

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
FLORIDA RULES OF APPELLATE
PROCEDURE

CASE NO.: SC16-1377

COMMENT OF THE FOURTH DISTRICT COURT OF APPEAL

Chief Judge Cory J. Ciklin files this comment on behalf of the Fourth District Court of Appeal. The Fourth District Court of Appeal's comment pertains exclusively to the proposed modifications to Florida Rule of Appellate Procedure 9.220(c), which relates to the format of an appendix.¹

The Appellate Court Rules Committee's proposed modifications to Rule 9.220(c) are as follows:

(c) **Electronic Format.** ~~Unless otherwise authorized by court order or court rule, the appendix shall be prepared and filed electronically with the clerk as an independent PDF file or a series of independent PDF files.~~ The appendix shall be prepared and filed electronically as a separate Portable Document Format ("PDF") file, or a series of separate PDF files, in compliance with the size limitations and other technical requirements established by the supreme court. The electronically filed appendix shall be filed as one document, unless size limitations or technical requirements established by the supreme court require multiple parts. The appendix shall be consecutively paginated, beginning with the cover sheet as page 1. The appendix must be properly indexed, bookmarked, and fully text searchable.

¹ Effective June 10, 2016, the Fourth District Court of Appeal instituted Administrative Order 2016-2, which set forth several requirements relating to electronically filed appendices. See **Exhibit A**. The administrative order includes, among other things, formatting and bookmarking requirements. The Fourth District Court of Appeal understands that any rule modification to Rule 9.220(c) will supersede its administrative order, and appreciates that Court referred the issue of electronic appendices to the Appellate Court Rules Committee for codification in the Florida Rules of Appellate Procedure.

The Fourth District Court of Appeal suggests that the proposed modifications to Rule 9.220(c), while a step in the right direction, will create the unintended consequences of: (1) the unnecessary filing of appendices comprised of multiple PDF files; and (2) the inclusion of “bare-bones” bookmarks which lack the necessary detail to inform the individual reading the PDF of the basic information relating to the documents to which the bookmarks point. Both consequences would make appendices far more difficult for court staff, including judges, staff attorneys, and other court personnel, to work with, as many of them read these documents on screen and do not print a hard copy. Rather, Rule 9.220(c) should parallel the requirements set forth for the record on appeal in Rule 9.200(d)(1)(C)(i)-(iii).

Rule 9.200(d)(1)(C) requires a record on appeal to be contained in a single PDF file which must be:

- (i) text searchable;
- (ii) paginated so that the page numbers displayed by the PDF reader exactly match the pagination of the index; and
- (iii) bookmarked, consistently with the index, such that each bookmark states the date, name, and record page of the filing and the bookmarks are viewable in a separate window.

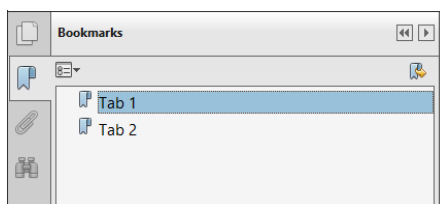
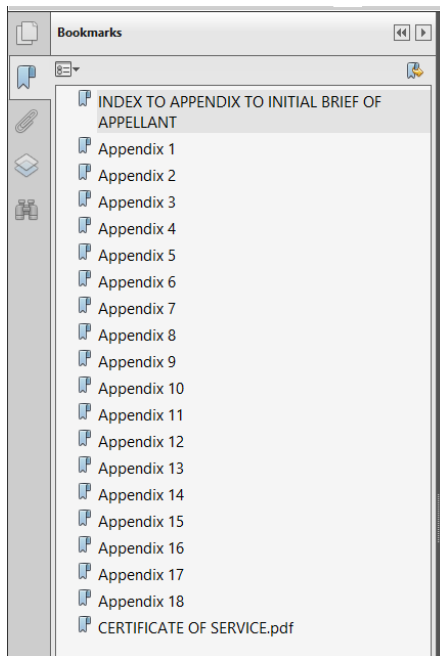
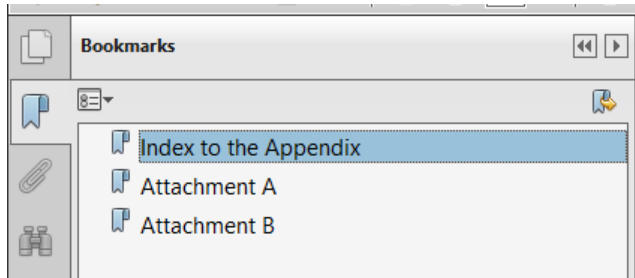
Fla. R. App. P. 9.200(d)(1)(C)(i)-(iii). Having the record in a single PDF document which is text searchable, properly paginated, and contains detailed bookmarks makes for a filing which allows judges, staff attorneys, and other court personnel to more effectively review, utilize, and work within the document. That is, Rule 9.200(c)

allows for the appellate courts to reap the benefits of the PDF document format when dealing with a record on appeal.

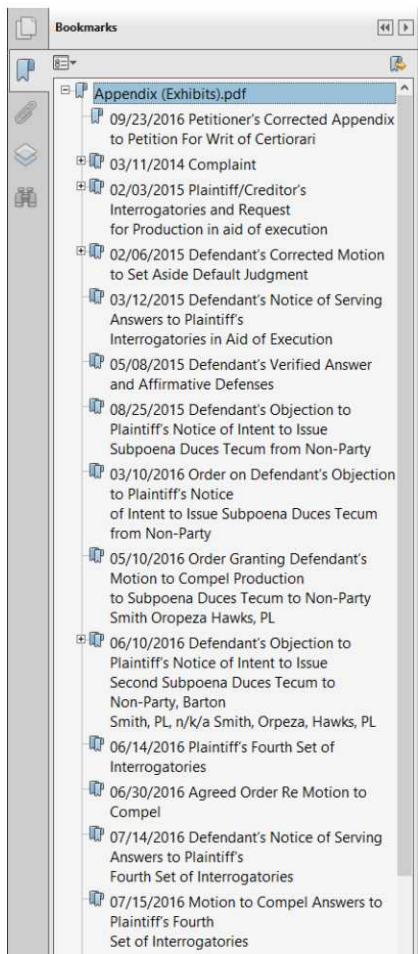
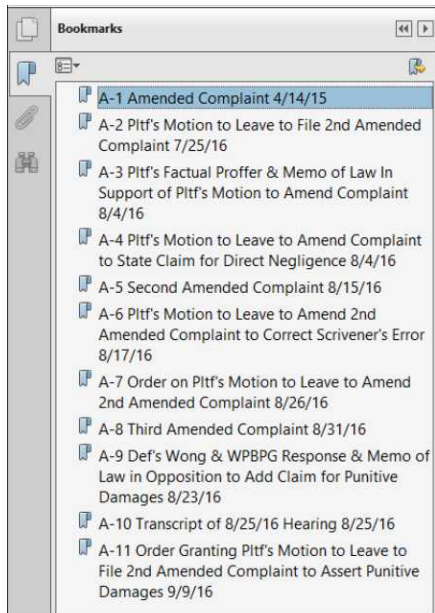
Unfortunately, the proposed Rule 9.220(c) does not allow the appellate courts to reap the benefits of the PDF document format in the same way. First, the proposed Rule 9.220(c) appears to allow for the filing of an appendix in multiple parts. Many judges, staff attorneys, and other court personnel do not print hard copies of appendices, and find it very difficult to work with a single electronic filing which is comprised of multiple PDF files. Also, the iDCA/eDCA system used by the First, Third, Fourth, and Fifth District Courts of Appeal allows for the filing of documents well in excess of the Florida Courts E-Filing Portal's limit of 50 megabytes (50 MB) per submission, thus making it largely unnecessary to file an appendix in a series of separate PDF files. The new Rule 9.220(c) should require an appendix to be filed as a single PDF document, and permit an appendix to be filed in multiple PDF documents only with leave of court.

Second, the proposed Rule 9.220(c) does not require the same level of detail within the bookmarks as is required in a record on appeal. Instead, the proposed Rule 9.220(c) merely requires that the appendix be "bookmarked" with no requirements as to how the PDF should be bookmarked. The lack of requirements will likely give rise to parties filing appendices with "bare-bones" bookmarks which are wholly lacking in detail, such as "A," "B," "C," and thus fail to provide any other

information about the documents contained in the appendix. Examples of such bookmarking, taken from appendices which attorneys attempted to file with the Fourth District Court of Appeal, are shown below:



Instead, the bookmarks in an appendix should be far more detailed, as shown in the following examples from appendices filed with the Fourth District Court of Appeal:



Based on the foregoing, the Fourth District Court of Appeal suggests the following alternative modification to Rule 9.220(c):

(c) **Electronic Format.** Unless otherwise authorized by court order or court rule, the appendix shall be prepared and filed electronically with the clerk as an independent ~~PDF~~ Portable Document Format (“PDF”) file or a series of independent PDF files. The appendix shall be consecutively paginated, beginning with the cover sheet as page 1. The appendix must be properly indexed, bookmarked, and fully text searchable. Each bookmark shall state the date and name of the document which it references and direct to the first page of that document, and all bookmarks shall be viewable in a separate window.

This alternative modification will allow the appellate courts to reap the benefits of the PDF document format when working with an appendix, in the same way the appellate courts reap the benefits of the PDF document format when working with a record on appeal.

Aside from the proposed alternative modification to Rule 9.220(c), the Fourth District Court of Appeal also brings to the Court’s attention another concern involving electronic appendices – four-pane “mini” transcripts, as well as “tab” and/or “divider” pages which existed in paper appendices – the inclusion of which make a PDF document very difficult to work with. In the case of the four-pane “mini” transcripts, the transcripts are very difficult to read, particularly on a tablet device. In the case of “tab” and/or “divider” pages, bookmarks which point to these pages are largely useless because the reader is always required to scroll forward to the actual first page of the bookmarked document. Though not addressed in the

proposed alternative modification above, the Fourth District Court of Appeal did address these issues in its Administrative Order 2016-2 and suggests to the Court that these issues may merit further investigation from a rules perspective.

The Fourth District Court of Appeal appreciates the opportunity to comment on the proposed rule change and greatly appreciates the Court's continued efforts to allow Florida's appellate courts to benefit from electronic filing to the greatest extent possible.

Respectfully submitted,

/s/ Cory J. Ciklin
Chief Judge Cory J. Ciklin
Fourth District Court of Appeal
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Florida Bar No. 332275

CERTIFICATE OF SERVICE

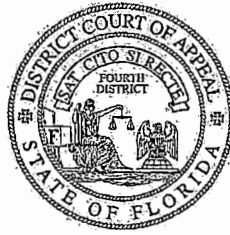
I HEREBY CERTIFY that the foregoing document has been furnished by e-mail to Kristin Ann Norse, Chair of the Appellate Court Rules Committee, P.O. Box 3396, Tampa, FL 33601-3396, knorse@kmf-law.com, and Heather Savage Telfer, Bar Staff Liaison to the Appellate Court Rules Committee, 651 E. Jefferson Street, Tallahassee, FL 32399-2300, htelfer@flabar.org, on November 28, 2016.

/s/ Cory J. Ciklin
Chief Judge Cory J. Ciklin

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this response is in Times New Roman 14-point font and otherwise complies with the requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Cory J. Ciklin
Chief Judge Cory J. Ciklin



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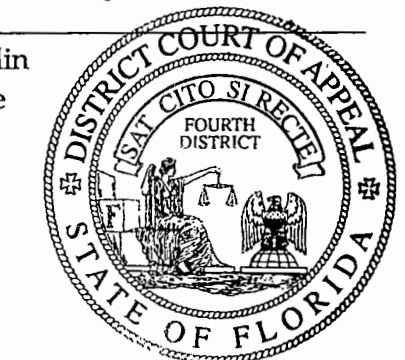
ADMINISTRATIVE ORDER RE: ELECTRONIC FILING OF APPENDICES

AO2016-2

June 3, 2016

1. **Impact on Previous Administrative Order** - This Administrative Order supersedes Administrative Order 2013-04, entitled "ADMINISTRATIVE ORDER RE: ELECTRONIC FILING OF APPENDICES."
2. **Effective Date** - Effective June 10, 2016, any appendix filed electronically with the court shall comply with this order.
3. **Format of Electronic Appendix**
 - a. The electronic filing of an appendix with a petition, brief, motion, response, or reply must be made in Adobe portable document format ("pdf") and in accordance with this Court's procedures for electronic filing.
 - b. An electronically filed appendix shall not contain: (i) additional divider or tab pages, which would have been included in a paper appendix; or (ii) four-pane "mini" transcripts.
 - c. The appendix must be properly indexed, bookmarked, fully searchable as required by Florida Rule of Judicial Administration 2.520(b), and be in compliance with Florida Rules of Judicial Administration 2.420 and 2.425.
4. **Bookmarking Requirements** - all appendices shall be bookmarked, such that each bookmark states the date and name of the document which it references and directs to the first page of that document, and all bookmarks shall be viewable in a separate (and/or side) window.
5. **Separate Filing Requirement** - The electronically filed index and appendix shall be filed as one document, but shall be filed separately from the petition, brief, motion, response, or reply.
6. **Noncompliance With This Order** - Filers may be required to re-file an electronic appendix if it is missing pages, contains unreadable documents or four-pane transcripts, or otherwise does not comply with this order. The Clerk shall reject any appendix filed by an attorney which does not comply with this order.

DONE AND ORDERED at West Palm Beach, Florida, on June 3, 2016.



Cory J. Ciklin
Chief Judge

ATTEST:

Lonnie Weissblum
Clerk of the Court