

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.: 16-1377

**APPELLATE COURT RULES COMMITTEE'S
RESPONSE TO COMMENTS**

Kristin A. Norse, Chair of the Appellate Court Rules Committee ("Committee"), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this response to comments.

The comments resulted in the Committee proposing additional amendments to Florida Rule of Appellate Procedure 9.220. These additional rule amendments, which are described below, were approved 37-1-1 by the full Committee. As required by Florida Rule of Judicial Administrative 2.140, the proposed amendments were reviewed by the Executive Committee of The Florida Bar's Board of Governors, and were approved 10-0.

The Committee received comments from Cassandra L. Snapp; the Honorable Cory J. Ciklin, Chief Judge of the Fourth District Court of Appeal; and the Honorable L. Clayton Roberts, Chief Judge of the First District Court of Appeal.

The Committee appreciates Ms. Snapp's favorable opinion of the proposed amendments to Rule 9.200(f) pending in this case.

The Chief Judges of the Fourth District Court of Appeal and the First District Court of Appeal shared concerns with the Committee's proposed amendments to subdivision (c) of Rule 9.220 (Appendix). In response, the Committee proposes additional amendments to that subdivision. Additional amendments are indicated in the appendices with double underline and ~~double strikethrough~~.

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PROPOSED RULE AMENDMENTS

RULE 9.220. APPENDIX

The Fourth District Court of Appeal expressed concerns that the Committee's originally proposed amendments would encourage the filing of multiple appendices; did not require enough detail in the bookmarking requirement; does not prohibit the filing of "four-pane 'mini' transcripts;" and does not prohibit the use of divider or tab pages (*See* Fourth District Court of Appeal Comment at 6.) The First District Court of Appeal wholly endorsed the comments from the Fourth District Court of Appeal.

The comments regarding multiple appendices, bookmarking requirements, and condensed transcripts are well taken. In response, the Committee proposes additional amendments to Florida Rule of Appellate Procedure 9.220(c).

Specifically, in the first sentence, the Committee proposes removing its amendment "or a series of separate PDF files, in compliance with the size limitation and other technical requirements established by the supreme court."

In the second sentence, the Committee suggests replacing "supreme court" with "Florida Supreme Court Standards for Electronic Access to the Courts" to correctly refer to the "*Standards*." Also in that sentence, the Committee suggests replacing "one" with "1" to conform to with the requirements in *In re: Guidelines for Rules Submissions*, AOSC06-14 (Fla. 2006) ("*Guidelines*").

In the third sentence, the Committee proposes adding that the appendix shall be "properly indexed."

The Committee suggests deleting the last sentence. In its place, the Committee proposes new language as well as new subdivisions (c)(1)–(c)(4). These additions will require PDF files to be text searchable; be paginated so that the page numbers displayed by the PDF reader exactly match the pagination of the index; be bookmarked, consistently with the index, such that each bookmark states the date, name of the document which it references, and directs to the first page of that document; and not contain condensed transcripts, without leave of the court. The proposed bookmarking requirement will conform Rule 9.220 with the bookmarking requirements in subdivision (d) of Rule 9.200 (The Record).

In its comment, the Fourth District Court of Appeal suggested that the Florida Court E-filing Portal's filing limit of 50 megabytes would encourage the

filing of multiple appendices. (See Fourth District Court of Appeal Comment at 3.) The majority of the Committee agreed to delete the reference to a “series of separate PDF files” but believes that the Rule should refer to the *Standards* as the authority for guidelines on electronic filing.

The Committee declined to prohibit the inclusion of divider pages, but believes that the concern is addressed by the enhanced bookmarking requirements which will direct the reader to the start of a section.

The Committee agrees with the Fourth District Court of Appeal’s concern about four-pane “mini” transcripts. (See Fourth District Court of Appeal Comment at 6.) The Committee agreed to prohibit “condensed transcripts, unless authorized by the court.” The Committee believes this will generally discourage the practice, but will allow for situations in which the expense is burdensome or for cases in which the transcripts are not available in another format.

Several committee members raised concerns regarding the inclusion of newly proposed subdivision (c)(4) regarding condensed or “mini-pane” transcripts. Their opposition to the requirement stemmed from their concern that there is no corresponding rule for transcripts filed in the trial court. Indeed, one member—a sitting trial judge—pointed out that some judges even require that transcripts be filed in the “mini” or “condensed” format at the trial court. The concern is that a party who did not file the relevant pleading with an attached mini-transcript in the first place may now be required to bear the administrative burden of figuring out how to “uncondense” the document in order to include it in an appendix. For pro se litigants or solo practitioners, that burden is all the greater. More concerning is that in a proceeding in which an appendix essentially replaces the trial court record, as in a nonfinal appeal or extraordinary writ proceeding, the party filing the appendix may now have to alter the record to comply with this appendix rule. The minority perspective was that if condensed transcripts are an issue, their prohibition should first be done at the trial level by the Rules of Judicial Administration Committee, to ensure appellate practitioners are not altering documents from the trial court record in preparing appendices. This concern has been sent to the Rules of Judicial Administration Committee for their review.

WHEREFORE, the Appellate Court Rules Committee respectfully requests that the Court amend Florida Rule of Appellate Procedure 9.220(c) as detailed in this response.

Respectfully submitted on February 10, 2017.

/s/ Kristin A. Norse
Kristin A. Norse
Chair, Appellate Court Rules Committee
Kynes, Markman & Felman
P.O. Box 3396
Tampa, FL 33601-3396
813/229-1118
knorse@kmf-law.com
Florida Bar No. 965634

/s/ John F. Harkness, Jr.
John F. Harkness, Jr.
Executive Director
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5600
jharkness@floridabar.org
Florida Bar No. 123390

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, via the Florida Courts E-filing Portal, on February 10, 2017, to:

Cassandra A. Snapp
Law Offices of Mark L. Horwitz, P.A.
17 E. Pine Street
Orlando, FL 32801-2607
cassandra@mlhorwitzlaw.com
Florida Bar No. 31740

Honorable Cory J. Ciklin, Chief Judge
District Court of Appeal,
Fourth District
1525 Palm Beach Lakes Blvd.
West Palm Beach, FL 33401-2301
ciklinc@flcourts.org
Florida Bar No. 332275

Honorable L. Clayton Roberts, Chief Judge
District Court of Appeal, First District
2000 Drayton Drive
Tallahassee, FL 32399-0950
robertsc@1dca.org
Florida Bar No. 44709

Kenneth McLaughlin
District Court of Appeal, First District
2000 Drayton Drive
Tallahassee, FL 32399-0950
mclaughk@1dca.org
Florida Bar No. 362832

CERTIFICATE OF COMPLIANCE

I certify that these rules were read against Thomson Reuters' *Florida Rules of Court—State* (2016 Rev. Edition).

I certify that this report was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Heather Savage Telfer

Heather Savage Telfer, Staff Liaison
Appellate Court Rules Committee
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5702
htelfer@floridabar.org
Florida Bar No. 139149

Additional amendments are indicated with double underline and ~~double strikethrough~~.

RULE 9.220. APPENDIX

(a) **Purpose.** The purpose of an appendix is to permit the parties to prepare and transmit copies of those portions of the record deemed necessary to an understanding of the issues presented. It may be served with any petition, brief, motion, response, or reply but shall be served as otherwise required by these rules. In any proceeding in which an appendix is required, if the court finds that the appendix is incomplete, it shall direct a party to supply the omitted parts of the appendix. No proceeding shall be determined until an opportunity to supplement the appendix has been given.

(b) **Contents.** The appendix shall contain a coversheet, an index, a certificate of service, and a conformed copy of the opinion or order to be reviewed and may contain any other portions of the record and other authorities. Asterisks should be used to indicate omissions in documents or testimony of witnesses. The cover sheet shall state the name of the court, the style of the cause, including the case number if assigned, the party on whose behalf the appendix is filed, the petition, brief, motion, response, or reply for which the appendix is served, and the name and address of the attorney, or pro se party, filing the appendix.

(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, Florida Supreme Court Standards for Electronic Access to the Courts require multiple parts. The appendix shall be properly indexed and consecutively paginated, beginning with the cover sheet as page 1. The appendix must be properly indexed, bookmarked, and fully text searchable. The PDF file(s) shall:

(1) be text searchable;

(2) be paginated so that the page numbers displayed by the PDF reader exactly match the pagination of the index;

(3) be bookmarked, consistently with the index, such that each bookmark states the date, name of the document which it references, and directs to the first page of that document. All bookmarks must be viewable in a separate window; and

(4) not contain condensed transcripts, unless authorized by the court.

(d) Paper Format. When a paper appendix is authorized, it shall be ~~separately bound or separated from the petition, brief, motion, response, or reply by a divider and appropriate tab, and the following requirements shall apply:~~ (1) ~~if the appendix includes documents filed before January 1991 on paper measuring 8 1/2 by 14 inches, the documents should be reduced in copying to 8 1/2 by 11 inches, if practicable; and (2) if reduction is impracticable, the appendix may measure 8 1/2 by 14 inches, but it should be bound separately from the document that it accompanies. The appendix shall be consecutively paginated, beginning with the cover sheet as page 1. In addition, the following requirements shall apply:~~

(1) if the appendix includes documents filed before January 1991 on paper measuring 8 1/2 by 14 inches, the documents should be reduced in copying to 8 1/2 by 11 inches, if practicable; and

(2) if reduction is impracticable, the appendix may measure 8 1/2 by 14 inches, but must be separated from the 8 1/2 by 11-inch document(s) that it accompanies.

Committee Notes

1977 Adoption. This rule is new and has been adopted to encourage the use of an appendix either as a separate document or as a part of another matter. An appendix is optional, except under rules 9.100, 9.110(i), 9.120, and 9.130. If a legal size (8 1/2 by 14 inches) appendix is used, counsel should make it a separate document. The term “conformed copy” is used throughout these rules to mean a true and accurate copy. In an appendix the formal parts of a document may be omitted if not relevant.

1980 Amendment. The rule has been amended to reflect the requirement that an appendix accompany a suggestion filed under rule 9.125.

1992 Amendment. This amendment addresses the transitional problem that arises if legal documents filed before January 1991 must be included in an

appendix filed after that date. It encourages the reduction of 8 1/2 by 14 inch papers to 8 1/2 by 11 inches if practicable, and requires such documents to be bound separately if reduction is impracticable.

APPENDIX C—ADDITIONAL AMENDMENTS

Proposed Rule	Reason for Change
<p>RULE 9.220. APPENDIX</p> <p>(a) [No change]</p> <p>(b) Contents. The appendix shall contain a <u>coversheet</u>, an index, a certificate of service, and a conformed copy of the opinion or order to be reviewed and may contain any other portions of the record and other authorities. Asterisks should be used to indicate omissions in documents or testimony of witnesses. <u>The cover sheet shall state the name of the court, the style of the cause, including the case number if assigned, the party on whose behalf the appendix is filed, the petition, brief, motion, response, or reply for which the appendix is served, and the name and address of the attorney, or pro se party, filing the appendix.</u></p> <p>(c) Electronic Format. <u>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, Florida Supreme Court Standards for Electronic Access to the Courts 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.</u></p>	<p>The Committee does not propose any additional amendments to subdivision (b).</p> <p>Additional amendments are indicated with <u>double underline</u> and double strikethrough.</p> <p>Further amends the subdivision to discourage the filing of multiple appendices.</p> <p>Replaces “one” with “1” to conform to with the requirements in <i>In re: Guidelines for Rules Submissions</i>, AOSC06-14 (Fla. 2006) (“<i>Guidelines</i>”). Replaces “supreme court” with “Florida Supreme Court Standards for Electronic Access to the Courts” to correctly refer to the “<i>Standards</i>.”</p>

<p><u>The PDF file(s) shall:</u></p> <p style="padding-left: 40px;">(1) <u>be text searchable;</u></p> <p style="padding-left: 40px;">(2) <u>be paginated so that the page numbers displayed by the PDF reader exactly match the pagination of the index;</u></p> <p style="padding-left: 40px;">(3) <u>be bookmarked, consistently with the index, such that each bookmark states the date, name of the document which it references, and directs to the first page of that document. All bookmarks must be viewable in a separate window; and</u></p> <p style="padding-left: 40px;">(4) <u>not contain condensed transcripts, unless authorized by the court.</u></p> <p><u>(d) Paper Format.</u> When a paper appendix is authorized, it shall be separately bound or separated from the petition, brief, motion, response, or reply by a divider and appropriate tab, and the following requirements shall apply: (1) if the appendix includes documents filed before January 1991 on paper measuring 8 1/2 by 14 inches, the documents should be reduced in copying to 8 1/2 by 11 inches, if practicable; and (2) if reduction is impracticable, the appendix may measure 8 1/2 by 14 inches, but it should be bound separately from the document that it accompanies. <u>The appendix shall be consecutively paginated, beginning with the cover sheet as page 1. In addition, the following requirements shall apply:</u></p> <p style="padding-left: 40px;">(1) <u>if the appendix includes documents filed before January 1991 on paper measuring 8 1/2 by 14 inches, the documents should be reduced in copying to 8 1/2 by 11 inches, if</u></p>	<p>Moves this provision to new subdivisions (c)(1)–(c)(2).</p> <p>Creates new subdivision (c)(3) which conforms the bookmarking requirement to the bookmarking requirements in subdivision (d) of Rule 9.200 (The Record).</p> <p>Creates new subdivision (c)(4) which prohibits the filing of “four-pane ‘mini’ transcripts” without leave of the court.</p> <p>The Committee does not propose any additional amendments to subdivision (d).</p>
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<p><u>practicable; and</u></p> <p><u>(2) if reduction is impracticable, the appendix may measure 8 1/2 by 14 inches, but must be separated from the 8 1/2 by 11-inch document(s) that it accompanies.</u></p> <p>Committee Notes</p> <p>[No change]</p>	
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