

# RECENT AMENDMENTS TO FLORIDA RULES OF APPELLATE PROCEDURE

Appellate Practice Section

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**O**n October 26, 2006, the Supreme Court of Florida adopted several amendments to the Rules of Appellate Procedure proposed by the Florida Appellate Court Rules Committee. See In re: Amendments to the Florida Rules of Appellate Procedure (Out of Cycle), 31 Fla. L. Weekly S732 (Fla. Oct. 26, 2006). These

**Based on the recommendations of the Florida Appellate Court Rules Committee, the Supreme Court amended rule 9.120(d) to allow parties to file jurisdictional briefs in cases in which the district court certifies a direct conflict with another district court, concluding that such briefing will assist the Court in determining whether jurisdiction exists.**

amendments will become effective on January 1, 2007. This article briefly discusses some of the more significant changes.

Florida Rule of Appellate Procedure 9.120(d) currently does not allow parties to file jurisdictional briefs when they seek to invoke the discretionary jurisdiction of the Supreme Court to review district court decisions certifying a direct conflict with another district court or a question of great public

importance. This means that in such cases parties cannot submit briefs explaining why the Court has and should exercise jurisdiction to review the case. Based on the recommendations of the Florida Appellate Court Rules Committee, the Supreme Court amended rule 9.120(d) to allow parties to file jurisdictional briefs in cases in which the district court certifies a

*Continued on page 13*

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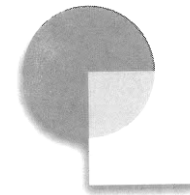
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*Continued from page 12*

direct conflict with another district court, concluding that such briefing will assist the Court in determining whether jurisdiction exists. The Supreme Court, however, did not adopt this same amendment for cases in which a question is certified to be of great public importance. Parties will continue to be barred from submitting jurisdictional briefs in such cases.

Florida Rule of Appellate Procedure 9.200 was amended in two respects. First, subsection (a)(2) was amended to provide that, in dependency and termination of parental rights cases and cases involving families and children in need of services, the original orders and judgments shall remain with the clerk of the lower tribunal, and the clerk shall transmit copies to the district court for appellate review. This amendment recognizes that in such cases the trial court continues to exercise jurisdiction during the pendency of the appeal and needs access to the original court file.

The second amendment to rule 9.200 relates to subsection (b)(2), which governs the preparation of transcripts of the proceedings. Rule

9.200(b)(2) currently requires court reporters to file and serve a paper copy of the transcripts with the clerk of the lower tribunal and the designated parties. The Supreme Court amended subsection (b)(2) to require that court reporters also file and serve electronic copies of the designated transcripts.

Florida Rule of Appellate Procedure 9.210(a)(5) outlines the page limits for appellate briefs. Typically, a party filing a cross-appeal must include the issues and argument for the cross-appeal in their answer brief, which is limited to 50 pages. This means that a cross-appellant, unless granted leave by the court, will be allowed fewer pages to present its cross-appeal issues and argument than an appellant is allowed in the initial brief. In order to facilitate a balanced presentation of the arguments of both parties, rule 9.210(a)(5) was amended to allow a party who has filed a cross-appeal to submit an answer brief not to exceed 85 pages, which gives the appellee/cross-appellant an additional 35 pages to present their argument.

Florida Rule of Appellate Procedure 9.300 was amended to eliminate the Supreme Court tolling

exception in subsection (d)(10). The Supreme Court, unlike the district courts of appeal, currently does not allow the service of a motion to automatically toll the briefing schedule. Instead, a party seeking to have its motion toll the time for filing a brief must file a separate motion requesting that relief. Rule 9.300(d)(10) has now been deleted, meaning that the service of a motion in the Supreme Court, other than those listed in rule 9.300(d), will automatically toll the time for filing a brief.

Florida Rule of Appellate Procedure 9.370, which addresses the time for filing an amicus brief, was amended to clarify that the due date for the amicus brief runs from the service of the brief, petition, or response, and not from the filing of such documents.

The Supreme Court adopted a few other minor changes to the rules governing criminal appeals, workers' compensation appeals, and termination of parental rights appeals. Practitioners should review the opinion issued by the Supreme Court for those changes.

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## *Appellate Tip*

**Although the Supreme Court is obligated to review decisions of the district courts of appeal declaring invalid a state statute, the Court will not review unelaborated per curiam decisions issued by a district court of appeal, even if the appellant argues that the district court's decision necessarily invalidates a state statute. See *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006). The clerk's office will dismiss notices of appeal and petitions for discretionary review asserting jurisdiction on this basis.**

