

IN THE SUPREME COURT OF FLORIDA

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

Case No.: SC06-_____

**TWO -YEAR- CYCLE REPORT OF THE
APPELLATE COURT RULES COMMITTEE**

Jack R. Reiter, Chair, Florida Appellate Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, submit this Two-Year- Cycle Report of the Appellate Court Rules Committee (the “Committee”) under Rule 2.130(c)(4), Florida Rules of Judicial Administration. Attached is a two-column chart setting forth the proposed rule amendments contained in this Report and a brief explanation of each change, as well as a copy of the rules being amended in full-page legislative format.

As required by Rule 2.130(c)(2), the proposed rule amendments were advertised in the Florida Bar News and on the Internet website of The Florida Bar. *See* Appendix A. There were no comments received related to the proposals to amend the rules contained in this Report. The only comments received were directed to rules 9.180(e) and (f)(5)(D), which proposals the Committee voted to withdraw from consideration on January 20, 2006.

As required by Rule 2.130(c)(3), the proposed rule amendments were reviewed by the Board of Governors of The Florida Bar, which voted unanimously to approve all proposed amendments at its variously scheduled meetings. The

Committee's final numerical voting records on the proposals are listed below and in the attached table of contents. Although this Court recently amended the Rules of Judicial Administration to change the Committee's reporting cycle to 2008, the Committee requested the Court to allow the filing of this report out-of-cycle to facilitate timely consideration of these proposals. The Court granted the Committee's request on January 3, 2006.

A list of the proposed changes, together with (1) a detailed explanation of each proposal; (2) the name and address of proponent of the proposal if other than the Committee; (3) the Committee's final numerical voting records on each proposal; and (4) any significant dissenting views of the Committee, are set forth below. Unless otherwise stated, the amendments arose through a Committee member's request. Additionally, copies of the Committee's meeting minutes for the past two years are included in attached Appendix B along with any materials relevant to the proposed amendments.

I.

Proposed Changes to Rule 9.120(d)

Following an inquiry by former Committee Chair Kathi Giddings, the Committee recommends amending Rule 9.120(d) to require jurisdictional briefs when the district court certifies questions of great public importance or inter-district conflicts. Currently, the rule does not require parties to file jurisdictional

briefs when jurisdiction is invoked in this Court under Rules 9.030(a)(2)(A)(v) or (a)(2)(A)(vi).

The amendment would permit jurisdictional briefs to assist this Court to determine whether jurisdiction exists notwithstanding the certification by a district court of appeal, which will also allow this Court to focus on jurisdiction prior to briefing on the merits. The Committee found that this Court discharged jurisdiction in 2003 in a number of cases after briefing on the merits, notwithstanding the certification by a district court. The proposal calls for deleting the last sentence of the rule. *See* App. B, pp. 192-193 . Committee vote: 45-2.

II.

Proposed Changes to Rule 9. 130(a)(3)(C)(ii)

By letter dated January 21, 2004, a member of The Florida Bar, Gregory Grossman, requested the Committee to consider whether Rule 9.130(a)(3)(C)(ii) should be amended to resolve a conflict among the district courts as to whether an order dissolving or refusing to dissolve a writ of garnishment should be immediately appealable. *See* Appendix C, pp. 201-201. The Committee's Civil Rules Subcommittee researched the issue (*see* App. C, pp.217-219), and recommended the full Committee propose an amendment to Rule 9.130(a)(3)(C)(ii) to comport with the practice of the majority of Florida's district courts of appeal. The Committee found that there was considerable case law on the

issue going back many years. Yet, many cases had permitted appeals of garnishment orders without discussion.

Recently, however, two cases were in direct conflict. In *Ramseyer v. Williamson*, 639 So. 2d 205 (Fla. 5th DCA 1994), the Fifth District Court of Appeal held that an order denying a motion to dissolve a writ of garnishment was a non-appealable, non-final order under Rule 9.130. A year later, the Fourth District Court of Appeal came to the opposite conclusion in *5361 N. Dixie Highway v. Capital Bank*, 658 So. 2d 1037 (Fla. 4th DCA 1995). There, the court held that an order denying a motion to dissolve a writ of garnishment was appealable under Rule 9.130(a)(3)(C)(ii) as an order determining the immediate possession of property.

The proposed amendment clarifies that orders involving garnishments are directly appealable, which codifies the prior practice of the courts and resolves the above noted conflict. Further, the amendment codifies that orders involving attachments and replevins are also appealable. While there is no current dispute that these orders are appealable, the Committee wanted to avoid any confusion that might result in the absence of a direct reference to attachment and replevin. *See* App. B, pp.157-160. The proposal adds language to subdivision 9.130(a)(3)(C)(ii) to provide that appeals to the district courts of appeal of non-final orders, which determine the right to immediate possession of property, include orders that “grant,

modify, dissolve, or refuse to grant, modify, or dissolve writs of replevin, garnishment, or attachment.” The Committee also proposed a comment to explain the reason for the amendment. Committee vote: 39-0.

The name and address of the proponent of the rule amendment is:

Gregory Grossman
Astigarraga Davis Mullins & Grossman, P.A.
701 Brickell Ave., 16th Fl
Miami, FL 33131

III.

Proposed Changes to Rule 9.130(a)(3)(C)(iii)

Following a request by Florida Bar member Ryan Truskoski (see App. D, pp. 221-227) to consider amending Rule 9.130(a)(3)(C)(iii), the Committee proposes amending this subdivision to allow an immediate appeal in dependency and termination of parental rights cases of a non-final order determining the right to child custody. *See* App. B, pp.109-113;140-143. The current rule expressly allows similar orders to be immediately appealed in family law custody disputes, but does not extend the right to immediate review to shelter care orders.

Dissenters expressed concern that this proposed amendment would open the floodgates to new appeals in dependency proceedings and that allowing immediate appeals by a parent whose parental rights have been terminated would cause further danger and disruption to a child. *See* App. B, pp. 110-111. The proponents of the amendment noted, however, that there should be no inconsistency between

allowing an immediate appeal in a custody decision in a family case and a custody decision in a dependency case. *See* App. B, p. 111. The proposed additional language to the subdivision provides that appeals to the district courts of appeal of non-final orders that determine child custody in juvenile dependency or termination of parental rights cases are permitted. The Committee also proposed a comment that describes what the rule does. Committee vote: 32-14.

IV.

Proposed Changes to Rule 9.130(a)(5)

The Committee's Family Law Rules Subcommittee recommended changes to Rule 9.130(a)(5) to avoid specifically referencing a certain rule in case there is future renumbering of the rules. The proposed amendment also follows the framework applicable to general principles of rendition and that a motion for relief from judgment must be authorized and timely. *See* App. B, pp. 143-145. The proposal calls for deleting the objectional limiting language and replacing it with inclusive language. The Committee also proposed a comment to explain the intent of the amendment. Committee vote: 49-0.

V.

Proposed Changes to Rule 9.146(b)

The Committee recommends amending Rule 9.146(b) to clarify who may take an appeal covered by Rule 9.146 and confirm that the rule does not provide an

independent basis for jurisdiction beyond the orders specified in Rule 9.130. *See* App. B, pp. 107-108. The Committee proposed the amendment to approve the holding in *D.K.B. v. Dep't of Children & Families*, 904 So. 2d 430 (Fla. 2d DCA 2005), which reiterated that non-final orders are immediately appealed only if they fall within the categories set forth in Rule 9.130. The Committee noted that this issue arises in shelter care orders, but that the rule is ambiguous and may be relied on to try and create jurisdiction rather than identify who may appeal. The proposal changes the title of the rule from "Appeal Permitted" to "Who May Appeal." The Committee also proposed a comment to explain the reason for the amendment. Committee vote: 46-0.

VI.

Proposed Changes to Rules 9.180(e); (f)(5)(A); (g)(3)(A) and (D)

By letter dated January 21, 2004, Committee member Robert Teitler asked the Committee to correct the existing appellate rule 9.180 to reflect the changes in the administration of workers= compensation matters as well as the change in trial-level procedural rules. *See* App. F, pp. 235-236. In response the Committee proposed an amendment to Rule 9.180(f)(5)(A), Rule 9.180(g)(3)(A), and Rule 9.180(g)(3)(D) to remove any reference to the Florida Workers= Compensation Rules "form 4.9125," which no longer exists. The Committee adopted the three suggested rule amendments.

Change to Rule 9.180(f)(5)(A). Currently, Rule 9.180(f)(5)(A) provides that a verified petition to be relieved of costs and a sworn financial affidavit are to be “in substantially the same form as form 4.9125 of the Rules of Workers= Compensation Procedure.” The proposed amendment deletes this phrase.

Change to Rule 9.180(g)(3)(A). Currently, Rule 9.180(g)(3)(A) provides that a verified petition to be relieved of costs must contain a sworn financial affidavit as described in subdivision (D) “in a form substantially the same as form 4.9125 of the Rules of Workers= Compensation Procedure.” The proposed amendment deletes this phrase.

Change to Rule 9.180(g)(3)(D). Currently, Rule 9.180(g)(3)(D) provides that “The sworn financial affidavit shall be substantially the same as form 4.9125.” The proposed amendment deletes this sentence. *See* App. B. pp. 168-169.
Committee vote: 42-0.

VII.

Proposed Changes to Rule 9.200

Changes to Rule 9.200(a)(2). The Committee recommends amending Rule 9.200(a)(2) to provide that original orders and judgments remain with the trial court in dependency and termination of parental rights cases, just as they are in family law appeals (with copies going to the appellate court with the record). The Committee thinks the amendment is appropriate because in dependency and

termination of parental rights cases, as in other types of family law cases, the lower tribunal continues to exercise jurisdiction during the pendency of the appeal. The Committee thinks that this may have been an oversight that needs to be corrected. *See App. B.*, pp.113-114. The Committee also proposed a comment to explain the reason for the amendment. Committee vote: 41-0.

The name and address of the proponent of this rule amendment is:

Hon. Stevan T. Northcutt
Second District Court of Appeal
1700 N. Tampa St., Suite 300
Tampa FL 33602-2648

Change to Rule 9.200(b)(2). The Committee recommends that Rule 9.200(b)(2) be amended to require court reporters to include, along with the actual transcripts submitted, an electronic copy of each transcript that is designated for inclusion in the record on appeal. The Committee obtained information from court reporters regarding the proposed amendment, and none of the reporters contacted expressed any objection to this procedure. Certain courts already adhere to the practice of obtaining electronic copies of transcripts, as do many attorneys. The cost is nominal. *See App. B.*, pp.116-118, 148-150, 165-168. Committee vote: 44-0.

The name and address of the proponent of this rule amendment is:

Rebecca Mercier-Vargas
Jane Kreuzler Walsh P.A.
501 S. Flagler Dr., Suite 503
West Palm Beach, FL 33401-5913

VIII.
Proposed Changes to Rule 9.210(a)(5)

By letter dated March 25, 2003, Thomas Hall, Clerk of the Supreme Court, requested that the Committee address whether it was necessary that the page limitation for briefs involving cross-appeals be increased. *See* App. G, pp. 238-239. After an exhaustive review of other jurisdictions, the Committee proposes an amendment to Rule 9.210(a)(5) to extend the page limitation for the answer brief/initial brief of appellee/cross-appellant from 50 pages to 85 pages. This facilitates the balanced presentation of argument by equalizing the number of pages available to both an appellant and a cross-appellant. The proposed language provides that if a cross-appeal is filed the answer or initial brief is limited to 85 pages. Committee vote: 36-8.

IX.
Proposed Change to Rule 9.300(d)(10)

The Committee's General Rules Subcommittee considered whether the Rules of Appellate Procedure should continue to require a separate request to toll time to accompany a motion for extension of time in the Florida Supreme Court as currently required in Rule 9.300(d)(10). *See* App. B, pp.87-89. Former Committee Chair Kathi Giddings proposed the elimination of this requirement. This would mean that a motion for extension of time would automatically toll the time periods

under the Rules and would be consistent with the effect of a motion for extension in a district court of appeal.

Ms. Giddings, who used to work at the Florida Supreme Court, indicated that she could find no historical rationale for the rule, which is often overlooked by practitioners. Florida Supreme Court Clerk Tom Hall advised that the requirement places an administrative burden on the Court by requiring a litigant to file two documents rather than one, and agreed that the Committee should evaluate whether the rule is necessary. The proposal deletes the subdivision from the rule. The Committee unanimously recommended the proposed revision.

X.

Proposed Changes to Rule 9.370(c)

By letter of October 8, 2003, to former Committee Chair Mark Leban, former Committee Chair Judge Winifred J. Sharp suggested that Rule 9.370(c) should clearly state when amicus briefs are to be served or filed in original writ proceedings. *See* App. H, pp. 241-243. The Committee proposes that the Rule be amended to clarify that amicus briefs are permitted in extraordinary writ proceedings and that the time for submitting an amicus brief runs from service of the primary brief, rather than filing. *See* App. B, pp. 194-196. The proposal further clarifies that the filing of an amicus brief does not alter or extend the briefing deadlines for the parties to file their briefs. The proposal calls for a change in the

subdivision's title to reflect that it is the time of service, not filing, that triggers the amicus briefing timetable, and adds language that indicates both that amicus briefs are permitted in original proceedings and that service of these briefs do not alter or extend the parties' briefing deadlines. Committee vote: 47-1.

The name and address of the proponent of the rule amendment is:

Judge Winifred J. Sharp
Fifth District Court of Appeal
300 S. Beach St.
Daytona Beach, FL 32114-5002

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

Dated: _____

Respectfully submitted

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