Filing # 51851269 E-Filed 01/31/2017 11:55:18 AM

RECEIVED, 01/31/2017 11:58:29 AM, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

IN RE: 2017 REGULAR-CYCLE REPORT FOR AMENDMENTS TO THE FLORIDA RULES OF APPELLATE PROCEDURE **CASE NO.: 17-**

REGULAR-CYCLE REPORT OF THE
APPELLATE COURT RULES COMMITTEE

Kristin A. Norse, Chair of the Appellate Court Rules Committee ("Committee"), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this regular-cycle report, under Florida Rule of Judicial Administration 2.140(b).

All rule and form amendments have been approved by the full Committee and, as required by Florida Rule of Judicial Administration 2.140, reviewed by The Florida Bar Board of Governors. The voting records of the Committee and the Board of Governors are attached as Appendix A. Pursuant to Florida Rule of Judicial Administration 2.140(b), the amendments were published in the July 1, 2016, edition of The Florida Bar *News*. (*See* Appendix D.) Comments were received from Stephen T. Maher, Chris W. Altenbernd, Laura Anne Triplett, and Paul R. Regensdorf.

Based on the comments from Mr. Altenbernd and Mr. Regensdorf, the Committee voted to revoke amendments to the rendition subdivision of Rule 9.020 (Definitions), the statement of proceeding amendments in Rule 9.200 (The Record), and Rule 9.300 (Motions). The revoked amendments were published in the July 1, 2016, edition of The Florida Bar *News*, but do not appear in this report. (*See* Appendix G–120-G–125.) The Committee believes that Mr. Maher's comment is beyond the scope of the published amendments. Mr. Maher's concerns are being considered as a new request for amendment. Ms. Triplett's comment led the Committee to amend Rule 9.170 to correct rule reference. The Committee's additional amendments were published in the December 1, 2016, edition of The Florida Bar *News*.

The Committee proposes amendments to the following rules: Rule 9.010 (Effective Date ~~and~~; Scope; Applicability of Florida Rules of Judicial Administration); Rule 9.020 (Definitions); Rule 9.030 (Jurisdiction of Courts); Rule 9.040 (General Provisions); Rule 9.100 (Original Proceedings); Rule 9.110 (Appeal Proceedings to Review Final Orders of Lower Tribunals and Orders Granting New Trial in Jury and ~~Non-Jury~~Nonjury Cases); Rule 9.120

(Discretionary Proceedings to Review Decisions of District Courts of Appeal); Rule 9.125 (Review of Trial Court Orders and Judgments Certified by the District Courts of Appeal as Requiring Immediate Resolution by the Supreme Court of Florida); Rule 9.130 (Proceedings to Review ~~Non-Final~~Nonfinal Orders and Specified Final Orders); Rule 9.140 (Appeal Proceedings in Criminal Cases); Rule 9.141 (Review Proceedings in Collateral Postconviction Criminal Cases); Rule 9.142 (Procedure for Review in Death Penalty Cases); Rule 9.145 (Appeal Proceedings in Juvenile Delinquency Cases); Rule 9.146 (Appeal Proceedings in Juvenile Dependency and Termination of Parental Rights Cases and Cases Involving Families and Children in Need of Services); Rule 9.150 (Discretionary Proceedings to Review Certified Questions from Federal Courts); Rule 9.160 (Discretionary Proceedings to Review Decisions of County Courts); Rule 9.170 (Appeal Proceedings in Probate and Guardianship Cases); Rule 9.180 (Appeal Proceedings to Review Workers' Compensation Cases); Rule 9.190 (Judicial Review of Administrative Action); Rule 9.200 (The Record); Rule 9.210 (Briefs); Rule 9.225 (Notice of Supplemental Authority); Rule 9.300 (Motions); Rule 9.310 (Stay Pending Review); Rule 9.330 (Rehearing; Clarification; Certification; Written Opinion); Rule 9.331 (Determination of Causes in a District Court of Appeal En Banc); Rule 9.350 (Dismissal of Causes); Rule 9.360 (Parties); Rule 9.370 (Amicus Curiae); Rule 9.380 (Notice of Related Case or Issue); Rule 9.400 (Costs and Attorneys' Fees); Rule 9.410 (Sanctions); Rule 9.420 (Filing; Service of Copies; Computation of Time); Rule 9.430 (Proceedings by Indigents); Rule 9.500 (Advisory Opinions to Governor); Rule 9.510 (Advisory Opinions to Attorney General); Rule 9.700 (Mediation Rules); Rule 9.710 (Eligibility for Mediation); Rule 9.720 (Mediation Procedures); Rule 9.800 (Uniform Citation System); and Rule 9.900 (Forms).

The rule and form amendments, as shown in Appendix B (full page) and Appendix C (two-column), are proposed for the following reasons:

RULE 9.010. EFFECTIVE DATE ~~AND~~; SCOPE; APPLICABILITY OF FLORIDA RULES OF JUDICIAL ADMINISTRATION

The Committee proposes amending Florida Rule of Appellate Procedure 9.010. Former Committee member, James Edward Nutt, suggested that the applicability of the Rules of Judicial Administration provision belonged in the rule devoted to "scope" rather than in Rule 9.020 (Definitions). (*See* Appendix E–1.) The Committee agreed and proposes moving the sentence on the applicability of the Florida Rules of Judicial Administration from subdivision (h) of Rule 9.020 (Definitions) to the beginning of the second paragraph of Rule 9.010. Additionally,

for consistency, the Committee proposes amending the title by deleting "and"; adding a semicolon after "Date"; and adding "; Applicability of Florida Rules of Judicial Administration" after "Scope." (*See* Appendix G–4-G–6.)

RULE 9.020. DEFINITIONS

The Committee proposes several amendments to Florida Rule of Appellate Procedure 9.020. John Richard Hamilton, a former member of the Committee, suggested many amendments to the Florida Rules of Appellate Procedure for consistency throughout the rules set and to conform to *In re: Guidelines for Rules Submissions*, AOSC06-14 (Fla. 2006) ("*Guidelines*"). (*See* Appendix E–2.) The Committee agreed and many of the punctuation and consistency suggestions throughout this report are proposed as a result of Mr. Hamilton's request. (*See* Appendix G–84-G–85.)

The Committee proposes amending subdivision (a)(2) by removing the hyphen from "non-final" for consistency throughout the rules set. (*See* Appendix G–84-G–85.) The Committee's proposal suggests deleting existing subdivision (h) and moving that language to Rule 9.010 (Effective Date ~~and~~; Scope; Applicability of the Florida Rules of Judicial Administration). (*See* Appendix G–4-G–6.)

While reviewing the "rendition" subdivisions for a different purpose, the Committee determined that the rule should be reorganized for greater clarity for the reader. As proposed, existing subdivision (i) is renumbered as subdivision (h). Additional amendments are proposed for greater clarity for the reader.

Specifically, the Committee proposes dividing up the contents of existing subdivision (i) into new subdivisions (h)(1)(A)–(h)(1)(I). Existing subdivisions (i)(1)–(i)(3) are renumbered as (h)(2)(A)–(h)(2)(C). Additionally, the Committee proposes amending subdivisions (h)(2)(A)–(h)(2)(C) by removing "If such a motion or motions have been filed" from existing (i)(1)–(i)(3), renumbered as subdivisions (h)(2)(A)–(h)(2)(C). The Committee suggests amending existing subdivision (i)(3), renumbered as (h)(2)(C), by rephrasing the paragraph to delete "such a motion or motions have been filed and." All three subdivisions (h)(2)(A)–(h)(2)(C) would include new amendments specifying that the signed, written order must be filed with the clerk. (*See* Appendix G–116-G–120.)

The Committee proposes renumbering existing subdivision (j) as subdivision (i). Finally, the Committee proposes a new subdivision (j) to provide a definition of "conformed copy" as an accurate and true copy. Currently, "conformed copy" is

defined in committee notes of Rule 9.220 (Appendix), but not in the rules themselves. (*See* Appendix G–51.)

Please note that there are other amendments pending to this rule in *In re: Amendments to the Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.030. JURISDICTION OF COURTS

The Committee proposes a substantive amendment to Florida Rule of Appellate Procedure 9.030. Former Committee Chair, Michael Robert Ufferman, suggested that for consistency with the appellate model of the District Courts of Appeal, the rule should be amended to require a three-judge panel in appeals to a circuit court. (*See* Appendix E–28.) After conducting substantial research on the issue, the Committee agrees with Mr. Ufferman and proposes new subdivision (c)(4) entitled "Panels." (*See* Appendix G–21-G–24; G–52-G–55; G–103-G–105) The amendment would require review by a three-judge panel for matters within the appellate jurisdiction of the circuit court. The Committee notes that a similar proposal was considered in approximately 1999-2000 and was rejected due to fiscal concerns of smaller counties and circuits. But the Committee researched which counties currently allow for a three-judge panel and determined that Monroe—the smallest county in the state—requires three judge panels for appeals in circuit court. The Committee believes that, if the smallest county can require a three-judge panel, then other larger counties could find the resources as well. This would not only make the appellate process consistent in the circuit and district courts, it would alleviate concerns that a review by a single circuit judge could be perceived as simply substituting one judge's opinion for another.

The Committee's research included statistics from the Office of State Courts Administrator on appeals from county court to circuit court appeals. (*See* Appendix H-1.) It appears that relatively few cases are appealed from county court to circuit court.

The Committee also proposes several style amendments to Rule 9.030. The majority of the Committee's proposed amendments are grammatical in nature and add conjunctives and punctuation to conform to the *Guidelines*. The Committee proposes amending the title of subdivision (a) to avoid confusion between the Supreme Court of Florida and the United States Supreme Court. A colon is added to the end of subdivisions (a)(1)(A), (a)(2), (a)(2)(A), (a)(2)(B) to conform to the *Guidelines*. "And" is added to the end of subdivisions (a)(1)(A)(i), (a)(1)(B)(i), (b)(1)(B), and (c)(1)(B) to conform to the *Guidelines*. "Or" is added to the end of

subdivisions (a)(2)(A)(v), (a)(2)(B)(ii), (b)(2)(A), and (b)(4)(A) to conform to the Supreme Court's Style Guide. The comma at the end of subdivision (a)(2)(B)(i) is replaced with a semicolon. The hyphen is removed from "nonfinal" in subdivisions (b)(1)(B), (b)(2)(A), (b)(4)(B), (c)(1)(B), and (c)(2) for consistency throughout the rules set. (*See* Appendix G–84-G–85.)

RULE 9.040. GENERAL PROVISIONS

The Committee proposes grammatical and punctuation amendments to Florida Rule of Appellate Procedure 9.040. Specifically, the Committee proposes removing the hyphen in "nonfinal" in subdivisions (b)(2), (b)(2)(A), (b)(2)(B), and (b)(2)(C) for consistency throughout the rules set.

In subdivision (b)(2)(B), the Committee recommends substituting "which" with "that." In subdivision (g), the Committee proposes adding "of appeal" after "district court" to clarify which court is being referenced. (*See* Appendix G–84-G–85.)

RULE 9.100. ORIGINAL PROCEEDINGS

The Committee proposes consistency and capitalization amendments to Florida Rule of Appellate Procedure 9.100. Specifically, the hyphen is removed from "nonfinal" in subdivisions (a), (b)(3)(C), (c), and (c)(3) for consistency throughout the rules set. The Committee further proposes beginning subdivisions (b)(3)(A)–(b)(3)(C) with lower case letters to conform to the *Guidelines*. The proposed amendments to subdivisions (c)(1)–(c)(4) begin each subdivision with a lower case letter and replace the period at the end of the subdivisions (c)(1)–(c)(3) with a semicolon. Subdivision (c)(3) is amended to add the conjunctive "or" to the end of the subdivision to comply with the *Guidelines*. (*See* Appendix G–84-G–85.)

RULE 9.110. APPEAL PROCEEDINGS TO REVIEW FINAL ORDERS OF LOWER TRIBUNALS AND ORDERS GRANTING NEW TRIAL IN JURY AND ~~NON-JURY~~NONJURY CASES

The Committee proposes several amendments to Florida Rule of Appellate Procedure 9.110. The Honorable Chris W. Altenbernd suggested that the scope of review in subdivision (h) "is wrong for many, if not all, (k) appeals." (*See* Appendix E-29.) The Committee agreed that there was confusion and proposes amendments to clarify the respective scopes of review. In particular, the Committee proposes amending subdivision (h) by beginning the subdivision with

"[e]xcept as provided in subdivision (k)" to ensure that the scope of review of a partial final judgment is governed by subdivision (k). The Committee proposes amending subdivision (k) by adding a sentence to the end of the subdivision addressing the scope of review of a partial final judgment to clarify that subdivision (h) does not expand the scope of review of partial final judgments to include rulings that are not directly related to and an aspect of the final order under review. *E.g.*, *Cygler v. Presjack*, 667 So. 2d 458, 461 (Fla. 4th DCA 1996). The Committee also proposes a committee note to explain the amendments to subdivisions (h) and (k). (*See* Appendix G–74-G–75; G–87-G–89.)

The Committee proposes several grammatical and punctuation amendments to Rule 9.110. The Committee proposes amending the title of Rule 9.110 to remove the hyphen from "Nonjury" for consistency throughout the rules set. The Committee proposes adding a colon at the end of subdivision (a) to conform to the *Guidelines*. The Committee also proposes removing the hyphen from "nonjury" in subdivision (a)(3). In subdivision (f), the Committee proposes adding the article "the" before "appellant. The Committee proposes adding the article "the" before "appellant" in the second sentence of subdivisions (i) and (j). In subdivision (*l*), the Committee proposes updating the cross-reference to the "rendition" subdivision of Rule 9.020 (Definitions), changing the subdivision reference from (i) to (h). (*See* Appendix G–84-G–85.)

RULE 9.120. DISCRETIONARY PROCEEDINGS TO REVIEW DECISIONS OF DISTRICT COURTS OF APPEAL

The Committee proposes minor amendments to Florida Rule of Appellate Procedure 9.120. The Committee proposes adding the article "the" before "petitioner" in the first sentence of subdivision (d) and before "respondent" in the second sentence. Also in subdivision (d), "of appeal" is added to the last sentence to clarify that the courts being referenced are the district courts of appeal. (*See* Appendix G–84-G–85.)

The Committee proposes amending subdivision (f) by deleting the second half of the first sentence, which requires the brief on the merits be accompanied by a conformed copy of the decision of the district court of appeal. The Committee believes that this requirement is duplicative because subdivision (d) already requires a party to provide the decision as an appendix to the jurisdictional brief. (*See* Appendix G–109-G–110.)

Please note that there are other amendments pending to this rule in *In re: Amendments to the Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.125. REVIEW OF TRIAL COURT ORDERS AND JUDGMENTS CERTIFIED BY THE DISTRICT COURTS OF APPEAL AS REQUIRING IMMEDIATE RESOLUTION BY THE SUPREME COURT OF FLORIDA

The Committee proposes several punctuation and consistency amendments to Florida Rule of Appellate Procedure 9.125. Specifically, the Committee proposes adding "of Florida" to the end of the rule title to clarify that the rule title is referring to the Supreme Court of Florida and to avoid confusion with the United States Supreme Court. Another suggested amendment is to add "of appeal" after "district court" in the first sentence of subdivision (a). The Committee proposes the same addition of "of appeal" in two places in the first sentence of subdivisions (c) and (f). In subdivisions (e)(1)–(e)(4), the Committee proposes replacing the capital letter beginning each subdivision with a lower case letter. In subdivisions (e)(1)–(e)(3), the Committee proposes replacing the periods at the end of the subdivisions with semicolons to conform to the *Guidelines*. Also, in subdivision (e)(3), the Committee proposes removing the signature block (as it is superfluous) and adding the conjunctive "and" at the end of the subdivision. The Committee proposes amending the title of subdivision (g) to add an article before "Supreme Court" and adding "of Florida" after. This will clarify that the court being referenced is the Supreme Court of Florida and avoid confusion with the United States Supreme Court. Additionally, the Committee suggests adding "of appeal" after "district court" in the second and fifth sentences to clarify that the court being referenced is the district court of appeal. (*See* Appendix G–84-G–85.) In the fourth sentence, the Committee recommends replacing "papers" with "documents" to conform with electronic filing. (*See* Appendix G–10-G–15.)

RULE 9.130. PROCEEDINGS TO REVIEW ~~NON-FINAL~~NONFINAL ORDERS AND SPECIFIED FINAL ORDERS

The Stetson Law Review's Symposium on Appellate Issues, Winter 2013 Edition, raised several concerns about nonfinal orders and potential new classes of nonfinal orders. The first article by Anthony Russo, Ezequiel Lugo, and Jared Krukar, *Certiorari Redefined: Would the "Functional Restatement" Function?*, 42 Stetson Law Review 403 (Winter 2013), suggested that cases in which a party faces an order denying the existence of settlement agreements should be able to

appeal that nonfinal order to avoid the expense of a trial. (*See* Appendix E–31.) The Committee agreed and proposes amending Florida Rule of Appellate Procedure 9.130 by creating new subdivision (a)(3)(C)(xii) to permit review of nonfinal orders to determine if, "as a matter of law, a settlement agreement is unenforceable, was set aside, or never existed."

While amendments expanding the list of appealable nonfinal orders in Rule 9.130 are generally discouraged, Florida's public policy strongly encourages settlements, which courts may enforce pursuant to general contract law. In the event a court enters an order finding a settlement does not exist or setting aside a settlement agreement, an immediate appeal furthers this pro-settlement policy. If an appellate court determines that a lower tribunal incorrectly set aside a settlement agreement or found a settlement agreement did not exist, the parties would not have to litigate further in the trial court, saving resources and promoting settlement. Additionally, a number of subdivisions to Rule 9.130 already contemplate an immediate appeal of discrete issues when determined "as a matter of law," including subdivisions (a)(3)(C)(v) (workers' compensation immunity) and (a)(3)(C)(vii) (qualified immunity in civil rights claim arising under federal law). To accommodate the additional subdivision, the Committee proposes deleting the "or" currently at the end of subdivision (a)(3)(C)(x) and changing the period at the end of subdivision (a)(3)(C)(xi) to a semicolon. (*See* Appendix G–42-G–50; G–70-G–71.)

The second article is Mark Miller's *No More Lip Service: Why Florida Appellate Rules Should Allow For Non-Final Appeal of Orders Granting Disqualification of A Party's Attorney*, 42 Stetson Law Review 489 (Winter 2013). That article discussed allowing nonfinal appeals for orders granting the disqualification of an attorney. (*See* Appendix E–75.) The Committee agreed that this new class of nonfinal orders was needed and the Committee recommends the creation of new subdivision (a)(3)(E) to permit review of nonfinal orders that "grant or deny a motion to disqualify counsel." The proposed amendment would address situations in which the ability to appeal this nonfinal order is critical to a party due to conflicts of interest. *See*, *e.g.*, *Frye v. Ironstone Bank*, 69 So. 3d 1046, 1053 (Fla. 2d DCA 2011) (counsel for bank in deficiency action enjoyed unfair informational advantage and "had the best ally possible" in former counsel for guarantor whom he also defended against guarantor's legal malpractice lawsuit); *Health Care & Retirement Corp. of Am. v. Bradley*, 944 So. 2d 508 (Fla. 4th DCA 2006) (counsel who had defended claims of negligence against nursing home switched sides when he joined new firm and actively litigated negligence claim against nursing home on behalf of estate of former resident). These cases highlight

the need to permit a nonfinal appeal of a motion to disqualify before having to complete a trial. (*See* Appendix G–71-G–72.)

The minority position is that this rule may be easily subject to abuse. Some members suggested that the ability to appeal this type of nonfinal order could unnecessarily delay proceedings.

Proposed amendments to subdivision (a)(3)(D) include replacing "and" with "or" for greater clarity to the reader. Additionally, the period would be replaced with a semicolon and "or" would be added to the end of the subdivision to allow for proposed new subdivision (a)(3)(E).

The Committee suggests several punctuation and consistency amendments for this rule, including removing the hyphens from "non-final" in the rule title, subdivisions (a)(1)–(a)(3), (c), (f), (h), and (i) for consistency throughout the rules set. The Committee also recommends deleting the hyphen in "non-jury" in subdivision (a)(3)(4). In subdivisions (a)(3) and (a)(3)(C), the Committee proposes adding colons after "that" and "determine" to conform to the *Guidelines*. In subdivision (a)(3)(C)(ii), the addition of a comma after "dissolve" is suggested. A hyphen is added to "timely filed notice of appeal" in subdivision (g). (*See* Appendix G–84-G–85.)

RULE 9.140. APPEAL PROCEEDINGS IN CRIMINAL CASES

The Committee proposes several amendments to Florida Rule of Appellate Procedure 9.140. Amy Singer Borman, General Counsel for the Fifteenth Judicial Circuit, wrote to the Committee and raised issues her office was having with lawyers assuming that the clerk of the lower tribunal would serve their designations on the court reporter. (*See* Appendix E–90.) The Committee agreed that the rules could be clearer and proposes amendments adding "and served by counsel for appellant" in subdivision (d)(1)(D) to clarify who has the responsibility to file and serve the designations to the approved court reporter. Similarly, in subdivisions (f)(2)(C), (f)(2)(D), and (f)(2)(E), "designate" is replaced with "serve the designation" to clarify who has the responsibility to serve the designations on the approved court reporter. In subdivision (f)(6)(B), the beginning of the second sentence is deleted and, in its place, the Committee proposes adding "[a]ppellate counsel shall file the designation with the court and serve it on the approved court reporter or approved transcriptionist" to clarify who has the responsibility to file and serve the designations and to maintain consistency with other proposed amendments. (*See* Appendix G–110-G–115.)

At the staff liaison's suggestion, the Committee proposes amending the second to last sentence of subdivision (c)(3) by replacing "attorney of record" with "defendant's attorney." This change will avoid any conflict with pending amendments to Florida Rule of Judicial Administration 2.505, concerning attorney of record, in SC16-1062, as well as provide greater clarity to the reader. Similarly, the Committee recommends amending subdivision (d)(1) by replacing "attorney of record for a defendant" with "defendant's attorney." Additionally, "in a criminal proceeding" is deleted as being superfluous. (*See* Appendix G–105-G–106. Jan 2016)

Former Committee member Elisha Naoli Page suggested that the Committee consider amendments to address the return of the record in criminal cases. (*See* Appendix E–150.) The Committee agrees and in subdivision (f)(5), the Committee proposes amending the rule to indicate that the return of the record does not apply to portions of the record that were electronically filed. Specifically, "after final disposition of the appeal" would be deleted and would be replaced with ", after final disposition of the appeal, any portions of the appellate record that were not electronically filed." To accommodate this revision, the Committee recommends deleting "the record." (*See* Appendix G–15.)

Former Committee Chair Michael Robert Ufferman suggested that the Committee review Rule 9.140(f)(6) to determine if it should be amended in light of the Court's addition of a time period in which to request the rehearing of an order disposing of a motion filed under Florida Rule of Criminal Procedure 3.800(b) (Correction, Reduction, and Modification of Sentences). (*See* Appendix E–93.) The Committee agreed that the potential for conflict exists concerning the timeframe for preparation of the record and the timeframe for filing motions for rehearing. To address the potential conflict, the Committee proposes breaking the rule into new subdivisions (f)(6)(A)(i)–(f)(6)(A)(iii). New subdivision (f)(6)(A)(i) is amended to add a last sentence to detail the contents of the supplemental record in cases in which a motion for rehearing is filed. New subdivision (f)(6)(A)(ii) is amended to specify that the clerk shall electronically transmit the supplemental record 20 days after the filing of an order disposing of a Rule 3.800(b)(2) motion, unless a motion for rehearing is filed. Proposed subdivision (f)(6)(A)(iii) ties the transmission of the supplemental record for a Rule 3.800 motion either to the ruling on the motion, or if there is a motion for rehearing filed, to the disposition of that motion. The Committee proposes titles for subdivisions (f)(6)(A) and (f)(6)(B) of "Transmission" and "Transcripts," respectively, to conform to the *Guidelines*. (*See* Appendix G–1-G–4.)

The Committee proposes amending subdivision (f)(6)(B) to clarify who has the responsibility to file the designation and serve it on the approved court reporter or approved transcriptionist as discussed earlier in this report. Specifically, the Committee proposes deleting "[a] copy of the designation shall be filed with the" from the second sentence. In its place, the Committee suggests adding "[a]ppellate counsel shall filed the designation with the court and serve it on the approved court reporter or approved transcriptionist." (*See* Appendix G–105-G–107.)

The Committee suggests several amendments to conform to the *Guidelines*. These include the addition of a colon after subdivisions (b)(1), (b)(2)(A)(ii), and (c)(1) and the word "and" to the end of the subdivision (b)(2)(B)(i)e.. The hyphen in "non-final" would be removed in subdivision (c)(2). In subdivisions (f)(2)(D) and (f)(4), the Committee proposes removing the hyphen from "non-indigent." In subdivision (f)(2)(D), "Office of Attorney General" is replaced with "attorney general." In subdivision (f)(2)(F), the hyphen in "publicly-funded" is deleted for consistency. In subdivision (f)(6)(B), "transmittal" is replaced with "transmission." In subdivision (g)(1), the Committee proposes amending the subdivision title to capitalize "merits." In subdivision (h)(1), the Committee suggests adding "of appeal" after "notice" in two places to clarify the type of notice that is being referenced. (*See* Appendix G–84-G–85.)

RULE 9.141. REVIEW PROCEEDINGS IN COLLATERAL OR POSTCONVICTION CRIMINAL CASES

The Committee proposes amending Florida Rule of Appellate Procedure 9.141. (*See* Appendix E–100.) Lonn Weissblum, Clerk of the Fourth District Court of Appeal, raised a concern regarding cases in which a postconviction motion is summarily denied. The summary record can be quite large and currently is not required to be indexed or paginated. The Committee agreed that this was a concern and proposes amending Rule 9.141 to require the indexing and pagination of summary records. Specifically, the Committee proposes amending subdivision (b)(2)(B) to require the clerk of the lower tribunal to index and paginate the index and send copies of the index and record to the parties. (*See* Appendix G–41-G–42.)

Former Committee Chair Michael Robert Ufferman asked the Committee to review Rule 9.141 to address instances in which the record on appeal is assembled and transmitted before the appellant has the opportunity to add additional documents that were before the lower tribunal. (*See* Appendix E–102.) The Committee agreed that this could pose a problem as records on appeal are now quickly assembled and transmitted electronically. In subdivision (b)(3)(B)(ii), the

Committee suggests allowing the appellant to direct the clerk to include additional documents. This amendment would allow the appellants 10 days to provide any directions to the clerk prior to the record being transmitted. (See Appendix G–42-G–43.)

The Committee proposes amending the title of subdivision (b)(3), to change "one" for "1" to conform to the *Guidelines*. The Committee proposes amending subdivision (c)(4) by adding a colon at the end of the subdivision. In subdivisions (c)(4)(F)(i)–(c)(4)(F)(ii), the Committee proposes beginning the subdivisions with lower case letters and ending subdivision (c)(4)(F)(i) with a semicolon to conform to the *Guidelines*. In subdivision (c)(6)(D), the Committee proposes adding "of appeal" after "district court" in the second sentence to clarify which court is being referenced. An additional punctuation suggestion is to add a colon to the end of subdivision (d)(4). (*See* Appendix G–84-G–85.)

Please note that there are other amendments pending to this rule in *In re: Amendments to the Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.142. PROCEDURE FOR REVIEW IN DEATH PENALTY CASES

The Committee proposes several punctuation and grammatical amendments to Florida Rule of Appellate Procedure 9.142. Specifically, the Committee proposes amending subdivision (a)(1)(B) to remove the capital letters in "Supreme Court" so that the subdivision correctly refers to the Supreme Court of Florida and to avoid confusion with the United States Supreme Court. In subdivision (a)(3), the Committee suggests a slight rewording to "may be issued" from "may issue" for greater clarity for the reader. The Committee proposes the addition of a colon at the end of subdivisions (b)(2), (b)(3)(B), and (c)(4). Additionally, the Committee suggests adding the conjunctive "and" at the end of subdivision (b)(2)(D). Subdivision (b)(3)(A) would be amended to include the article "the" before "petitioner requested" in the first half of the paragraph. In subdivision (c)(11), "rule" becomes "rules." Amendments to subdivision (d) include removing the hyphen from "post-conviction" in the subdivision title and subdivision (d)(2)(A). Also in subdivision (d)(2)(A), "of appeal" is added after "notice" to clarify the type of notice being referenced. Finally, in subdivision (d)(2)(D), the Committee suggests amending the title of the subdivision to correctly reference the Supreme Court of Florida and to avoid confusion with the United States Supreme Court. (*See* Appendix G–84-G–85.)

RULE 9.145. APPEAL PROCEEDINGS IN JUVENILE DELINQUENCY CASES

The Committee suggests editorial amendments to Florida Rule of Appellate Procedure 9.145. The Committee proposes adding a colon to the end of subdivisions (b) and (c)(1). The Committee proposes removing the hyphen from "non-final" in the title of subdivision (c)(2). (*See* Appendix G–80-G–81.) As amended, subdivision (d) would refer to "documents" instead of "papers." (*See* Appendix G–11-G–15.)

RULE 9.146. APPEAL PROCEEDINGS IN JUVENILE DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES AND CASES INVOLVING FAMILIES AND CHILDREN IN NEED OF SERVICES

The Committee recommends substantive amendments to Florida Rule of Appellate Procedure 9.146. Committee member, Stephanie Christina Zimmerman, suggested that the Committee review Rule 9.146 to determine if it is consistent with the other Rules of Appellate Procedure; to determine if the rule reflects current practice; and to "ensure the procedures in the rule are still consistent with the purposes of the rule's intention of expedited review of dependency and termination of parental rights cases." (*See* Appendix E-103.) The Committee reviewed the rule with these concerns in mind and proposes several amendments. First, the Committee recommends creating new subdivision (c)(3) to address how a party seeks review of an order. Currently, Rule 9.310 (Stay Pending Review) does not specifically address review of an order in dependency and termination of parental rights proceedings.

In subdivision (g)(3)(B), the Committee suggests adding a final sentence to detail how to address a situation in which more than one initial or answer brief is served. This will conform Rule 9.146 to amendments proposed for Rule 9.210 (Briefs).

The proposed amendments to subdivision (g)(4)(B) are intended to address situations in which the attorney concludes there are no meritorious issues. As proposed, a third sentence is added to the subdivision that would require the record on appeal and transcript to be forwarded to the parent. This would allow the parent the opportunity to file a brief within 20 days of the withdrawal. (*See* Appendix G–67-G–70.)

For consistency, the Committee proposes removing the hyphen from "non-final" in subdivision (c)(1). In the title of subdivision (g)(2)(C), the Committee proposes replacing "Transmittal" with "Transmission." In subdivision (g)(2)(C), the Committee suggests removing the hyphen from "non-indigent." (*See* Appendix G–80-G–81.) In the same subdivision, the Committee suggests changing "form" to "format" in the last sentence. (*See* Appendix G–11-G–15.) Also in that sentence, the Committee suggests removing "by e-mail" and instead referring to "electronic" service, which would encompass service through the Florida Courts E-filing Portal.

Please note that there are amendments pending to this rule in *In re: Amendments to the Florida Rules of Juvenile Procedure and Florida Rule of Appellate Procedure 9.146*, SC16-553.

RULE 9.150. DISCRETIONARY PROCEEDINGS TO REVIEW CERTIFIED QUESTIONS FROM FEDERAL COURTS

This strictly editorial amendment in subdivision (a) changes "one" to "1" to conform to the *Guidelines*.

RULE 9.160. DISCRETIONARY PROCEEDINGS TO REVIEW DECISIONS OF COUNTY COURTS

The Committee proposes amending Florida Rule of Appellate Procedure 9.160 to remove the hyphen from "non-final" in subdivision (c). In subdivision (d), the Committee suggests ending the subdivision with a colon. In subdivision (d)(1), the Committee proposes adding a semicolon after "law." Additionally, subdivision (d)(1) and (d)(2) should be separate paragraphs to conform to the *Guidelines*. In subdivision (f)(2), the Committee proposes adding "of appeal" to specify that the court being referenced is the District Court of Appeal. (*See* Appendix G–84-G–85.)

Please note that there are other amendments pending to this rule in *In re: Amendments to the Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.170. APPEAL PROCEEDINGS IN PROBATE AND GUARDIANSHIP CASES

In her comment, Committee member Laura Anne Triplett noted that subdivision (c) of Florida Rule of Appellate Procedure 9.170 incorrectly refers to Rule 9.200(a)(3) (The Record). (*See* Appendix F–5.) The Committee agreed that, in fact, the correct subdivision is (a)(2) and proposes an amendment to correct the reference. (*See* Appendix G–121.)

Robert J. Hauser wrote to the Committee and asked that Rule 9.170 address situations in which a record is not transmitted, but appendices are filed pursuant to Rule 9.170(c). (*See* Appendix E–105.) The Committee agreed that there is no mechanism to notify the clerk of the appellate court that appendices are going to be filed instead of the record on appeal. To address this concern and to provide notice to the clerk of the appellate court, the Committee recommends amending subdivision (c) to include "; a copy of such direction shall be served on the court when it is served on the clerk of the lower tribunal" in the second sentence. In the third sentence, the Committee proposes adding "; a copy of such direction shall be served on the court when it is served on the clerk of the lower tribunal." (*See* Appendix G–85.)

The Committee suggests amending subdivision (b)(24) to correctly refer to the subdivisions as (b)(1)–(b)(23) instead of (1)–(23).

RULE 9.180. APPEAL PROCEEDINGS TO REVIEW WORKERS' COMPENSATION CASES

The Committee proposes editorial and consistency amendments to Florida Rule of Appellate Procedure 9.180. For consistency throughout the rules set, the Committee proposes replacing the colons in subdivisions (b)(2), (f), (f)(1), (f)(5)(D), (f)(7), (g), (g)(2)(C), (g)(3)(C)–(g)(3)(E), and (h)(1)–(h)(2) with semicolons. In the title of subdivision (e)(1), the Committee suggests adding "of appeal" to specify that the court being referenced is the District Court of Appeal. In subdivision (e)(2), the Committee suggests adding "of Florida" to specify that the Court being referenced is the Supreme Court of Florida and to avoid confusion with the United States Supreme Court. (*See* Appendix G–84-G–85.) In the title of subdivision (f)(3), the Committee proposes changing "Transmittal" to "Transmission" for consistency. In subdivision (f)(1), the Committee proposes adding a comma after "lower tribunal." The Committee proposes adding the article "the" in the second sentence of subdivision (f)(5)(E) and the first sentence of subdivisions (g)(1)(C) and (g)(1)(C)(ii). In subdivision (g)(1)(D), the Committee suggests beginning the subdivision with the article "the" and adding "the" before appellant later in the same subdivision. In subdivision (g)(1)(E), the Committee proposes adding the article "the" before "appellant" in the first and second sentences. Subdivision (g)(3)(A) is amended to reflect the full reference to subdivision (g)(3)(D). In subdivision (i) 3), the Committee proposes changing "attorney fee" to "attorneys' fee.

In subdivisions (f)(6)(A)–(f)(6)(C), the Committee proposes amending the subdivision titles and the subdivisions to use consistent language. Specifically, in subdivision (f)(6)(A), the title and first sentence would be amended to include "Approved Court" before "Reporter" to clarify the type of reporter being referenced. In the same subdivision, "transcriber" is replaced by "transcriptionist" for consistency throughout the rules set. In subdivision (f)(6)(B), "Court" is added to the title and first sentence to identify the type of reporter. In the same subdivision "transcriber" is replaced with "transcriptionist" both in the subdivision title and the first sentence of the subdivision. In the title of subdivision (f)(6)(C), "transcriber" is replaced with "transcriptionist." In the first sentence, "court" is added before "reporter," for consistency. And "transcriber designated" is replaced with "transcriptionist selected" to avoid confusion. In the last sentence of the subdivision, "court" is added before "reporter" and "transcriber" is replaced with "transcriptionist." (*See* Appendix G–110-G–115.)

Please note that there are other amendments pending to this rule in *In re: Amendments to the Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.190. JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

Former Committee member Robert J. Telfer III and current Committee member Gigi Rollini suggested that the Committee review Florida Rule of Appellate Procedure 9.190 to determine if the statutory references were correct. (*See* Appendix E–106.) Based on this review, the Committee proposes several amendments to Rule 9.190 to clarify confusing language and remove outdated references. Specifically, the Committee proposes amending subdivision (c) to add titles to subdivisions (c)(2)(A)–(c)(2)(F). Subdivision (c)(2)(A) is amended to remove the reference to section 120.56, Florida Statutes, as it is unnecessary. Further amendments to subdivisions (c)(2)(A)–(c)(2)(E) remove language in parentheticals that describe the statutes. Amendments in subdivision (c)(2)(C) update the reference from Florida Administrative Weekly to Florida Administrative Register. The Committee proposes dividing subdivision (c)(2)(E) into two new subdivisions (c)(2)(E)(i) and (c)(2)(E)(ii). The existing language in subdivision (c)(2)(E) is moved into new subdivision (c)(2)(E)(ii). New subdivision (c)(2)(E)(i) describes what should be included in the record on appeal for proceedings held pursuant to section 120.56, Florida Statutes, "Challenges to Rules." This is not addressed in existing subdivision (c)(2)(E). Currently the subdivision addresses challenges under section 120.54, Florida Statutes, "Rulemaking" and under section 120.68, Florida Statutes, "Judicial Review." The

Committee's proposed amendments would fill in the gap. (*See* Appendix G–8-G–10.)

The Committee also proposes punctuation and grammatical amendments to the rule. As proposed, the hyphen is removed from "non-final" in subdivisions (b)(2) and (c)(3) for consistency throughout the rules set. The end of subdivision (c)(2)(E)(ii) is amended to correct the conjunctive from "and" to "or." Subdivision (c)(4) is amended to add an article before "appellant" in the second sentence. An extra period is deleted in subdivision (e)(2)(C). (*See* Appendix G–84-G–85.)

RULE 9.200. THE RECORD

As was discussed previously under Rule 9.140 (Appeal Proceedings in Criminal Cases), Amy Singer Borman wrote to the Committee and raised an issue that her office was having with lawyers assuming that the clerk of the lower tribunal would serve their designations on the court reporter. (*See* Appendix E–90.) The Committee agreed that the rules could be clearer and, in response, the Committee proposes amendments to subdivision (b)(1). Towards the end of the first sentence, the Committee proposes adding "and shall serve the designation on the approved court reporter, civil court reporter, or approved transcriptionist." The Committee suggests adding the same language to the end of the second sentence in the subdivision to ensure that both the appellant and the appellee file and serve the designation on the court reporter. (*See* Appendix G–110-G–115.)

While reviewing a concern raised about timeframes in the statement of evidence or proceedings, the Committee noticed that the subdivisions (b)(2)–(b)(4) were not in chronological order. To put the subdivisions in chronological order, the Committee proposes moving the contents of existing subdivision (b)(3) to subdivision (b)(2). Most of the contents of existing subdivision (b)(2) are renumbered as (b)(3). The remaining contents of existing subdivision (b)(2) are moved into subdivision (b)(4). The existing contents of (b)(4) are renumbered as (b)(5). To bring greater clarity to the rule, these subdivisions are now titled as follows: (b)(1) "Designation to Court Reporter," (b)(2) "Court Reporter's Acknowledgment," (b)(3) "Time for Service of Transcript," (b)(4) "Organization of Transcript," and (b)(5) "Statement of Evidence or Proceedings." (*See* Appendix G–90-G–94.)

In existing subdivision (b)(2), renumbered as subdivision (b)(3), the Committee proposes increasing the period of time for service of the designated transcript on the parties to 10 days as 5 days is not enough time.

The Committee proposes amending subdivision (c) to add "of appeal" after "notice" to identify the type of notice being filed. In subdivision (e), the Committee proposes adding the article "the" before "appellant" in the first sentence. (*See* Appendix G–84-G–85.)

Please note that there are other amendments pending to this rule in *In re: Amendments to the Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.210. BRIEFS

Former staff liaison, Jodi Beth Jennings, suggested that while the rules committees have removed references to filing multiple paper copies with the appellate court, there could still be confusion as to whether a paper copy was required in addition to the electronic copy. (*See* Appendix E–108.) The Committee agreed that the clarification could be helpful and proposes amending subdivision (a)(1) of Florida Rule of Appellate Procedure 9.210. Specifically, the Committee suggests adding a sentence to the end of subdivision (a)(1) to state "[w]hen filed in electronic format, parties shall file only the electronic version." The Committee proposes amending subdivision (a)(4) to require the e-mail address of the attorney filing the brief to be included on the cover sheet. (*See* Appendix G–50-G–51.)

The Committee proposes a more substantial amendment to subdivisions (a)(6) and (f). Robert J. Hauser wrote to the Committee and asked for the rules to be clarified so a lawyer knows how to respond when multiple answer briefs or replies are filed in the same case. (*See* Appendix E–109.) For example, when two initial briefs are filed, but there is only one appellee; does the appellee file one answer brief or two? The Committee proposes new subdivision (a)(6) to clarify the one attorney, one brief policy. New subdivision (a)(6) would read "[u]nless otherwise ordered by the court, an attorney representing more than 1 party in an appeal may file only 1 initial or answer brief and 1 reply brief, if authorized, which will include argument as to all of the parties represented by the attorney in that appeal. A single party responding to more than 1 brief, or represented by more than 1 attorney, is similarly bound." This rule is consistent with federal appellate practice within the state, as governed by the internal operating rules of the Eleventh Circuit Court of Appeals. (*See* 11th Cir. R. 28-1 to 28-4, IOP 2 ("One Attorney, One Brief.")) The amendment will clear up any confusion and promote uniformity of practice. The addition to the end of subdivision (f) would read "[i]n any appeal or cross-appeal, if more than 1 initial or answer brief is authorized, the responsive brief shall be served within 20 days after the last initial or answer brief

was served or could have been timely served, whichever is later." (*See* Appendix G–30-G–32.)

In subdivision (b)(1)–(b)(8), the Committee suggests beginning each subdivision with a lower case letter and ending subdivisions (b)(1)–(b)(7) with semicolons to conform to the *Guidelines*. Additional amendments to subdivision (b)(2) remove the last sentence referencing the uniform citation system. The Committee believes that the language is duplicative of the language in subdivision (g). In subdivision (b)(3), the Committee suggests combining both sentences by deleting the first period and adding ", with." In subdivision (b)(4), the Committee proposes replacing ". It" with ", which" to join the sentences. A similar amendment is proposed to join the existing last sentence of subdivision (b)(4) with the rest of the subdivision. The Committee proposes ending subdivision (b)(7) with "and" to conform to the *Guidelines*. (*See* Appendix G–84-G–85.)

RULE 9.225. NOTICE OF SUPPLEMENTAL AUTHORITY

The Committee proposes a slight rephrasing of Florida Rule of Appellate Procedure 9.225. The suggested amendments remove passive voice. Instead of beginning the paragraph with "[n]otice of supplemental authority may be filed. . ." the paragraph would begin "[a] party may file notices of supplemental authority with. . ." The Committee proposes additional amendments to the first sentence by removing "the" before "last" and removing "served" after "brief" and adding "service of the party's." As proposed, the sentence would read "[a] party may file notices of supplemental authority with the court before a decision has been rendered to call attention to decisions, rules, statutes, or other authorities that are significant to the issues raised and that have been discovered after service of the party's last brief served in the cause." (*See* Appendix G–83-G–84.)

RULE 9.310. STAY PENDING REVIEW

The Committee proposes amending Florida Rule of Appellate Procedure 9.310 by removing the hyphen in "non-final" in subdivision (a). This will provide consistency throughout the rules set. (*See* Appendix G–84-G–85.)

RULE 9.330. REHEARING; CLARIFICATION; CERTIFICATION; WRITTEN OPINION

The Committee proposes substantial amendments to Florida Rule of Appellate Procedure 9.330. Former Committee Chair Wendy S. Loquasto and former Committee Vice Chair Craig Edward Leen suggested that the Committee

review the rules to see if there was a way to restrict or eliminate per curiam affirmances ("PCA"). (*See* Appendix E–112-E–113.) Concerns were raised by Committee members that cases in which one court has exclusive subject matter jurisdiction were disproportionately affected by PCA decisions as there is no way to apply to the Supreme Court of Florida on the basis of conflicting decisions between District Courts of Appeal. The Committee thought a better approach would be to allow a party to ask for a written opinion that explained the reasoning behind the affirmance. The Committee ultimately decided to propose amendments that outline the reasons on which a motion for written opinion could be properly based. The reasons were based on the *Final Report and Recommendations Committee on Per Curiam Affirmed Decisions*, May 2000.

Additional debate about the proposed amendments to Rule 9.330 centered on whether the rule, in its current state, applies to nonfinal appellate orders. The Committee members differed in their reading of the rule. Some members believed the rule applies to motions for reconsideration or rehearing of all appellate orders, including nonfinal ones. Other members read the rule as applying only to motions for rehearing of final appellate orders and decisions, but perhaps not prohibiting a motion for reconsideration of a nonfinal order based on a court's authority to revisit nonfinal orders. Some Committee members voiced concern that the rule should not encourage motions for reconsideration of nonfinal orders.

Eventually the Committee reached a unanimous decision in favor of the proposed amendments to Rule 9.330. The Committee reasoned that the procedures in Rule 9.330 should apply *only* to final appellate orders and decisions, as defined in proposed subdivision (e). Case law provides that appellate courts have the inherent authority to reconsider nonfinal orders, and the rule does not limit this authority. But, the Committee believes reconsideration of nonfinal orders should not be governed by the procedures and time limitations in Rule 9.330. Instead, motions for reconsideration should be dealt with by the court, within its discretion, and in the manner chosen by the court. Also, the proposed amendments would make Rule 9.330 more consistent with Florida Rule of Civil Procedure 1.530 (Motion for New Trial and Rehearing; Amendments of Judgments). (*See* Appendix G–55-G–67; G–75-G–79.)

Several Committee members initially were opposed to limiting Rule 9.330 to final appellate orders and decisions. These committee members expressed concern that the rule would eliminate parties' ability to ask appellate courts to reconsider important nonfinal orders. After considering these concerns, the Committee revised the proposed amendments to Rule 9.330 to clarify, in subdivision (e), that the rule

does not prohibit the court from using its inherent authority to permit reconsideration of nonfinal orders. The revised proposed amendments were approved unanimously.

Currently, the rule uses inconsistent language to refer to the appellate ruling to which the motion is directed. In some places the rule uses "order" while in other places it uses "decision." For consistency and clarity, the Committee proposes that the phrase "order or decision" be used throughout the rule to refer to the appellate ruling on which the motion is directed.

In addition, the Committee proposes revising subdivision (b) to clarify that parties are permitted to file one of each type of post-decision motion listed in Rule 9.330. The Committee believes that the language in the current rule is unclear. For example, it could be read as allowing only a motion for rehearing or a motion for clarification, but not both. In the opinion of the majority of the Committee, the rule should explicitly state that parties are permitted to file one of each type of post-decision motion. The proposed amendment would eliminate any ambiguity on this issue.

The Committee proposes adding a new requirement to subdivision (b) that all post-decision motions must be filed in a single document. There was some concern that appellate court clerks do not have the capability to properly docket a single document that includes several types of motions. However, on balance, the Committee believes clerks would favor a single document and have mechanisms to properly identify the motions within that type of document.

With the intent of making the rule more user-friendly, the Committee proposes dividing subdivision (a) into new subdivisions (a)(1)–(a)(3). New subdivision (a)(1) would be titled "Time for Filing." New subdivision (a)(2) would be titled "Contents." Subdivision (a)(2) would be further broken into subdivisions (a)(2)(A)–(a)(2)(D). Subdivision (a)(2)(A) would be titled "Motion for Rehearing." Subdivision (a)(2)(B) would be titled "Motion for Clarification." Subdivision (a)(2)(C) would be titled "Motion for Certification" and would contain new language detailing the contents of a motion for certification. Subdivision (a)(2)(D) would be titled "Motion for Written Opinion" and would contain new language detailing the contents of a motion for written opinion. New subdivisions (a)(2)(D)(i)–(a)(2)(D)(iii) provide reasons for requesting a written opinion: legitimate basis for supreme court review; explanation for an apparent deviation from prior precedent; or guidance to the parties or lower tribunal. New subdivisions (a)(2)(D)(iii)a.–(a)(2)(D)(iii)e. detail the reasons for which guidance

can be requested: the issue is also present in other cases pending before the court or another district court of appeal; the issue is expected to recur in future cases; there are conflicting decisions on the issue from lower tribunals; the issue decided is one of first impression; or the issue arises in a case in which the court has exclusive subject matter jurisdiction. New subdivision (a)(3) would be titled "Response" and would be shortened to the following: "[a] response may be served within 10 days of service of the motion." The remaining language in the existing subdivision (a), regarding written opinion, the statement, and signature block, is deleted because it would no longer be needed. The language regarding written opinion is incorporated into new subdivision (a)(2)(D). Because the new language in (a)(2)(D) requires the motion to set forth the specific bases for seeking a written opinion under the revised rule, the Committee suggests a certification is not necessary.

At the end of subdivisions (d)(1) and (d)(2), the Committee proposes substituting the commas with semicolons for consistency throughout the rules set.

RULE 9.331. DETERMINATION OF CAUSES IN A DISTRICT COURT OF APPEAL EN BANC

The Committee addresses several concerns in its proposed amendments to Florida Rule of Appellate Procedure 9.331. The Honorable Douglas Alan Wallace of the Second District Court of Appeal brought to the Committee's attention that the 2014 cycle amendments to Rule 9.330 (Rehearing; Clarification; Certification) were not paralleled in Florida Rule of Appellate Procedure 9.331 (*See* Appendix E–115.) The Committee agreed that the rules should use the same language and proposes adding "or issue" after "case" in the third sentence of subdivision (a) to solve the discrepancy. (*See* Appendix G–80-G–81.)

Former Committee member Paul R. Regensdorf suggested that the Committee amend Rule 9.331 to require that parties be notified when a case is being considered en banc on the court's own motion. (*See* Appendix E–116.) Currently the parties are not notified if a court decides to hear a case en banc on its own motion. The Committee agreed that such notice should be provided to the parties. The Committee proposes adding a new sentence in subdivision (a) stating that "[i]f a majority of the participating judges order that a proceeding will be determined en banc, the district court of appeal shall promptly notify the parties that the proceedings will be determined en banc." There was discussion as to whether to provide for additional argument or briefing at this stage in the proceedings, but ultimately it was determined that the parties could request

additional briefing or argument upon receiving notice that the case will be heard en banc. This would leave the decision regarding additional briefing or argument in the discretion of the appellate court. (*See* Appendix G–27-G–30.)

In subdivision (d)(3), the Committee proposes clarifying the options that the court can implement by deleting "and may" and adding ", or any combination of those options" after "additional argument." The Committee believes this will make it clear that the court can limit the issues to be reheard, require additional briefs or argument, or do some combination of these options.

The Committee proposes amending subdivision (a) by adding "of appeal" after "district" to clarify which court is being referenced. In subdivision (b), the Committee proposes removing the capital letters in "Supreme Court" to correctly identify the court being referenced and to avoid confusion with the United States Supreme Court. In subdivision (d)(2), the Committee suggests replacing "one" with "1" to conform to the *Guidelines*. In the same subdivision the Committee proposes adding "(d)" in front of "(1)" to correctly identify the subdivision being referenced. (*See* Appendix G–84-G–85.) The Committee suggests removing the signature block in the rule as it is superfluous.

RULE 9.350. DISMISSAL OF CAUSES

Committee member Elizabeth Cangelose Wheeler raised a concern that the filing deadline in subdivision (b) of Florida Rule of Appellate Procedure 9.350 could conflict with subdivision (g) "Cross-Appeal" of Rule 9.110 (Appeal Proceedings to Review Final Orders of Lower Tribunals and Orders Granting New Trial in Jury and Non-Jury Cases). Specifically, "an appellee may file a timely notice of cross-appeal within 10 days of service of the notice of appeal [under Rule 9.110(g)], but a dismissal by the appellant could be effective 10 days after filing of the notice of appeal [under Rule 9.350(b)]." (*See* Appendix E–121.) To avoid this conflict, the Committee proposes amending subdivision (b) to provide that a dismissal shall not be effective until 10 days after service of the notice of appeal. (*See* Appendix G–75.)

Committee member Kristina Samuels, individually and not in her capacity as counsel in the Supreme Court's Clerk's office, suggested that Rule 9.350 should be amended to address proceedings filed pursuant to Rule 9.120 (Discretionary Proceedings to Review Decisions of District Courts of Appeal). (*See* Appendix E–123.) The addition of new language would clarify the issue. The Committee proposes amending subdivision (b) by adding "[i]n a proceeding commenced under

rule 9.120, dismissal shall not be effective until 10 days after the serving of the notice to invoke discretionary jurisdiction or until 10 days after the time prescribed by rule 9.120(b), whichever is later" to the end of the subdivision. (*See* Appendix G–107-G–108.) The Committee also proposes adding the article "a" before "petitioner" in the first sentence of subdivision (b). Further in that sentence, the Committee proposes changing the effective date of the dismissal to 10 days after "service" of the notice of appeal, as opposed to 10 days after "filing" of the notice of appeal. This will conform the subdivision to the amendments discussed above.

RULE 9.360. PARTIES

Chris W. Altenbernd suggested that "joinder" under Florida Rule of Appellate Procedure 9.360 was misnamed. (*See* Appendix E–125.) Instead, Mr. Altenbernd suggested that parties do not "join" an appeal, but they may switch sides. The Committee agrees that the terminology may not fully explain what is intended and that the title "Joinder" is somewhat misleading as the term definitely has different connotations in the Florida Rules of Civil Procedure. (*See* Appendix G–10-G–14.) After considering several alternatives, "realignment" appears to be the proper term. A non-party cannot "join" an appeal pursuant to this rule, but can be realigned from one side to the other. Of course, this is a one-way realignment. An appellant/petitioner cannot realign as an appellee/respondent – only the reverse can be true. So the Committee proposes more specific party descriptors to make the rule more precise. (*See* Appendix G–16-G–21; G–33-G–39; G–85-G–87.)

Specifically, the Committee proposes changing the title of subdivision (a) to "Joinder for Realignment as Appellant or Petitioner." As proposed, subdivision (a) is substantially rephrased to read: "[a]n appellee or respondent who desires to realign as an appellant or petitioner shall serve a notice of joinder no later than the latest of the following." The Committee suggests renumbering existing subdivisions (a)(i)–(a)(iii) to (a)(1)–(a)(3) respectively, to conform to the *Guidelines*. Additionally, in renumbered (a)(1), the Committee proposes moving "petition" to after "notice of appeal" and adding a hyphen to "timely filed notice of appeal." In the last paragraph of subdivision (a), the Committee proposes deleting the end of the first sentence "in the same manner as the petition or notice of appeal." The Committee also proposes a committee note to detail the amendments to subdivision (a).

Former Committee member Dorothy DiFiore mentioned at a Committee meeting that an amendment should be made to Rule 9.360 regarding changing the caption of a case after joinder. (*See* Appendix E–126.) She has encountered

problems with captions remaining unchanged in cases appealed from county to circuit court. The Committee agreed that this could be more clearly explained in the rules and proposes adding a sentence to the end of subdivision (a) that "[t]he body of the notice shall set forth the proposed new caption. Upon filing of notice and payment of the fee, the clerk shall change the caption to reflect the realignment of the parties in the notice. (*See* Appendix G–85-G–87.)

With regard to Mr. Altenbernd's comment that the time period to make this realignment choice should be longer, the Committee found that somewhat problematic. A late realignment has the potential to cause disruption to other deadlines, particularly the designation of the record. Parties often have to make important substantive choices early in the appellate process—such as the decision to file a cross-appeal. In the absence of compelling examples showing why the timing has been an issue, the Committee errs on the side of leaving this time period unchanged. Since this deadline is not jurisdictional, realignment could be made later in the appellate process by motion and order of the court.

With regard to any potential confusion about where to file or where to pay the associated filing fees, the language of the rule seems to adequately address these issues. A party files and pays the court in which the petition or notice of appeal was filed. Depending on the circumstances, that can be a variety of courts and is not necessarily the "lower tribunal." The Committee does not see the confusion, nor a way to phrase this requirement any more succinctly.

In subdivision (b), the Committee proposes amending the subdivision title to remove the commas and "and," replacing them with semicolons for greater consistency throughout the rules set. (*See* Appendix G–84-G–85.)

In subdivision (c)(4), Committee proposes adding "of appeal" after "notice" to identify the type of notice being referenced. Finally, the Committee proposes amending subdivision (c)(4) to delete "of record" after "attorney" and adding "the person's" before "attorney." This proposed amendment will avoid conflict with proposed amendments to the Florida Rules of Judicial Administration defining the roles of attorneys that are pending with the Court in SC16-1062. (*See* Appendix G–105-G–106.)

RULE 9.370. AMICUS CURIAE

Committee member, the Honorable Jeffrey Thomas Kuntz, suggested that Florida Rule of Appellate Procedure 9.370 should be amended to more closely follow the case law regarding amicus curiae briefs. (*See* Appendix E–128.)

Additionally, Judge Kuntz suggested amending the rule to explicitly allow an amicus curiae to submit a filing in support of, or in opposition to, a motion for rehearing. The Committee agreed that the issue should be addressed in the rule, but determined that participation of amicus curiae supporting or opposing a motion for rehearing, should be left to the discretion of the court. The Committee proposes amending subdivision (c) to state that "[l]eave of court is required to serve an amicus brief in support of or opposition to a motion for rehearing, rehearing en banc, or for certification to the Supreme Court of Florida."

Additional proposed amendments include adding "amicus" in front of "brief" in the second sentence of subdivision (a). This will bring uniformity to the name of the brief. In subdivision (b), the Committee proposes beginning "Rule" in the first sentence with a lower case "r" to conform to the *Guidelines*. In the fourth sentence of subdivision (c), the Committee suggests deleting "curiae" after "amicus" for consistency in the name of the brief. The Committee suggests changing the title of subdivision (d) to identify the name of the court as "the Supreme Court of Florida" to avoid confusion with the United States Supreme Court. The Committee proposes amending the last sentence of subdivision (d) to replace "one" with "1" to conform to the *Guidelines*. (*See* Appendix G–89-G–90; G–106-G–107.)

RULE 9.380. NOTICE OF RELATED CASE OR ISSUE

Former Committee Vice Chair Craig Edward Leen suggested that the Committee create a new rule to address notices of related case or issue. (*See* Appendix E–129.) As proposed, the new rule standardizes the information required to be included in a notice of related case or issue.

Some District Courts of Appeal authorize notices of related case or issue to be filed by Administrative Order. Other District Courts of Appeal require a docketing statement with this information to be filed by the party filing the appeal or petition. The requirements also differ as to how broadly the rule applies. For example, whether the party must report a case that might be in some way similar to the case at issue or whether a party only has to report a case that involves identical facts or similar facts. After Committee members raised concerns, the scope of the proposed rule was narrowed and was drafted to be permissive instead of mandatory. Still, some Committee members raised concerns that the issue was already covered by docketing statements and that the new rule was not necessary. In the end, the Committee proposes a new Florida Rule of Appellate Procedure

9.380 (Notice of Related Case or Issue) and a companion form in Rule 9.990(j) to provide uniformity. (*See* Appendix G–24-G–27.)

RULE 9.400. COSTS AND ATTORNEYS' FEES

The Committee formed a subcommittee to assess whether rules should be amended to accurately reflect procedures in the Florida Supreme Court. Subcommittee members identified a concern that Rule 9.400 does not address the procedure for seeking attorneys' fees in supreme court cases of when review is sought there based on great public importance or through discretionary review of a decision of the District Courts of Appeal. The Committee agreed that these cases should be addressed in Rule 9.400 and proposes two new subdivisions in subdivision (b). As proposed, new subdivision (b)(3) would detail when motions for attorneys' fees should be filed in a discretionary review case filed under Rule 9.030(a)(2)(A) (Jurisdiction of Courts). If adopted, new subdivision (b)(4) would detail when motions for attorneys' fees should be filed in a case involving a question certified to be of great public importance. This will permit parties to timely request attorneys' fees in those cases where there is a two-step jurisdictional process. Additionally, the Committee proposes a committee note to explain the time limits in subdivision (b). (*See* Appendix G–108-G–109.)

RULE 9.410. SANCTIONS

The Committee proposes several non-substantive amendments to Florida Rule of Appellate Procedure 9.410. In subdivisions (a), (b)(3), and (b)(4), the Committee proposes substituting "papers" with "documents" to conform with electronic filing. (*See* Appendix G–11-G–15.) In subdivision (b)(2), the Committee suggests amending the references to subdivision (3) and subdivision (4) to subdivision (b)(3) and subdivision (b)(4), respectively, to provide greater clarity to the reader. In the first paragraph of subdivision (b)(4), the Committee proposes replacing "(a)" and "(b)" with "(A)" and "(B)" to conform to the *Guidelines*. In the second paragraph of subdivision (b)(4), the Committee proposes replacing "which" with "that." Finally, the Committee proposes deleting the signature block as being superfluous.

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

Former Committee Chair, Michael Robert Ufferman, suggested that the Committee review Florida Rule of Appellate Procedure 9.420 in light of the move to electronic filing and electronic service. (*See* Appendix E–130.) Rule 9.420

currently requires the initial document in an appeal to be served through U.S. Mail. The Committee agreed that requiring the initial document to be served through U.S. Mail was outdated. But the Committee did raise concerns that in original proceedings, the appellant may not know who to serve on the opposite side. In response, the Committee proposes amending subdivision (c) to require that only petitions to invoke the original jurisdiction of the court be served both by e-mail and in paper format. Specifically, the Committee proposes deleting the following in the first sentence: "the initial document filed in a proceeding governed by these rules (including any notice to invoke jurisdiction, notice of appeal, or petition for an original writ)." In its place, the Committee proposes adding the following "petitions invoking the original jurisdiction of the court under rule 9.030(a)(3), (b)(3), or (c)(3)." Also in subdivision (c), the Committee proposes replacing "form" with "format." (*See* Appendix G–11-G–15; G–81-G–82.)

In subdivisions (a)(2)(A)–(a)(2)(B), the Committee proposes beginning each subdivision with a lower case letter and ending subdivision (a)(2)(A) with a semicolon instead of a comma. At the end of subdivision (b)(2), the Committee proposes replacing "transmittal" with "transmission." (*See* Appendix G–84-G–85.)

RULE 9.430. PROCEEDINGS BY INDIGENTS

The Committee proposes minor amendments to Florida Rule of Appellate Procedure 9.430. In subdivisions (a) and (c)(2), the Committee suggests beginning "supreme court" with lower case letters to correctly identify the court being referenced as the Supreme Court of Florida to avoid confusion with the United States Supreme Court. In subdivision (c)(1), the Committee proposes adding the article "a" before "court" and ending the subdivision with a colon. In subdivision (c)(1)(A), the Committee proposes replacing the comma with a semicolon before "and." In subdivision (d), the Committee proposes adding the article "a" before "court." (*See* Appendix G–84-G–85.)

RULE 9.500. ADVISORY OPINIONS TO GOVERNOR

Former Committee Member John Richard Hamilton suggested that the Committee review Florida Rule of Appellate Procedure 9.500. Currently, Rule 9.500 states that the Florida Supreme Court may appoint an amici but does not specifically provide that the Court may allow amici if not appointed. (*See* Appendix E–131.) The Committee does not intend to propose substantive changes to proceedings initiated pursuant to Rules 9.500 and 9.510 (Advisory Opinions to Attorney General). Instead, the Committee seeks to amend the language to be

consistent with the Florida Constitution and the Internal Operating Procedures of the Supreme Court of Florida. In doing so, the Committee also addressed Mr. Hamilton's suggestion regarding the ability of the Florida Supreme Court to allow amici in addition to appointing amici. (*See* Appendix G–39-G–40.)

In subdivision (b), the Committee suggests deleting the comma after "section 1(c)" and in its place insert "of the." In subdivision (b)(1), the Committee recommends deleting "that purview" and replacing it with "the purview of article IV, section 1(c) of the Florida Constitution" to specify the correct article and section of the Florida Constitution.

In the first sentence of subdivision (b)(2), the Committee proposes deleting "that" before "purview," adding "of article IV, section 1(c) of the Florida Constitution" after "purview," substituting "may" with "shall," replace "person whose substantial interests may be affected to be heard" with ", subject to its rules of procedure, interested persons to be heard." The Committee suggests deleting the last two sentences of subdivision (b)(2) as the procedures are duplicative of procedures in other rules.

In subdivision (b)(3), the Committee proposes adding the following to the end of the first sentence: "not earlier than 10 days from the filing and docketing of the request, unless in their judgment the delay would cause public injury. The governor shall be advised forthwith in writing." This conforms the rule with article IV, section 1 of the Florida Constitution. Finally, the Committee suggests deleting the last sentence of the subdivision to conform to electronic documents.

RULE 9.510. ADVISORY OPINIONS TO ATTORNEY GENERAL

For the reasons discussed above in Rule 9.500 (Advisory Opinions to Governor), the Committee proposes several amendments to Florida Rule of Appellate Procedure 9.510. Specifically, the Committee proposes deleting the contents of subdivision (c), but retaining the subdivision title, as the language is outdated. As proposed, existing subdivision (c)(1) would be deleted and existing subdivision (c)(2) would be amended and renumbered as subdivision (c)(1). Amendments to proposed subdivision (c)(1) include deleting the beginning of the first sentence "[i]f the request is within the purview" and beginning the subdivision with "[t]he court shall permit." The committee proposes changing "may" to "shall" to conform to the language of the Florida Constitution. Later in the first sentence, the Committee suggests replacing "the attorney general and other interested person to be heard" with "subject to its rules of procedure, interested persons to be heard."

Additional amendments to this subdivision include deleting the last sentence of existing subdivision (c)(2).

The Committee proposes new text for subdivision (c)(2) to explain the timeframe within which the opinion should be rendered. Specifically, the Committee suggests "[t]he justices shall render their opinion no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to article XI, section 5 of the Florida Constitution" to reference the correct article and section of the Florida Constitution and to provide a deadline for an opinion to be rendered. (*See* Appendix G–40-G–41.)

RULE 9.700. MEDIATION RULES

The Committee proposes stylistic amendments to Florida Rule of Appellate Procedure 9.700. In subdivision (a), the Committee proposes amending "supreme court" to begin with lower case letters and deleting "of Florida" to accurately refer to the Supreme Court of Florida and to avoid confusion with the United States Supreme Court. In subdivision (e), the Committee proposes substituting "that" for "which." (*See* Appendix G–84-G–85.)

RULE 9.710. ELIGIBILITY FOR MEDIATION

The Committee proposes converting Florida Rule of Appellate Procedure 9.710 into a list, pursuant to the *Guidelines*, with subdivisions (a)–(f) beginning in lower case letters. Additional amendments recommend ending subdivisions (a)–(e) with semicolons, adding "and" to the end of subdivision (e), and ending subdivision (f) with a period. (*See* Appendix G–84-G–85.)

RULE 9.720. MEDIATION PROCEDURES

The Committee proposes amending Florida Rule of Appellate Procedure 9.720 to conform to the *Guidelines*. Specifically, the Committee proposes amending subdivisions (a)(1)–(a)(3) to begin with lower case letters. Additionally, amendments to subdivision (a)(1) include replacing the period with a semicolon. In subdivision (a)(2), the Committee suggests replacing "one" with "1" and adding "; and" to the end of the subdivision. (*See* Appendix G–84-G–85.)

In subdivisions (b)(1)–(b)(4), the Committee proposes similar amendments. Specifically, the Committee proposes amending subdivisions (b)(1)–(b)(4) with lower case letters. Additionally, amendments to (b)(1)–(b)(3) include replacing the periods with semicolons. The Committee suggests adding the conjunctive "or" to

the end of subdivision (b)(3). Also in subdivision (b)(1), the Committee suggests adding "s'" to the end of "attorney" for consistency throughout the rules set.

RULE 9.800. UNIFORM CITATION SYSTEM

Elizabeth Wilson Neiberger, on behalf of former Florida State University Law Review members Steven Eric Kolbert and Zachary Wells Lombardo, suggested substantial amendments to Florida Rule of Appellate Procedure 9.800. (*See* Appendix E–133.) Mr. Kolbert and Mr. Lombardo were preparing a new edition of the Florida Style Manual when they identified parts of the rule that may need clarification or revision. The Committee reviewed Mr. Kolbert and Mr. Lombardo's suggestions and recommends the following amendments based on their suggestions and the Committee's additional concerns. The Committee also proposes amendments throughout the Rules to provide specific citation forms that were acceptable for all unpublished opinions and included the various sources from which those decisions could be drawn. (*See* Appendix G–7-G–8; G–79-G–80; G–84; G–95-G–103.)

In subdivision (a), the Committee suggests moving the contents of existing subdivision (a)(2) to subdivision (a)(1) and moving the existing contents of subdivision (a)(1) to subdivision (a)(2). This will put the current citation form at the top of the subdivision. Additionally, in proposed subdivision (a)(1), the Committee suggests adding "1887–present" to distinguish the two citation forms.

The Committee proposes dividing subdivision (a)(3) into new subdivisions (a)(3)(A)–(a)(3)(D) to address Florida Supreme Court opinions not published in the Southern Reporter. Specifically, the citations are removed from existing subdivision (a)(3) and in their place "any of the following;" is proposed. Proposed new subdivision (a)(3)(A) would provide the citation form for slip opinions. Proposed new subdivision (a)(3)(B) would provide the citation form for Florida Law Weekly. Proposed subdivision (a)(3)(C) would provide the citation form for Westlaw. Proposed subdivision (a)(3)(D) would provide the citation form for LexisNexis.

The Committee proposes dividing subdivision (b)(2) into new subdivisions (b)(2)(A)–(b)(2)(D) to address Florida District Court of Appeal opinions not yet published in the Southern Reporter. Proposed new subdivision (b)(2)(A) would provide the citation form for slip opinions. Proposed new subdivision (b)(2)(B) would provide the citation form for Florida Law Weekly. Proposed new

subdivision (b)(2)(C) would provide the citation form for Westlaw. Proposed new subdivision (b)(2)(D) would provide the citation form for LexisNexis.

The Committee proposes amending subdivision (c)(1) by deleting the contents and replacing it with the circuit court citation "*State v. Campeau*, No. 1990-CF-4363, 16 FLW C65 (Fla. 9th Cir. Ct. Nov. 7, 1990)." This will provide the citation form for a circuit court decision. Similarly, in subdivision (c)(2), the citation is replaced with the county court citation "*Gables Ins Recovery v. Progressive Am. Ins. Co.*, No. 2012-24280-SP-05, 22 FLW Supp. 637 (Miami-Dade Cty. Oct. 8, 2014)." This will provide the citation form for a county court decision. The Committee proposes dividing subdivision (c)(3) into new subdivisions (c)(3)(A)–(c)(3)(D) to address Florida Circuit Court and County Court opinions not published in the Florida Law Weekly or Florida Law Weekly Supplement. Proposed subdivision (c)(3)(A) would provide the citation form for slip opinions. Proposed subdivision (c)(3)(B) would provide the citation form for the Florida Supplement. Proposed subdivision (c)(3)(C) would provide the citation form for Westlaw. Proposed subdivision (c)(3)(D) would provide the citation form for LexisNexis.

Subdivision (d) is amended to remove the phrase "[c]ite if not in Southern Reporter." Subdivision (d)(1) is amended to delete the citation form for decisions of the Public Employees Relations Commission and is replaced with the citation form for final agency orders. Subdivision (d)(2) is amended to delete the citation form for decisions of the Public Service Commission and is replaced with the citation form for decisions of the Division of Administrative Hearings. Existing language in subdivisions (d)(3)–(d)(5) is deleted. Proposed new subdivision (d)(3) provides the citation form for a case's subsequent history at the agency and in the courts. Proposed new subdivision (d)(4) addresses decisions that are not available online but are published in an administrative law reporter. Further, the Committee proposes adopting new subdivisions (d)(4)(A)–(d)(4)(I). Proposed new subdivision (d)(4)(A) provides a citation form for opinions in the Florida Administrative Law Reports. Proposed new subdivision (d)(4)(B) provides a citation form for opinions in the Florida Career Service Reporter. Proposed new subdivision (d)(4)(C) provides a citation form for opinions in the Environmental and Land Use Administrative Law Reporter. Proposed new subdivision (d)(4)(D) provides a citation form for opinions in the Florida Department of Revenue Tax Reporter. Proposed new subdivision (d)(4)(E) provides a citation form for opinions in the Florida Public Employee Reporter. Proposed new subdivision (d)(4)(F) provides a citation form for opinions in the Florida Public Service Commission Reporter. Proposed new subdivision (d)(4)(G) provides a citation form for opinions in the

Florida Compensation Reports. Proposed new subdivision (d)(4)(H) provides a citation form for opinions in the Florida Division of Administrative Hearings Reports. Proposed new subdivision (d)(4)(I) provides a citation form for opinions in the Florida Administrative Reporter. This will provide proper citation forms for each publication where administrative decisions may be published.

The Committee proposes amending subdivision (e) to remove the language in parentheticals. Additionally, the Committee proposes dividing the citations into new subdivisions (e)(1)–(e)(2) as "current provision" and "historical provision" respectively. Additionally, the proposed amendments provide a citation form for historical provisions of the Florida Constitution.

In subdivision (f), the Committee proposes dividing the citations into new subdivisions (f)(1)–(f)(2). In proposed new subdivision (f)(1), the reference to the Florida Statutes is replaced with a current statute. Subdivision (f)(2) contains the citation form for the Florida Statutes Supplement.

The Committee proposes replacing the contents of subdivision (g) with the citation form for Florida Administrative Code. The subdivision title is amended accordingly.

David J. Brunnell suggested an amendment to Rule 9.800. (*See* Appendix E–148.) Mr. Brunnell suggested that including the page number for Laws of Florida approved after 1956 will become increasing difficult in the digital age because digital versions do not contain page numbers. The Committee agrees and proposes removing "at 473," from subdivision (h)(1) thus deleting the page number requirement. (*See* Appendix G–7-G–8.)

In subdivision (h), the Committee proposes renumbering existing subdivisions (h)(1) and (h)(2) as (h)(2) and (h)(3) respectively. Proposed new subdivision (h)(1) provides the citation form for Florida Laws from 1997–present. Existing subdivision (h)(1), proposed new subdivision (h)(2), is additionally amended to replace "[a]fter 1956" with "1957–1996." In existing subdivision (h)(2), proposed new subdivision (h)(3), "1943" is moved after the chapter instead of at the end of the citation.

Former Bar Liaison Ellen Sloyer noted that there is not a citation form for Standard Jury Instructions in Contracts and Business Cases. (*See* Appendix E–149.) The Committee agreed that the citation form should be included in Rule 9.800 and suggests adding a citation form in subdivision (i) after the citation form for Standard Jury Instructions in Civil Cases. (*See* Appendix G–24.)

In subdivision (i), the Committee proposes listing the full name of the rules sets before the listing of the citation form. Additional amendments delete the citation form to the Florida Administrative Code. After the citation form for the Rules Regulating The Florida Bar, the Committee proposes adding two new citation forms for the Florida Judicial Code of Conduct and the Florida Board of Bar Examiners. This will add citation forms for rules sets not previously included in this Rule.

In subdivision (j), the Committee proposes moving "Fla." into the parenthetical with the year.

The Committee proposes dividing subdivision (k) into new subdivisions (k)(1) and (k)(2)(A)–(k)(2)(D) to address United States Supreme Court opinions not published in the United States Reports. Proposed new subdivision (k)(1) would contain the existing citation form "*Sansone v. United States*, 380 U.S. 343 (1965)." As proposed, the citations are removed from proposed new subdivision (k)(2) and in their place "any of the following:" is suggested. Proposed new subdivision (k)(2)(A) would provide the citation form for slip opinions. Proposed new subdivision (k)(2)(B) would provide the citation form for Florida Law Weekly Federal. Proposed subdivision (k)(2)(C) would provide the citation form for Westlaw. Proposed subdivision (k)(2)(D) would provide the citation form for LexisNexis.

The Committee proposes dividing subdivision (*l*) into new subdivisions (*l*)(1) and (*l*)(2)(A)–(*l*)(2)(E) to address Federal Courts of Appeal opinions not published in the Federal Reporter. Proposed new subdivision (*l*)(1) would contain the existing citation form "*Gulf Oil Corp. Bivins*, 276 F.2d 753 (5th Cir. 1960)." As proposed, the citations are removed from proposed new subdivision (*l*)(2) and in their place "any of the following:" is suggested. Proposed new subdivision (*l*)(2)(A) would provide the citation form for slip opinions. Proposed new subdivision (*l*)(2)(B) would provide the citation form for opinions in the Federal Appendix. Proposed new subdivision (*l*)(2)(C) would provide the citation form for Florida Law Weekly Federal. Proposed subdivision (*l*)(2)(D) would provide the citation form for Westlaw. Proposed subdivision (*l*)(2)(E) would provide the citation form for LexisNexis.

The Committee proposes dividing subdivision (m) into new subdivisions (m)(1) and (m)(2)(A)–(m)(2)(D) to address opinions not published in the Federal Supplement. Proposed new subdivision (m)(1) would contain the existing citation form "*Pugh v. Rainwater*, 322 F. Supp. 1101 (S.D. Fla. 1971)." As proposed, the

citations are removed from proposed new subdivision (m)(2) and in their place "any of the following:" is suggested. Proposed new subdivision (m)(2)(A) would provide the citation form for slip opinions. Proposed new subdivision (m)(2)(B) would provide the citation form for Florida Law Weekly Federal. Proposed subdivision (m)(2)(C) would provide the citation form for Westlaw. Proposed subdivision (m)(2)(D) would provide the citation form for LexisNexis.

In subdivision (n), the Committee proposes dividing the citations into new subdivisions (n)(1)–(n)(2). Subdivision (n)(1) would address the articles of the United States Constitution and subdivision (n)(2) would address the amendments to the Constitution.

In subdivision (*o*), the Committee proposes deleting the first sentence and moving details on pinpoint citations to subdivision (p). Additional amendments to subdivision (*o*) would change the priority of the Florida Style Manual and The Bluebook. After much discussion, the Committee determined that the Florida Style Manual should take priority over The Bluebook as the Florida Style Manual is free, available online, and provides Florida-specific examples not detailed in The Bluebook. Additional amendments to subdivision (*o*) include the addition of the website address for the Florida Style Manual.

In subdivision (p), the Committee proposes amending the subdivision title to include pinpoint citations. The Committee further proposes deleting the parentheses surrounding "or italicized." Finally, the Committee proposes adding a new sentence to the end of subdivision (p) stating that "[p]inpoint citations are preferred."

RULE 9.900. FORMS

The Committee proposes amending Florida Rule of Appellate Procedure 9.900 to include two new forms, to make updates to subdivision references, and for consistency. In subdivisions (a), (b), (c)(1)–(c)(2), (e), and (f) the Committee proposes changing the references from Rule 9.020(i) to Rule 9.020(h) to conform to the Committee's proposed amendments to Rule 9.020. To conform to the same amendments, the Committee proposes changing the reference from Rule 9.020(j) to Rule 9.020(i) in subdivision (d).

In subdivision (a), the Committee proposes replacing the dots in the paragraph before "Defendant/Appellant" with a line. In subdivisions (c)(1)–(c)(2), the Committee proposes removing the hyphen from "non-final." In the case style of subdivision (c)(2), the Committee recommends adding a "/" after "Appellant"

for consistency. In subdivision (e), the Committee proposes adding a line at the end of the caption to conform to the other forms in the rules set. In subdivision (f), the Committee proposes replacing the lines surrounding the language in parentheses with five dots. Additionally, in subdivision (f), the Committee proposes adding "of appeal" to the address block to provide greater clarity to the reader. (*See* Appendix G–84-G–85.)

In subdivision (h), the Committee proposes adding "in paper format" to the end of the first full paragraph. This will provide direction to parties exempt from the electronic service rules. (*See* Appendix G–11-G–15.) Also in subdivision (h), after number 3, the Committee proposes deleting "have been made" and adding, before "satisfactory," the phrase "I have made" to remove passive voice from the paragraph. Further in the same paragraph, the Committee proposes adding ", and I have served a designation on the approved court reporter, civil court reporter, or approved transcriptionist" to make it clear to appellant's counsel that they are responsible for serving the designation. (*See* Appendix G–110-G–115.) The Committee further proposes changing the references in the note from "9.200(b)(1), (2), & (3)" to "9.200(b)(1), (b)(2), & (b)(3)." In subdivision (j), the Committee proposes deleting the colon after "Case No." for consistency with the other forms.

The Committee proposes two new forms, as new subdivisions (k) and (*l*) respectively.

Proposed new subdivision (k) would provide a format for filing a notice of related case or issue. The approval of the form is dependent on adoption of proposed new Rule 9.380 (Notice of Related Case or Issue). As proposed, the form would require the case style and number, the name of the court in which the matter is pending, and asks the filer to identify the same facts from which both matters arise or the similar legal issue being addressed in both matters.

Proposed new subdivision (*l*) would provide a format for notice of joinder. As proposed, the form would also require the filer to insert the proposed new caption. This will make it easier for cases, post-joinder, to have the correct caption. The reasoning behind the underlying amendments is addressed above in Rule 9.360 (Parties). (*See* Appendix G–33-G–39; G–85-G–87.)

WHEREFORE, the Appellate Court Rules Committee respectfully requests that the Court amend the Florida Rules of Appellate Procedure as detailed above.

Respectfully submitted on January 31, 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 January 31, 2017, to:

Stephen T. Maher
Shutts & Bowen LLP
200 South Biscayne Blvd., Suite 4100
Miami, FL 33131
305/379-9161
SMaher@shutts.com

Honorable Chris W. Altenbernd
Carlton Fields
4221 W. Boy Scout Blvd., Suite 1000
Tampa, FL 33607-5780
813/223-7000
CAltenbernd@carltonfields.com

Laura Anne Triplett
Second District Court of Appeal
1700 N. Tampa Street
Tampa, FL 33602
tripletl@flcourts.org

Paul R. Regensdorf
P.O. Box 205
High Springs, FL 32655-0205
paul.regesndorf@gmail.com

James Edward Nutt
South FL Water Management District
P.O. Box 24680
West Palm Beach, FL 33416-4680
jnutt@sfwmd.gov

Michael Robert Ufferman
Michael Ufferman Law Firm, P.A.
2022 Raymond Diehl Rd. #1
Tallahassee, FL 32308-3881
ufferman@uffermanlaw.com

Amy Singer Borman
15th Judicial Circuit
205 N. Dixie Hwy, FL 5
West Palm Beach, FL 33401-4522
aborman@pbcgov.org

Lonn Weissblum
Clerk of the Court
Fourth District Court of Appeal
1525 Palm Beach Lakes Blvd.
West Palm Beach, FL 33401
WeissblumL@flcourts.org

Stephanie Christina Zimmerman
Department of Children & Families
Children's Legal Services
Statewide Appeals Director
9393 N. Florida Avenue, Suite 900
Tampa, FL 33612
Stephanie.Zimmerman@myflfamilies.com

Robert J. Hauser
Pankauski Law Firm PLLC
120 South Olive Avenue
West Palm Beach, FL 33401
hauser@pankauskilawfirm.com

Robert J Telfer III
Messer Caparello, P.A.
P.O. Box 15579
Tallahassee, FL 32317-5579
rtelfer@lawfla.com

Gigi Rollini
Messer Caparello, P.A.
P.O. Box 15579
Tallahassee, FL 32317-5579
grollini@lawfla.com

Wendy S. Loquasto
Fox & Loquasto, P.A.
1201 Hays Street, Suite 100
Tallahassee, FL 32301-2683
wendyloquasto@flappeal.com

Craig Edward Leen
City Attorney, City of Coral Gables
405 Biltmore Way
Coral Gables. FL 33134
cleen@coralgables.com

Hon. Douglas Alan Wallace
Second District Court of Appeal
170 N. Tampa Street
Tampa, FL 33602-2606
wallaced@flcourts.org

Elizabeth Cangelose Wheeler
Elizabeth C. Wheeler, P.A.
P.O. Box 2266
Orlando, FL 32802-2266
ewheeler@ewheelerpa.com

Dorothy Venable DiFiore
Quintarios, Prieto, Wood & Boyer, P.A.
1410 N. West Shore Blvd., Suite 200
Tampa, FL 33607-4533
dorothy.difiore@qpwblaw.com

Hon. Jeffrey T. Kuntz
Fourth District Court of Appeal
1525 Palm Beach Lakes Blvd.
West Palm Beach, FL 33401-2301
kuntzj@flcourts.org

Elizabeth Wilson Neiberger
Bryant Miller Olive
1 SE 3rd Ave., Suite 2200
Miami, FL 3313-1716
eneiberger@bmolaw.com

David J. Brunell
General Counsel's Office
Univ. of Central Florida
P.O. Box 160015
Orlando, FL 328-0015
david.brunell@ucf.edu

Elisha Naoli Page
Broward Co. Courthouse
201 SE 6th, Suite 550
Ft. Lauderdale, FL 33301-3312
epage@17th.flcourts.org

Steven Eric Kolbert
445 Massachusetts Ave. NE
#150-114
Washington D.C. 20001-2621
steve.kolbert@gmail.com

Zachary Wells Lombardo
Bryant Miller Olive, P.A.
One Tampa City Center
201 N. Franklin St., Suite 2700
Tampa, FL 33602-5816
zlombardo@bmolaw.com

Kristina Samuels
Florida Supreme Court
Clerk's Office
500 Duval Street
Tallahassee, FL 32399-6556
samuelsk@flcourts.org

CERTIFICATE OF COMPLIANCE

I certify that these rules were read against *Thompson Reuters's 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