursday in November;
- (12) Christmas Day;
- (13) any statewide primary day;
- (14) any Monday immediately following a Sunday on which one of the foregoing holidays falls; and
- (15) any other day when the clerk's office is closed.

**Committee Notes**

**1977 Amendment.** Subdivision (a) replaces former rule 3.4(a). The last sentence of former rule 3.4(a) was eliminated as superfluous. The filing of papers with a judge or justice is permitted at the discretion of the judge or justice. The advisory committee recommends that the ability to file with a judge or justice be exercised only if necessary, and that care be taken not to discuss in any manner the merits of the document being filed. See Fla. Code Prof. Resp., DR 7-110(B) (now R. Regulating Fla. Bar 4-3.5(b)); Fla. Code Jud. Conduct, Canon 3(A)(4).

Subdivision (b) replaces and simplifies former rules 3.4(b)(5) and 3.6(i)(3). The substance of the last sentence of former rule 3.4(b)(5) is preserved. It should be noted that except for the notices or petitions that invoke jurisdiction, these rules generally provide for service by a certain time rather than filing. Under this provision filing must be done before service or immediately thereafter. Emphasis has been placed on service so as to eliminate the hardship on parties caused by tardy service under the former rules and to eliminate the burden placed on the courts by motions for extension of time resulting from such tardy service. It is anticipated that tardy filing will occur less frequently under these rules than tardy service under the former rules because the parties are unlikely to act in a manner that would irritate the court. The manner for service and proof thereof is provided in subdivision (c).

Subdivision (d) replaces former rule 3.4(b)(3) and provides that if a party or clerk is required or permitted to do an act within a prescribed time after service, 5 days (instead of 3 days under the former rule) shall be added to the time if service is by mail.

Subdivision (e) replaces former rule 3.18 with no substantial change. “Holiday” is defined to include any day the clerk’s office is closed whether or not done by order of the court. The holidays specifically listed have been included, even though many courts do not recognize them as holidays, to not place a burden on practitioners to check whether an individual court plans to observe a particular holiday.

**1980 Amendment.** Subdivision (b) was amended to provide that either the lower tribunal or the court may limit the number of copies to be served. The rule contemplates that the number of copies may be limited on any showing of good cause, for example, that the number of copies involved is onerous or that the appeal involves questions with which some parties have no interest in the outcome or are so remotely involved as not to justify furnishing a complete record to them at appellant’s initial cost. The availability of the original record at the clerk’s office of the lower tribunal until due at the appellate court is a factor to be considered.

#### **Court Commentary**

**2000.** Subdivision (a)(2) codifies the Florida Supreme Court’s holding in *Thompson v. State*, 761 So.2d 324 (Fla. 2000).

### **RULE 9.430. PROCEEDINGS BY INDIGENTS**

**(a) Appeals.** A party who has the right to seek review by appeal without payment of costs shall, unless the court directs otherwise, file a signed application for determination of indigent status with the clerk of the lower tribunal, using an application form approved by the Supreme Court for use by circuit court clerks. The clerk of the lower tribunal’s reasons for denying the application shall be stated in writing and are reviewable by the lower tribunal. Review of decisions by the lower tribunal shall be by motion filed in the court.

**(b) Original Proceedings.** A party who seeks review by an original proceeding under rule 9.100 without the payment of costs shall, unless the court directs otherwise, file with the court a motion to proceed in forma pauperis. If the motion is granted, the party may proceed without further application to the court.

#### **(c) Incarcerated Parties.**

**(1) Presumptions.** In the absence of evidence to the contrary, an appellate court may, in its discretion, presume that

(A) assertions in an application for determination of indigent status filed by an incarcerated party under this rule are true, and

(B) in cases involving criminal or collateral criminal proceedings, an incarcerated party who has been declared indigent for purposes of proceedings in the lower tribunal remains indigent.

**(2) Non-Criminal Proceedings.** Except in cases involving criminal or collateral proceedings, an application for determination of indigent status filed under this rule by a person who has been convicted of a crime and is incarcerated for that crime or who is being held in custody pending extradition or sentencing shall contain substantially the same information as required by an application form approved by the Supreme Court for use by circuit court clerks. The determination of whether the case involves an appeal from an original criminal or collateral proceeding depends on the substance of the issues raised and not on the form or title of the petition or complaint. In these non-criminal cases, the clerk of the lower tribunal shall require the party to make a partial prepayment of court costs or fees and to make continued partial payments until the full amount is paid.

**(d) Parties in Juvenile Dependency and Termination of Parental Rights Cases; Presumption.** In cases involving dependency or termination of parental rights, an appellate court may, in its discretion, presume that any party who has been declared indigent for purposes of proceedings by the lower tribunal remains indigent, in the absence of evidence to the contrary.

#### Committee Notes

**1977 Adoption.** This rule governs the manner in which an indigent may proceed with an appeal without payment of fees or costs and without bond. Adverse rulings by the lower tribunal must state in writing the reasons for denial. Provision is made for review by motion. Such motion may be made without the filing of fees as long as a notice has been filed, the filing of fees not being jurisdictional. This rule is not intended to expand the rights of indigents to proceed with an appeal without payment of fees or costs. The existence of such rights is a matter governed by substantive law.

**2008 Amendment.** Subdivision (b) was created to differentiate the treatment of original proceedings from appeals under this rule. Each subdivision was further amended to comply with statutory amendments to section 27.52, Florida Statutes, the legislature's enactment of section 57.082, Florida Statutes, and the Florida Supreme Court's opinion in *In re Approval of Application for Determination of Indigent Status Forms for Use by Clerks*, 910 So.2d 194 (Fla. 2005).

### **RULE 9.440. ATTORNEYS**

**(a) Foreign Attorneys.** An attorney who is an active member in good standing of the bar of another state may be permitted to appear in a proceeding upon compliance with Florida Rule of Judicial Administration 2.510.

**(b) Withdrawal of Attorneys.** An attorney shall not be permitted to withdraw unless the withdrawal is approved by the court. The attorney shall file a motion for that purpose stating the reasons for withdrawal and the client's address. A copy of the motion shall be served on the client and adverse parties.

#### Committee Notes

**1977 Amendment.** This rule replaces former rule 2.3 with unnecessary subdivisions deleted. The deletion of former rule 2.3(c) was not intended to authorize the practice of law by research aides or secretaries to any justice or judge or otherwise approve actions inconsistent with the high standards of ethical conduct expected of such persons.

Subdivision (a) permits foreign attorneys to appear on motion filed and granted at any time. See Fla. Bar Integr. Rule By-Laws, art. II, § 2. There is no requirement that the foreign attorney be from a jurisdiction giving a reciprocal right to members of The Florida Bar. This

rule leaves disposition of motions to appear to the discretion of the court.

Subdivision (b) is intended to protect the rights of parties and attorneys, and the needs of the judicial system.

This rule does not affect the right of a party to employ additional attorneys who, if members of The Florida Bar, may appear at any time.

**2002 Amendment.** The amendments to subdivision (a) are intended to make that subdivision consistent with Florida Rule of Judicial Administration 2.061, which was adopted in 2001, and the amendments to subdivision (b) are intended to make that subdivision consistent with Florida Rule of Judicial Administration 2.060(i).

## **RULE 9.500. ADVISORY OPINIONS TO GOVERNOR**

**(a) Filing.** A request by the governor for an advisory opinion from the justices of the supreme court on a question affecting gubernatorial powers and duties shall be in writing. The original and 7 copies shall be filed with the clerk of the supreme court.

**(b) Procedure.** As soon as practicable after the filing of the request, the justices shall determine whether the request is within the purview of article IV, section 1(c), Florida Constitution, and proceed as follows:

(1) If 4 justices concur that the question is not within that purview, the governor shall be advised forthwith in writing and a copy shall be filed in the clerk's office.

(2) If the request is within that purview, the court may permit persons whose substantial interests may be affected to be heard on the questions presented through briefs, oral argument, or both. If the court determines to receive briefs or hear oral argument, it shall set the time for filing briefs, the date of argument, and the time allotted. The court may appoint amicus curiae and prescribe their duties.

(3) The justices shall file their opinions in the clerk's office. Copies shall be delivered to the governor.

### **Committee Notes**

**1977 Amendment.** This rule simplifies former rule 2.1(h) without material change.

## **RULE 9.510. ADVISORY OPINIONS TO ATTORNEY GENERAL**

**(a) Filing.** A request by the attorney general for an advisory opinion from the justices of the supreme court concerning the validity of an initiative petition for the amendment of the Florida Constitution shall be in writing. The original and 7 copies shall be filed with the clerk of the supreme court.

**(b) Contents of Request.** In addition to the language of the proposed amendment, the request referenced in subdivision (a) must contain the following information:

(1) the name and address of the sponsor of the initiative petition;

(2) the name and address of the sponsor's attorney, if the sponsor is represented;

(3) a statement as to whether the sponsor has obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot;

(4) if the sponsor has not obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot, the current status of the signature-collection process;

(5) the date of the election during which the sponsor is planning to submit the proposed amendment to the voters;

(6) the last possible date that the ballot for the target election can be printed in order to be ready for the election;

(7) a statement identifying the date by which the Financial Impact Statement will be filed, if the Financial Impact Statement is not filed concurrently with the request; and

(8) the names and complete mailing addresses of all of the parties who are to be served.

**(c) Procedure.** The justices must initially determine whether the request is within the purview of article V, section 3(b)(10), Florida Constitution, and proceed as follows:

(1) If 4 justices concur that the request is not within that purview, the attorney general will be advised immediately in writing and a copy will be filed in the clerk's office.

(2) If the request is within the purview, the court may permit the attorney general and other interested persons to be heard on the questions presented through briefs, oral argument, or both. If the court decides to receive briefs or hear oral argument, it will establish the time for filing briefs, the date of argument, and the time allotted.

#### Committee Notes

**1980 Amendment.** This rule has been replaced in its entirety by new Rules 9.150.

### **RULE 9.600. JURISDICTION OF LOWER TRIBUNAL PENDING REVIEW**

**(a) Concurrent Jurisdiction.** Only the court may grant an extension of time for any act required by these rules. Before the record is transmitted, the lower tribunal shall have concurrent jurisdiction with the court to render orders on any other procedural matter relating to the cause, subject to the control of the court.

**(b) Further Proceedings.** If the jurisdiction of the lower tribunal has been divested by an appeal from a final order, the court by order may permit the lower tribunal to proceed with specifically stated matters during the pendency of the appeal.

**(c) Family Law Matters.** In family law matters:

(1) The lower tribunal shall retain jurisdiction to enter and enforce orders awarding separate maintenance,

child support, alimony, attorneys' fees and costs for services rendered in the lower tribunal, temporary attorneys' fees and costs reasonably necessary to prosecute or defend an appeal, or other awards necessary to protect the welfare and rights of any party pending appeal.

(2) The receipt, payment, or transfer of funds or property under an order in a family law matter shall not prejudice the rights of appeal of any party. The lower tribunal shall have the jurisdiction to impose, modify, or dissolve conditions upon the receipt or payment of such awards in order to protect the interests of the parties during the appeal.

(3) Review of orders entered pursuant to this subdivision shall be by motion filed in the court within 30 days of rendition.

**(d) Criminal Cases.** The lower tribunal shall retain jurisdiction to consider motions pursuant to Florida Rules of Criminal Procedure 3.800(b)(2) and in conjunction with post-trial release pursuant to rule 9.140(h).

#### Committee Notes

**1977 Amendment.** This rule governs the jurisdiction of the lower tribunal during the pendency of review proceedings, except for interlocutory appeals. If an interlocutory appeal is taken, the lower tribunal's jurisdiction is governed by rule 9.130(f).

Subdivision (b) replaces former rule 3.8(a). It allows for continuation of various aspects of the proceeding in the lower tribunal, as may be allowed by the court, without a formal remand of the cause. This rule is intended to prevent unnecessary delays in the resolution of disputes.

Subdivision (c) is derived from former rule 3.8(b). It provides for jurisdiction in the lower tribunal to enter and enforce orders awarding separate maintenance, child support, alimony, temporary suit money, and attorneys' fees. Such orders may be reviewed by motion.

**1980 Amendment.** Subdivision (a) was amended to clarify the appellate court's paramount control over the lower tribunal in the exercise of its concurrent jurisdiction over procedural matters. This amendment would allow the appellate court to limit the number of extensions of time granted by a lower tribunal, for example.

**1994 Amendment.** Subdivision (c) was amended to conform to and implement section 61.16(1), Florida Statutes (1994 Supp.), authorizing the lower tribunal to award temporary appellate attorneys' fees, suit money, and costs.

**1996 Amendment.** New rule 9.600(d) recognizes the jurisdiction of the trial courts, while an appeal is pending, to rule on motions for post-trial release, as authorized by rule 9.140(g), and to decide motions pursuant to Florida Rule of Criminal Procedure 3.800(a), as authorized by case law such as *Barber v. State*, 590 So.2d 527 (Fla. 2d DCA 1991).

### **RULE 9.700. MEDIATION RULES**

**(a) Applicability.** Rules 9.700 – 9.740 apply to all appellate courts, including circuit courts exercising jurisdiction under rule 9.030(c), district courts of appeal, and the Supreme Court of Florida.

**(b) Referral.** The court, upon its own motion or upon motion of a party, may refer a case to mediation at any time. Such motion from a party shall contain a certificate that the movant has consulted opposing counsel or unrepresented party and that the movant is authorized to represent that opposing counsel or unrepresented party:

(1) has no objection;

(2) objects and cites the specific reasons for objection; or

(3) will promptly file an objection.

**(c) Time Frames for Mediation.** The first mediation conference shall be commenced within 45 days of referral by the court, unless the parties agree to postpone mediation until after the period for filing briefs has expired. The mediation shall be completed within 30 days of the first mediation conference. These times may be modified by order of the court.

**(d) Tolling of Times.** Unless otherwise ordered, or upon agreement of the parties to postpone mediation until after the expiration of time for filing the appellate briefs, all times under these rules for the processing of cases shall be tolled for the period of time from the referral of a case to mediation until mediation ends pursuant to section 44.404, Florida Statutes. The court, by administrative order, may provide for additional tolling of deadlines. A motion for mediation filed by a party within 30 days of the notice of appeal shall toll all deadlines under these rules until the motion is ruled upon by the court.

**(e) Motion to Dispense with Mediation.** A motion to dispense with mediation may be served not later than 10 days after the discovery of the facts which constitute the grounds for the motion, if:

(1) the order violates rule 9.710; or

(2) other good cause is shown.

#### **RULE 9.710. ELIGIBILITY FOR MEDIATION**

Any case filed may be referred to mediation at the discretion of the court, but under no circumstances may the following categories of actions be referred:

**(a) Criminal and post-conviction cases.**

**(b) Habeas corpus and extraordinary writs.**

**(c) Civil or criminal contempt.**

**(d) Involuntary civil commitments of sexually violent predators.**

**(e) Collateral criminal cases.**

**(f) Other matters as may be specified by administrative order.**

#### **RULE 9.720. MEDIATION PROCEDURES**

**(a) Appearance.** If a party to mediation is a public entity required to conduct its business pursuant to chapter

286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. Otherwise, unless changed by order of the court, a party is deemed to appear at a mediation conference if the following persons are physically present or appear electronically upon agreement of the parties:

(1) The party or its representative having full authority to settle without further consultation.

(2) The party's trial or appellate counsel of record, if any. If a party has more than one counsel, the appearance of only one counsel is required.

(3) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle without further consultation.

**(b) Sanctions.** If a party fails to appear at a duly noticed mediation conference without good cause, the court, upon motion of a party or upon its own motion, may impose sanctions, including, but not limited to, any or all of the following, against the party failing to appear:

(1) An award of mediator and attorney fees and other costs or monetary sanctions.

(2) The striking of briefs.

(3) Elimination of oral argument.

(4) Dismissal or summary affirmance.

**(c) Scheduling and Adjournments.** Consistent with the time frames established in rule 9.700(c) and after consulting with the parties, the mediator shall set the initial conference date. The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. The mediator shall notify the parties in writing of the date, time, and place of any mediation conference, except no further notification is required for parties present at an adjourned mediation conference.

**(d) Control of Procedures.** The mediator shall at all times be in control of the procedures to be followed in the mediation.

**(e) Communication with Parties.** The mediator may meet and consult privately with any party or parties or their counsel. Counsel shall be permitted to communicate privately with their clients.

#### **RULE 9.730. APPOINTMENT AND COMPENSATION OF THE MEDIATOR.**

**(a) Appointment by Agreement.** Within 10 days of the court order of referral, the parties may file a stipulation with the court designating a mediator certified as an appellate mediator pursuant to rule 10.100(f), Florida Rules for Certified and Court-Appointed Mediators. Unless otherwise agreed to by the parties, the mediator shall be licensed to practice law in any United States jurisdiction.



**(b) Appointment by Court.** If the parties cannot agree upon a mediator within 10 days of the order of referral, the appellant shall notify the court immediately and the court shall appoint a certified appellate mediator selected by such procedure as is designated by administrative order. The court shall appoint a certified appellate mediator who is licensed to practice law in any United States jurisdiction, unless otherwise requested upon agreement of the parties.

**(c) Disqualification of Mediator.** Any party may move to enter an order disqualifying a mediator for good cause. Such a motion to disqualify shall be filed within a reasonable time, not to exceed 10 days after discovery of the facts constituting the grounds for the motion, and shall be promptly presented to the court for an immediate ruling. If the court rules that a mediator is disqualified from a case, an order shall be entered setting forth the name of a qualified replacement. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

**(d) Substitute Mediator.** If a mediator agreed upon by the parties or appointed by the court cannot serve, a substitute mediator may be agreed upon or appointed in the same manner as the original mediator.

**(e) Compensation of a Court-Selected Mediator.** If the court selects the mediator pursuant to subdivision (b), the mediator shall be compensated at the hourly rate set by the court in the referral order or applicable administrative order. Unless otherwise agreed, the compensation of the mediator should be prorated among the named parties.

#### Committee Notes

This rule is not intended to limit the parties from exercising self-determination in the selection of any appropriate form of alternative dispute resolution or to deny the right of the parties to select a neutral. The rule does not prohibit parties from selecting an otherwise qualified non-certified appellate mediator prior to the court's order of referral. Parties may pursue settlement with a non-certified appellate mediator even within the ten-day period following the referral. However, once parties agree on a certified appellate mediator, or notify the court of their inability to do so, the parties can satisfy the court's referral to mediation pursuant to these rules only by appearing at a mediation conducted by a supreme court certified appellate mediator.

### **RULE 9.740. COMPLETION OF MEDIATION**

**(a) No Agreement.** If the parties do not reach an agreement as a result of mediation, the mediator shall report, within 10 days, the lack of an agreement to the court without comment or recommendation.

**(b) Agreement.** If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. Within 10 days thereafter, the mediator shall file a report with the court on a form approved by the court.

### **RULE 9.800. UNIFORM CITATION SYSTEM**

This rule applies to all legal documents, including court opinions. Except for citations to case reporters, all citation forms should be spelled out in full if used as an integral part of a sentence either in the text or in footnotes. Abbreviated forms as shown in this rule should be used if the citation is intended to stand alone either in

the text or in footnotes.

**(a) Florida Supreme Court.**

(1) 1846–1886: *Livingston v. L’Engle*, 22 Fla. 427 (1886).

(2) *Fenelon v. State*, 594 So. 2d 292 (Fla. 1992).

(3) For recent opinions not yet published in the Southern Reporter, cite to Florida Law Weekly: *Traylor v. State*, 17 Fla. L. Weekly S42 (Fla. Jan. 16, 1992). If not therein, cite to the slip opinion: *Medina v. State*, No. SC00-280 (Fla. Mar. 14, 2002).

**(b) Florida District Courts of Appeal.**

(1) *Sotolongo v. State*, 530 So. 2d 514 (Fla. 2d DCA 1988); *Buncayo v. Dribin*, 533 So. 2d 935 (Fla. 3d DCA 1988).

(2) For recent opinions not yet published in Southern Reporter, cite to Florida Law Weekly: *Myers v. State*, 16 Fla. L. Weekly D1507 (Fla. 4th DCA June 5, 1991). If not therein, cite to the slip opinion: *Fleming v. State*, No. 1D01-2734 (Fla. 1st DCA Mar. 6, 2002).

**(c) Florida Circuit Courts and County Courts.**

(1) *Whidden v. Francis*, 27 Fla. Supp. 80 (Fla. 11th Cir. Ct. 1966).

(2) *State v. Alvarez*, 42 Fla. Supp. 83 (Fla. Dade Cty. Ct. 1975).

(3) For opinions not published in Florida Supplement, cite to Florida Law Weekly: *State v. Campeau*, 16 Fla. L. Weekly C65 (Fla. 9th Cir. Ct. Nov. 7, 1990). If not therein, cite to the slip opinion: *State v. Campeau*, No. 90-4363 (Fla. 9th Cir. Ct. Nov. 7, 1990).

**(d) Florida Administrative Agencies.** (Cite if not in Southern Reporter.)

(1) For decisions of the Public Employees Relations Commission: *Indian River Educ. Ass’n v. School Bd.*, 4 F.P.E.R. ¶ 4262 (1978).

(2) For decisions of the Florida Public Service Commission: *In re Application of Tampa Elec. Co.*, 81 F.P.S.C. 2:120 (1981).

(3) For decisions of all other agencies: *Insurance Co. v. Department of Ins.*, 2 F.A.L.R. 648-A (Fla. Dept. of Insurance 1980).

**(e) Florida Constitution.** (Year of adoption should be given if necessary to avoid confusion.)

Art. V, §3(b)(3), Fla. Const.

**(f) Florida Statutes (Official).**

§350.34, Fla. Stat. (1973).

§120.53, Fla. Stat. (Supp. 1974).

**(g) Florida Statutes Annotated.** (To be used only for court-adopted rules, or references to other nonstatutory materials that do not appear in an official publication.)

32 Fla. Stat. Ann. 116 (Supp. 1975).

**(h) Florida Laws.** (Cite if not in Fla. Stat. or if desired for clarity or adoption reference.)

(1) After 1956: Ch. 74-177, § 5, at 473, Laws of Fla.

(2) Before 1957: Ch. 22000, Laws of Fla. (1943).

**(i) Florida Rules.**

Fla. R. Civ. P. 1.180.

Fla. R. Jud. Admin. 2.110.

Fla. R. Crim. P. 3.850.

Fla. R. Work. Comp. P. 4.113.

Fla. Prob. R. 5.120.

Fla. R. Traf. Ct. 6.165.

Fla. Sm. Cl. R. 7.070.

Fla. R. Juv. P. 8.070.

Fla. R. App. P. 9.100.

Fla. R. Med. 10.100.

Fla. R. Arb. 11.010.

Fla. Fam. L. R. P. 12.010.

Fla. Admin. Code R. 62D-2.014.

R. Regulating Fla. Bar 4-1.10.

Fla. Bar Found. By-Laws, art. 2.19(b).

Fla. Bar Found. Charter, art. III, §3.4.

Fla. Bar Integr. R., art. XI, §11.09.

Fla. Jud. Qual. Comm'n R. 9.

Fla. Std. Jury Instr. (Civ.) 6.4(c).

Fla. Std. Jury Instr. (Crim.) 2.03.

Fla. Std. Jury Instr. (Crim.) Robbery.

Fla. Stds. Imposing Law. Sancs. 9.32(a).

Fla. Bar Admiss. R. 3-23.1.

**(j) Florida Attorney General Opinions.**

Op. Att'y Gen. Fla. 73-178 (1973).

**(k) United States Supreme Court.**

*Sansone v. United States*, 380 U.S. 343 (1965).

(Cite to United States Reports, if published therein; otherwise cite to Supreme Court Reporter, Lawyer's Edition, or United States Law Week, in that order of preference. For opinions not published in these reporters, cite to Florida Law Weekly Federal: *California v. Hodari D.*, 13 Fla. L. Weekly Fed. S249 (U.S. Apr. 23, 1991).

**(l) Federal Courts of Appeals.**

*Gulf Oil Corp. v. Bivins*, 276 F.2d 753 (5th Cir. 1960).

For opinions not published in the Federal Reporter, cite to Florida Law Weekly Federal: *Cunningham v. Zant*, 13 Fla. L. Weekly Fed. C591 (11th Cir. March 27, 1991).

**(m) Federal District Courts.**

*Pugh v. Rainwater*, 332 F. Supp. 1107 (S.D. Fla. 1971).

For opinions not published in the Federal Supplement, cite to Florida Law Weekly Federal: *Wasko v. Dugger*, 13 Fla. L. Weekly Fed. D183 (S.D. Fla. Apr. 2, 1991).



















\_\_\_\_\_ )

We, \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto \_\_\_\_\_ in the principal sum of \$\_\_\_\_\_, for the payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

The condition of this obligation is: the above-named Principal has entered an appeal to the ....(court)..... to review the ....(judgment or order)..... entered in the above case on ....(date)....., and filed in the records of said court in book \_\_\_\_\_ at page\_\_\_\_\_.

NOW THEREFORE, if the Principal shall satisfy any money judgment contained in the judgment in full, including, if allowed by law, costs, interest, and attorneys' fees, and damages for delay in the event said appeal is dismissed or said judgment is affirmed, then this obligation shall be null and void; otherwise to remain in full force and effect.

Signed on ....(date)....., at ....(place).....

/s/ \_\_\_\_\_  
Principal

Signed on ....(date)....., at ....(place).....

/s/ \_\_\_\_\_  
Surety

**Committee Notes**

**1980 Amendment.** Forms 9.900(a) and (b) under the 1977 rules are modified, and additional forms are provided.

**1992 Amendment.** Forms 9.900(a), (c), and (e) were revised to remind the practitioner that conformed copies of the order or orders designated in the notice of appeal should be attached to the notice of appeal as provided in rules 9.110(d), 9.130(c), and 9.160(c).