

IN THE SUPREME COURT OF THE STATE OF FLORIDA

In Re Proposed Amendment
To Florida Rule of Appellate Procedure 9.200

FILED
JOHN A. TOMASINO
DEC - 1 2016
CLERK, SUPREME COURT
BY _____

COMMENT

LAW OFFICES OF MARK L. HORWITZ
A Professional Association

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I am very much in favor of the proposed addition of sub-subsection (3) to Rule 9.200(f).

You may be unaware of the difficulties attorneys in Orange County have had with the Orange County Clerk (I had never heard of this problem until I moved here), but the Orange County Clerk of Court had never included paper or non-bulky exhibits in the record on appeal, so that when appellate counsel took a case in which trial counsel had already filed the directions to clerk, ordering a supplemental record was always required. I was told that by civil attorneys that the problem had been corrected by the 2014 amendment to Rule 9.200, but when I recently got a record in a criminal appeal, no documentary exhibits were included. When I asked why, the deputy clerk responded that exhibits are not part of the record in a criminal appeal. When I pointed out the language of the rule, the clerk responded that it had been decided, in concert with the Fifth District Court of Appeal, that in a criminal case, all exhibits are physical evidence, and therefore not part of the Rule 9.200 record. When I pointed out the committee note to the 2014 amendment, she told me she'd consult the clerk's attorney and get back to me. She never did. It's been more than three months. Naturally, I filed a motion to supplement the record, and although I got everything I asked for, the supplemental record was not indexed and page numbered as required by the rule. I have since heard from some of the civil attorneys that the clerk's compliance has been inconsistent in their cases as well.

This is a battle appellate attorneys in Orange County cases have been fighting unsuccessfully for many years. Allowing the appellate court to reject non-compliant records and require the clerk to completely recompile them according to the rule may be the only thing that will finally convince the clerk to comply.

Respectfully submitted,

/s/ Cassandra Snapp
CASSANDRA SNAPP, ESQUIRE

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to Kristin Ann Norse by U.S. mail at P.O. Box 3396, Tampa, FL 33601-3396 and by e-mail at knorse@kmf-law.com, and has been furnished to Heather Telfer by U.S. mail at 651 E. Jefferson St., Tallahassee, FL 32399-2300 and by e-mail at htelfer@flabar.org on November 28, 2016.

/s/ Cassandra Snapp
CASSANDRA SNAPP

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing document, submitted in 14 point Times New Roman, complies with the font standards of Florida Rule of Appellate Procedure 9.210.

By: /s/ Cassandra Snapp
CASSANDRA SNAPP, ESQUIRE

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November 29, 2016

Florida Supreme Court
Attn: Clerk's office
500 South Duval St.
Tallahassee, FL 32399-1927

Dear Mr. Thomasino:

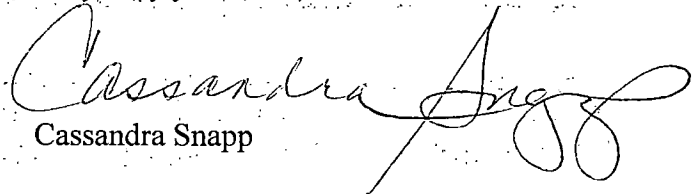
Enclosed is my comment on the proposed amendment to Rule 9.200.

The notice in the Florida Bar News said that this had to be filed through the e-filing portal, but we've been trying for two days and have been unable to persuade the machine to take the comment. More computer-savvy people than I have tried as well, and we can't find the right box.

Please accept the comment for filing. We hope, though we do not expect, to get a call from someone at the e-filing portal, and if so, the comment will be filed electronically by the deadline. If not, please consider that the comment has only been mailed so close to the deadline because the portal would not accept it for electronic filing.

Thank you for your consideration.

Very truly yours,


Cassandra Snapp

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