

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT, IN AND FOR PALM  
BEACH COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION  
CASE NO: 502010CA013833XXXXMBAW

**BAC HOME LOANS SERVICING, L.P.**  
**F/K/A COUNTRYWIDE HOME LOANS**  
**SERVICING, L.P.**

PLAINTIFF

VS.

**FRED DAWSON, ET AL**  
**DEFENDANT(S)**

COPY  
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JUN 24 2010

SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

**PLAINTIFF'S MOTION FOR REHEARING**

Plaintiff, BAC HOME LOANS SERVICING, L.P. F/K/A COUNTRYWIDE HOME LOANS SERVICING, L.P. by and through its undersigned counsel, and pursuant to Fla.R.Civ.P. 1.530, moves this Honorable Court to Rehear Defendant's, GREENWAY VILLAGE SOUTH ASSOCIATION NO.1, INC.'s ("Defendant Association"), Motion to Dismiss Complaint for Failure to Comply with Florida Supreme Court Order, hearing held June 14, 2010, and in support of states as follows:

1. This is an action to foreclose a mortgage on real property located in Palm Beach County, Florida by Plaintiff against Defendants, FRED DAWSON, et al.
2. On May 25, 2010, Plaintiff filed its Complaint to Foreclose Mortgage.
3. On June 5, 2010, Defendant filed its Motion to Dismiss Complaint for Failure to Comply with Florida Supreme Court Order, and to Award Attorney Fees. Said Motion was heard in front of Your Honor on June 14, 2010.
4. As grounds, Defendant Association alleged Plaintiff failed to verify its complaint in accordance with the amendment to Rule 1.110(b), as articulated by the Supreme Court in *In Re Amendments to the Florida Rules of Civil Procedure*, SC09-1460, 2010 WL 455295 (Fla. 2010).

5. The Florida Supreme Court released its opinion on In Re Amendments on February 11, 2010. See attached Exhibit "A." Among other things, the opinion amended Florida Rule of Civil Procedure 1.110(b) to require Plaintiff to verify the factual allegations of its complaint at the time of filing.

6. Plaintiff did not verify its Complaint and as a result, Defendant Association's Motion to Dismiss was granted. Plaintiff's Complaint was dismissed with leave to amend for lack of verification of the Complaint, pursuant to the amendment of Rule 1.110(b).

7. This amendment, as outlined in the opinion, did not have an effective date. Rather, the opinion stated that "the amendments shall become effective immediately upon the release of this opinion." In Re: Amendments at 10. See attached Exhibit "A."

8. However, the end of the opinion of In Re Amendments contained a clause delaying the rendering of this opinion as final until the time would expire to file a motion for rehearing, and if such a motion is filed, the opinion would not be final until that motion is dispensed with. Specifically, the Supreme Court stated that its opinion was "NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED." In Re: Amendments at 10.

9. Pursuant to this language, In Re: Amendments was not final and therefore, not in force or effect until the period to file a Motion for Rehearing had expired. Id. at 10. The period to timely file a Motion for Rehearing was 15 days. See Fla.R.App.P. 9.330(a). Two Motions for Rehearing were filed on February 26, 2010 and were taken as timely by the Court. See attached composite Exhibit "B."

10. Because the service of a timely filed Motion for Rehearing was timely filed, the effective date of the amendments to Rule 1.110(b) was tolled. This tolling of the subject opinion was self-executing and in effect on February 26, 2010 until June 3, 2010, pursuant to the

controlling language the Supreme Court included in its Opinion.

11. Plaintiff's Complaint was filed on May 25, 2010, during this period in which the amendment to Rule 1.110(b) was tolled.

12. As such, Plaintiff was not required to verify its complaints pursuant to the amendment to Rule 1.100(b) until the Supreme Court dispensed with the pending, timely filed Motions for Rehearing. That date was not until June 3, 2010.

13. Plaintiff agrees with Defendant Association's assertion that Fla.R.App.P. 9.020(I) and 9.020(h) do not apply in this situation. The Supreme Court's opinion was not an appellate order because it was not exercising its appellate jurisdiction or acting in its appellate capacity. In

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amending the Florida Rules of Civil Procedure, the Supreme Court was exercising its exclusive jurisdiction. *See In Re Amendments*; *See also* Harry Lee Anstead, Gerald Kogan et al., The Operation and Jurisdiction of the Supreme Court in Florida, 29 Nova L.Rev. 431, 562 (2005)

13. Consequently, when amending Rule 1.110(b), the Supreme Court was not exercising its appellate jurisdiction, but rather its exclusive jurisdiction pursuant to Art. V, § 2(a), Fla. Const. *See In Re Amendments* at 1.

14. Defendant Association mis-characterizes the applicability of Fla.R.App.P. 9.300(d)(10) in this situation. Rule 9.300(d)(10) governs the service of motions in *appellate* proceedings. Fla.R.App.P. 9.300; *See also* 2 FLPRAC § 13:6, a copy of which is attached hereto as Exhibit "C." The Supreme Court was not acting in an appellate capacity and therefore, not bound this rule.

15. This fact is further evidenced by the existence of the language demonstrating the non-finality of the opinion pending the determination of a timely filed Motion for Rehearing. The inclusion of this language, in and of itself, reflects the Supreme Court's intention not to be bound by Rule 9.300 while exercising its exclusive jurisdiction.

16. Because the Supreme Court was not acting in an appellate capacity, Fla.R.App.P. 9.300(d) was not applicable in this situation, and the language of its opinion of *In Re Amendments* controls. The Supreme Court's opinion in *In Re: Amendments* was not final and therefore, not in force or effect.

17. Plaintiff's assertion that the timely filed Motions for Rehearing tolled the effective date of Rule 1.110(b) is consistent with other opinions released by the Supreme Court. The Supreme Court has purposefully included this language in other opinions. See *In Re: Amendments to the Florida Rules of Civil Procedure - Management of Cases Involving Complex Litigation*, SC08-1141; *In Re: Amendments to Florida Rules of Criminal Procedure 3.172 and 3.985 and Amendments to Florida Rule of Civil Procedure 1.985*, SC09-282; *In Re: Amendments to the Florida Rules of Civil Procedure*, SC09-1358. See attached Composite Exhibit "D"

18. This language is consistent with the representations the of Supreme Court on its website page in which it first releases all of its new opinions for public viewing. <http://www.floridasupremecourt.org/decisions/opinions.shtml>. The Supreme Court specifically notes that "Unless opinions say otherwise, they are not final until any timely filed motions for rehearing are considered and disposed of by the Court." See <http://www.floridasupremecourt.org/decisions/opinions.shtml>.; a true and correct copy of that webpage is attached hereto as Composite Exhibit "E". The Supreme Court's opinion in *In Re Amendments* recited language almost exactly like this, reflecting that this opinion was not final. The subject opinion did not state otherwise.

19. Conversely, in other opinions enacted through its exclusive jurisdiction to promulgate rules of procedure, the Supreme Court has chosen to not include this language of non-finality, but rather include language of finality, such that demonstrates that a timely filed Motion for Rehearing will not toll the effective date of the proposed amendment. See *In Re:*

Amendments to the Florida Rules of Civil Procedure (Two Year Cycle), SC05-179; In Re: Amendments to the Florida Rules of Juvenile Procedure, SC09-141, In Re: Amendments to the Florida Rule of Judicial Administration 2.420 and the Florida Rules of Appellate Procedure, SC07-2050, In Re: Amendments to the Florida Rules of Criminal Procedure, SC09-159 (attached hereto as Composite Exhibit “F”), specifically stating “THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.”

20. In these specific cases, the Supreme Court set an effective date for the amendments. This date was always some time after the Courts opinion was released. It is apparent that this was done to provide the legal community some type of notice prior to the enactment or amendment of certain rules of procedure. In contrast, no such notice was afforded in this situation.

21. Plaintiff’s assertion that the timely filed Motions for Rehearing tolled the effective date of Rule 1.110(b) is also consistent with other Circuit’s rulings. Specifically, the Twelfth Circuit suspended its program of *sua sponte* dismissal for lack of verification due to its “misinterpretation” of the finality and effective date of In Re Amendments. See composite Exhibit “G” attached hereto. These dismissals were vacated on Plaintiff’s Motion for Rehearing.

22. Clearly, if the Supreme Court wanted to, they could have included language consistent with its other opinions, effectuating rule amendments specifically stating that a timely filed Motion for Rehearing will not toll the effective date of these amendments. In amending Rule 1.110(b), the Supreme Court intentionally chose not to include this language. Logic tells us that if the Supreme Court could have included certain language in its opinion, but chose not to and instead included certain other language, the included language was done so intentionally and for a purpose. In this case, that purpose was to allow for the tolling of the effective date of the amendment to Rule 1.110(b) until all timely filed Motions for Rehearing were determined, which

was not until June 3, 2010.

23. Prior to June 3, 2010, the Florida Rules of Civil Procedure were not amended to reflect any of the changes or amendments articulated in *In Re: Amendments*. This further evidences Plaintiff's position that Rule 1.110(b) was not in force or effect at the time of the filing of Plaintiff's complaint.

24. On June 3, 2010, the Supreme Court released its revised opinion on *In Re Amendments*. The Defendant Association's assertion that this opinion was final and in force and effect on February 11, 2010, yet revised on Rehearing on June 3, 2010, goes against common logic and sense. The mere fact that the Supreme Court entertained said Motions for Rehearing proves that the Supreme Court was not ready for this amendment to be final and controlling. If this truly was the case, and the amendments were to be in effect, the Supreme Court could have included language reflecting that this amendment related back to its original release date of the opinion, that the opinion was final regardless of any Motion for Rehearing, or even that the opinion was final period. However, the Supreme Court purposefully chose not to include any such language. The absence of such language conclusively demonstrates that the Supreme Court did not want *In Re: Amendments* to be final or in force or effect while any Motions for Rehearing were pending.

25. It is counterintuitive for this Court to give great weight to certain parts of this opinion, but choose to disregard others without argument. Because the Florida Supreme Court chose to purposefully include specific language tolling the finality of this opinion until any pending timely Motions for Rehearing were determined, that language must be taken into account and afforded the same weight as any other language present in the opinion. To do otherwise would effectively subvert the will of the Supreme Court to that of the trial court, in direct contradiction to the well-established principals of Florida jurisprudence.

WHEREFORE, Plaintiff respectfully requests this Honorable Court rehear and/or reconsider Defendant Association's Motion to Dismiss Complaint for Failure to Comply with Florida Supreme Court Order, hearing held June 14, 2010 and for any further relief this Court deems just and proper.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this

24 day of June, 2010 to the following:

FRED DAWSON

UNKNOWN SPOUSE OF FRED DAWSON  
12001 POINCIANA BLVD., #204  
WEST PALM BEACH, FL 33411

FRED DAWSON

UNKNOWN SPOUSE OF FRED DAWSON  
2000 S OCEAN BLVD., APT. 107N  
PALM BEACH, FL 33480

JEAN WINTERS, ESQ.

ATTY FOR GREENWAY VILLAGE SOUTH ASSOCIATION NO.1, INC.  
PO BOX 272662  
BOCA RATON, FL 33427

GREENWAY VILLAGE RECREATION ASSOCIATION, INC.

C/O IANNUZZI, DIANA, REGISTERED AGENT  
6 GREENWAY VLG., N105  
ROYAL PALM BEACH, FL 33411

JOHN DOE

JANE DOE

12001 POINCIANA BLVD., #204  
WEST PALM BEACH, FL 33411



CHRISTOPHER J. PELATTI, ESQ.

Law Offices of David J. Stern  
900 South Pine Island Road, Suite 400  
Plantation, Florida 33324-3920  
954-233-8000  
Fla. Bar No.: 79052

# Supreme Court of Florida

\_\_\_\_\_  
No. SC09-1460  
\_\_\_\_\_

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL  
PROCEDURE.

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\_\_\_\_\_  
No. SC09-1579  
\_\_\_\_\_

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL  
PROCEDURE - FORM 1.996 (FINAL JUDGMENT OF FORECLOSURE).

[February 11, 2010]

PER CURIAM.

In case number SC09-1460, the Task Force on Residential Mortgage Foreclosure Cases has proposed an amendment to Florida Rule of Civil Procedure 1.110 (General Rules of Pleading) and two new Forms for Use with Rules of Civil Procedure. In case number SC09-1579, the Civil Procedure Rules Committee has proposed amendments to form 1.996 (Final Judgment of Foreclosure) of the Forms for Use with Rules of Civil Procedure. We have consolidated these cases for the purposes of this opinion. We have jurisdiction. See art. V, § 2(a), Fla. Const.

"A"



release of this opinion. Because the amendments to form 1.996(a) (Final Judgment of Foreclosure) were not published by the Court for comment prior to their adoption, interested persons shall have sixty days from the date of this opinion in which to file comments, on those amendments only, with the Court.<sup>4</sup>

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, LABARGA, and PERRY, JJ., concur.  
CANADY, J., concurs in part and dissents in part with an opinion, in which  
POLSTON, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND  
IF FILED, DETERMINED.

CANADY, J., concurring in part and dissenting in part.

Because I am concerned that requiring prior judicial approval for the cancellation of foreclosure sales may produce untoward results, I dissent from the adoption of form 1.996(b). I would have instead adopted the proposal suggested by the Real Property, Probate, and Trust Law Section for the addition of a

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4. An original and nine paper copies of all comments must be filed with the Court on or before April 12, 2010, with a certificate of service verifying that a copy has been served on the Committee Chair, Mark A. Romance, 201 S. Biscayne Blvd, Suite 1000, Miami, FL 33131-4327, as well as separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until May 3, 2010, to file a response to any comments filed with the Court. Electronic copies of all comments and responses also must be filed in accordance with the Court's administrative order in In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

# Supreme Court of Florida

\_\_\_\_\_  
No. SC09-1460  
\_\_\_\_\_

**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL  
PROCEDURE.**

\_\_\_\_\_  
No. SC09-1579  
\_\_\_\_\_

**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL  
PROCEDURE - FORM 1.996 (FINAL JUDGMENT OF FORECLOSURE).**

[February 11, 2010]  
REVISED ON REHEARING

PER CURIAM.

In case number SC09-1460, the Task Force on Residential Mortgage Foreclosure Cases has proposed an amendment to Florida Rule of Civil Procedure 1.110 (General Rules of Pleading) and two new Forms for Use with Rules of Civil Procedure. In case number SC09-1579, the Civil Procedure Rules Committee has proposed amendments to form 1.996 (Final Judgment of Foreclosure) of the Forms for Use with Rules of Civil Procedure. We have consolidated these cases for the purposes of this opinion. ~~We have consolidated these cases for the purposes of this opinion.~~

June 3, 2010

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Committee notes are offered for explanation only and are not adopted as an official part of the rules. The amendments shall become effective immediately upon the release of this opinion. Because the amendments to form 1.996(a) (Final Judgment of Foreclosure) were not published by the Court for comment prior to their adoption, interested persons shall have sixty days from the date of this opinion in which to file comments, on those amendments only, with the Court.<sup>4</sup>

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, LABARGA, and PERRY, JJ., concur. CANADY, J., concurs in part and dissents in part with an opinion, in which POLSTON, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

CANADY, J., concurring in part and dissenting in part.

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**SUPREME COURT OF FLORIDA**

2010 FEB 26 A 10: 20

CLERK, SUPREME COURT

No. SC09-1460

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

No. SC09-1579

**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL  
PROCEDURE – FORM 1.996 (FINAL JUDGMENT OF FORECLOSURE)**

**MOTION FOR RE-HEARING OR CLARIFICATION**

Movant, SHAPIRO & FISHMAN, LLP (“the Shapiro Firm”), by and through its undersigned counsel, and pursuant to Fla.R.App.P. 9.330 and Fla.R.Jud.Admin. 2.140(b)(7), hereby files this Motion for Rehearing or Clarification of the Court’s Opinion dated February 11, 2010, and in support, states as follows:

1. The Shapiro Firm is a Florida law firm that primarily represents banks and lenders in real estate foreclosure actions.

**RICHMAN GREER, P.A.**  
Miami • West Palm Beach

"B"

SUPREME COURT OF FLORIDA

THOMAS D. HILL

2010 FEB 26 A 10: 32

CLERK, SUPREME COURT

IN RE: AMENDMENTS TO :  
THE :  
FLORIDA RULES OF :  
CIVIL PROCEDURE :  
\_\_\_\_\_ :

Case No: SC09-1460

Case No: SC09-1579

**BEN-EZRA & KATZ P.A.'S MOTION FOR REHEARING**

The law firm of Ben-Ezra & Katz, P.A. ("BEKPA") respectfully moves for rehearing pursuant to Rule 9.330, Fla. R. App. P. on the ground that the Court overlooked or misapprehended controlling points of law. In support of its motion, BEKPA states:

1. On February 11, 2010, in Case No. SC09-1460, this Court adopted, with minor changes, the amendments to the Florida Rules of Civil Procedure proposed by the Task Force on Residential Mortgage Foreclosure Cases (the "Task Force"). Among the Amendments the Court adopted was the new Form 1.996(b), which is a Motion to Cancel and Reschedule Foreclosure Sale ("New Form Motion to Cancel").

2. At the same time, in Case No. SC09-1579, the Court rejected an amendment proposed by the Civil Procedure Rules Committee, which would have provided that a foreclosure sale may not begin without the presence of a plaintiff's

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2 Fla. Prac., Appellate Practice § 13:6 (2010 ed.)

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Appellate Practice  
Philip J. Padovano[FNa0]

Part II. The Appellate Process  
Chapter 13. Motions

### § 13:6. Motions tolling time

The service of certain kinds of motions will operate to toll the time schedule of any proceeding in the appellate court until disposition of the motion. Thus, it is important to determine whether an appellate motion is the type of motion that will suspend the time schedule for filing or service of other papers.

Motions tolling the time schedule imposed by the appellate rules are identified by the process of elimination. Rule 9.300(b) states that "[e]xcept as prescribed by subdivision (d) of this rule, service of a motion shall toll the time schedule of any [appellate] proceeding." [FN1] The latter section of the rule specifically lists those motions that do not toll the running of any time period. The exceptions listed in rule 9.300(d) are as follows:

#### (d) Motions Not Tolling Time

- (1) Motions for post-trial release, rule 9.140(g).
- (2) Motions for stay pending appeal, rule 9.310.
- (3) Motions relating to oral argument, rule 9.320.
- (4) Motions relating to joinder and substitution of parties, rule 9.360.
- (5) Motions relating to amicus curiae, rule 9.370.
- (6) Motions relating to attorney's fees on appeal, rule 9.400.
- (7) Motions relating to service, rule 9.420.
- (8) Motions relating to admission or withdrawal of attorneys, rule 9.440.
- (9) Motions relating to expediting the appeal.
- (10) All motions filed in the Supreme Court, unless accompanied by a separate request to toll

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time.

Any motion not listed among these exceptions in rule 9.300(d) will operate to toll the time for further proceedings in the appellate court. For example, a motion for extension of time will extend the time period at least until such time as the appellate court rules on the motion.<sup>[FN2]</sup> And, a motion to supplement the record will suspend the time for filing a brief.<sup>[FN3]</sup>

The final exception listed in rule 9.300 (d) effectively limits the automatic tolling procedure in subsection (b) to proceedings in the district courts of appeal and appellate proceedings in the circuit courts. The filing of a motion in the Florida Supreme Court does not automatically toll the time for filing and service of other documents required by the appellate rules.<sup>[FN4]</sup> Counsel for the moving party must file a separate motion to toll the time periods pending resolution of the motion in question, and the matter of suspending the time is discretionary with the Supreme Court.

The time periods in the appellate rules are tolled by the filing of a motion only if the motion is authorized in the proceeding in question. A motion that is unauthorized will be treated by the court as a nullity, and it will not have any effect on the time periods for filing or service of other pleadings in the case.<sup>[FN5]</sup>

If the motion is in the general class of motions that operate to toll the appellate time schedule, it will have that effect even if it appears to be unmeritorious.<sup>[FN6]</sup> Whether the time periods will be extended automatically under rule 9.300(b) is a question that is resolved by considering the nature of the motion and not its relative merit.

The procedure for suspending time is self-executing. Assuming the motion is one that qualifies, the time periods are suspended automatically on the date the motion is served. It is not necessary to file a separate motion to toll the time.

Likewise, the time for service of the initial brief is automatically extended by an order extending the time to file the record on appeal. Rule 9.300(b) provides in material part that "[a]n order granting an extension of time for preparation of the record, or the index to the record, or for filing of the transcript of proceedings, shall extend automatically, for a like period, the time for service of appellant's initial brief."<sup>[FN7]</sup> With the advent of this provision, it is no longer necessary to file a motion to extend the time for service of the initial brief when an order is entered extending the time to file the record.

[FN0] Judge, First District Court Of Appeal, State Of Florida.

[FN1] **Tolling Time.** Motions not listed in Fla. R. App. P. 9.300(d) toll the time for performance of other acts under the appellate rules. See Huffman v. Florida Dept. of Corrections, 981 So. 2d 482 (Fla. 1st DCA 2008); Wilkinson v. McDonough, 960 So. 2d 911 (Fla. 1st DCA 2007).

[FN2] **Extension.** A motion for extension of time tolls the time period in question until disposition of the motion. See Kuznik v. State, 604 So. 2d 37 (Fla. 2d DCA 1992); Ike's Carter Pool and Maintenance Co. v. Roberts, 432 So. 2d 137 (Fla. 4th DCA 1983).

[FN3] **Record.** A motion to supplement the record tolls the time for filing the initial brief. See United Auto. Ins. Co. v. Active Spine Centers, LLC, 899 So. 2d 1235 (Fla. 3d DCA 2005).

[FN4] **Supreme Court.** A motion filed in the Supreme Court will not toll the appellate time periods "unless accompanied by a separate request to toll time." Fla. R. App. P. 9.300(d)(10). The 1977 committee notes explain that this section of the rule "codifies current practice in the supreme court, where motions do not toll time unless the court approves a specific request, for good cause shown, to toll time for the performance of the

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next act." It was further observed in the committee notes that "[v]ery few motions filed in [the supreme court] warrant a delay in further procedural steps to be taken in a case." The requirement of a separate motion for extension was deleted in 2006 but reinstated the following year to restore the rule to its original form. See In re Amendments to Florida Rule of Appellate Procedure 9.300, 967 So. 2d 194 (Fla. 2007).

**[FN5] Unauthorized.** An unauthorized motion does not toll the running of time. For example, in State v. Kilpatrick, 420 So. 2d 868 (Fla. 1982), the Supreme Court held that a motion for rehearing en banc unaccompanied by a motion for rehearing directed to the panel was a nullity. Since the motion was not an authorized motion, it could not serve to toll the time for seeking discretionary review in the supreme court.

**[FN6] Unmeritorious.** Fla. R. App. P. 9.300(b) does not distinguish between meritorious motions and frivolous motions. In Anderson v. Willis, 402 So. 2d 1344 (Fla. 1st DCA 1981), the court held that a motion to dismiss tolled the appellate time schedule even though the motion was of questionable merit.

**[FN7] Initial Brief.** The quoted portion of Fla. R. App. P. 9.300(b) was adopted in 1992. Before the revision there was some confusion regarding the effect of an extension of time for filing the record. The time for service of the initial brief is measured from the date of filing of the notice of appeal, and is independent of other time periods in the rules. Before the 1992 revision, an order extending the time for filing the record had no effect on the time for service of the initial brief.

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2 FLPRAC § 13:6

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# Supreme Court of Florida

\_\_\_\_\_  
No. SC08-1141  
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**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL  
PROCEDURE – MANAGEMENT OF CASES INVOLVING COMPLEX  
LITIGATION.**

[October 15, 2009]

PER CURIAM.

This matter is before the Court for consideration of comments concerning this Court's recent amendments to the Florida Rules of Civil Procedure, Forms for Use with Rules of Civil Procedure, Florida Family Law Rules of Procedure, and Florida Supreme Court Approved Family Law Forms in response to a petition filed by the Task Force on the Management of Cases Involving Complex Litigation (Task Force). See In re Amendments to the Fla. Rules of Civil Procedure – Mgmt. of Cases Involving Complex Litig., 15 So. 3d 558 (Fla. 2009). The comments we received primarily relate to the amended Civil Cover Sheet, Form 1.997 and the new Family Court Cover Sheet, Form 12.928. We have jurisdiction. See art. V, § 2(a), Fla. Const.

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## CONCLUSION

Accordingly, we amend Forms for Use with Rules of Civil Procedure 1.997 (Civil Cover Sheet) and 1.998 (Final Disposition Form), Florida Family Law Rules of Procedure 12.015 (Family Law Forms) and 12.100 (Pleadings and Motions), and Florida Supreme Court Approved Family Law Form 12.928 (Family Court Cover Sheet) as set forth in the appendix to this opinion. Form 12.928 is set forth ~~fully engrossed. In the remaining forms and rules, new language is indicated by~~ underscoring; deletions are indicated by struck-through type. As previously set forth in our prior opinion in this case issued in May 2009, the amendments to form 1.997 (Civil Cover Sheet) and form 12.928 (Family Court Cover Sheet) shall become effective January 1, 2010, at 12:01 a.m. The remainder of the amendments shall become effective immediately.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA,  
and PERRY, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND  
IF FILED, DETERMINED.

Original Proceeding – The Florida Rules of Civil Procedure

Thomas H. Bateman, III, Chair, Task Force on the Management of Cases  
Involving Complex Litigation, Messer, Caparello and Self, P.A., Tallahassee,  
Florida,

for Petitioner

# Supreme Court of Florida

\_\_\_\_\_  
No. SC09-282  
\_\_\_\_\_

**IN RE: AMENDMENTS TO FLORIDA RULES OF CRIMINAL  
PROCEDURE 3.172 AND 3.985 AND AMENDMENTS TO FLORIDA RULE  
OF CIVIL PROCEDURE 1.985.**

[October 1, 2009]

CANADY, J.

This matter is before the Court for consideration of proposed amendments to Florida Rules of Criminal Procedure 3.172 and 3.985. We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.140(e); Fla. R. Jud. Admin. 2.140(f).

On February 18, 2009, the Criminal Procedure Rules Committee (Committee) filed an out-of-cycle report proposing amendments to rules 3.172, Acceptance of Guilty or Nolo Contendere Plea, and 3.985, Standard Jury Instructions.

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civil procedure, rule 1.985, to reflect that the civil jury instructions are also available from the Court's website.

We hereby adopt the amendments to the Florida Rules of Criminal Procedure and Florida Rules of Civil Procedure as set forth in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective immediately upon ~~the filing of this opinion.~~

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, POLSTON, LABARGA, and PERRY, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

Original Proceeding – Florida Rules of Criminal Procedure Committee and Florida Rule of Civil Procedure Committee

Fleur J. Lobree, Chair, Florida Rules of Criminal Procedure Committee, Office of the State Attorney, Eleventh Judicial Circuit, Miami, Florida, Thomas Howell Bateman, III, Past Chair, Florida Criminal Procedure Rules Committee, Messer, Caparello and Self, P.A., Tallahassee, Florida; Mark A. Romance, Chair, Florida Rules of Civil Procedure Committee, Richman Greer, P.A., Miami, Florida; John F. Harkness, Jr., Executive Director, Jodi Jennings and Madelon Horwich, Staff Liaisons, The Florida Bar, Tallahassee, Florida,

for Petitioner

# Supreme Court of Florida

\_\_\_\_\_  
No. SC09-1358  
\_\_\_\_\_

## IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE.

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[October 1, 2009]  
SECOND CORRECTED OPINION

PER CURIAM.

The Florida Bar's Civil Procedure Rules Committee (Committee) has filed a fast-track report of proposed amendments to Florida Rules of Civil Procedure in response to recent legislation. We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.140(e).

The Committee proposes amendments to Rule of Civil Procedure Form 1.918 (Lis Pendens). The amendment to the form is in response to recent enactment of section 48.23(1)(c), Florida Statutes, which governs the contents of a notice of lis pendens. See ch. 2009-39, §1, Laws of Fla. The statutory changes went into effect July 1, 2009. See ch. 2009-39, § 2, Laws of Fla. The Committee also proposes the addition of a committee note clarifying that a notice of lis pendens should contain either the date of the institution of the underlying action,

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the date of the clerk's receipt of the notice of lis pendens, or the case number of the underlying action. The Florida Bar Board of Governors unanimously approved the proposals.

After considering the Committee's report and reviewing the relevant legislation, we amend form 1.918 as reflected in the appendix to this opinion. New language is underscored, and deleted language is struck through. The committee note is offered for explanation only and is not adopted as an official part of the rules. These amendments shall become effective immediately upon the release of this opinion. Because the amendments were not published for comment prior to their adoption, interested persons shall have sixty days from the date of this opinion in which to file comments with the Court.<sup>1</sup>

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA,  
and PERRY, JJ., concur.

---

1. An original and nine paper copies of all comments must be filed with the Court on or before November 30, 2009, with a certificate of service verifying that a copy has been served on the committee chair, Mark Romance, 201 S. Biscayne Blvd, Suite 1000, Miami, Florida 33131-4327, as well as separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The committee chair has until December 21, 2009, to file a response to any comments filed with the Court. Electronic copies of all comments and responses also must be filed in accordance with the Court's administrative order In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).



NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND  
IF FILED, DETERMINED.

Original Proceeding – Florida Rules of Civil Procedure Committee

Mark A. Romance, Chair, Civil Procedure Rules Committee, Richman Greer, P.A.,  
Miami, Florida, John F. Harkness, Jr., Executive Director, and Madelon Horwich,  
Bar Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

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JUNE 17, 2010

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- [SC09-1460 & SC09-1579 – In Re: Amendments To The Florida Rules of Civil](#)

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- Procedure – Rehearing Order
- SC09-1460 – In Re: Amendments To The Florida Rules of Civil Procedure – Revised Opinion On Rehearing
  - SC09-1579 – In Re: Amendments To The Florida Rules of Civil Procedure – Form 1.966 (Final Judgment on Foreclosure) - Revised Opinion On Rehearing

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- SC08-573 – Alan Lyndell Wade v. State of Florida
- SC08-1968 – Pamela Perera v. United States Fidelity and Guaranty Company

- Procedure – Rehearing Order
- SC09-1460 – In Re: Amendments To The Florida Rules of Civil Procedure – Revised Opinion On Rehearing
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- SC08-1968 – Pamela Perera v. United States Fidelity and Guaranty Company

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- [SC07-1964 – Donald Bradley v. State of Florida – Revised Opinion; and](#)
- [SC08-1813 – Donald Bradley v. Walter A. McNeil, etc., – Order](#)
- [SC08-1813 – Donald Bradley v. Walter A. McNeil, etc., – Revised Opinion](#)
- [SC08-789 – Louis R. Menendez, Jr. v. Progressive Express Insurance Co., Inc. – Order](#)
- [SC08-789 – Louis R. Menendez, Jr. v. Progressive Express Insurance Co., Inc. – Revised Opinion](#)
- [SC09-938 – Attorneys' Title Insurance Fund, Inc. v. M.I. Industries Usa, Inc., Et Al.](#)
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- [SC08-2255 – Vanessa Van Vorgue v. Mara M. Rankin](#)
- [SC09-1384 – In Re: Amendments To The Florida Rules For Certified And Court-Appointed Mediators](#)
- [SC09-1747 – Inquiry Concerning A Judge, Nos. 08-392 and 08-360 Re: Angela Dempsey – Correction Notice](#)
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MARCH 25, 2010

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No opinions were released.

MARCH 18, 2010

**Opinions Released 03/18/2010**

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- SC07-51 – Eugene W. McWatters v. State of Florida
- SC07-2050 – In Re: Amendments To Florida Rule of Judicial Administration 2.420 And The Florida Rules of Appellate Procedure

MARCH 11, 2010

**Opinions Released 03/11/2010**

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- SC08-494 – Todd Zommer v. State of Florida
- SC08-528 – Tiffany Ann Cole v. State of Florida

MARCH 4, 2010

**Opinions Released 03/04/2010**

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- SC08-2358 – In Re: Amendments To Florida Family Law Rules of Procedure – Forms 12.996(A), 12.996(B), And 12.996(C)
- SC08-2087 – Christy Aills v. Luciano Boemi, M.D., Et Al. – Correction Notice
- SC08-2087 – Christy Aills v. Luciano Boemi, M.D., Et Al. – Corrected Opinion
- SC09-284 – In Re: Standard Jury Instructions in Civil Cases – Report No. 09-01 (Reorganization of the Civil Jury Instructions)
- SC09-296 – In Re: Standard Jury Instructions in Civil Cases – Report No. 09-02 (Greater Weight of the Evidence, Negligence, Believability of Witnesses and Closing Instructions)
- SC09-299 – In Re: Standard Jury Instructions in Civil Cases – Report No. 09-03 (Jury Deadlocked)
- SC09-300 – In Re: Standard Jury Instructions in Civil Cases – Report No. 09-04 (Burden of Proof on Defense Issues)
- SC09-301 – In Re: Standard Jury Instructions in Civil Cases – Report No. 09-05 (Medical Malpractice Insurer's Bad Faith Failure to Settle)
- SC09-302 – In Re: Standard Jury Instructions in Civil Cases – Report No. 09-06 (Probable Cause – Malicious Prosecution and False Imprisonment)
- SC09-303 – In Re: Standard Jury Instructions in Civil Cases – Report No. 09-07 (Intentional Tort Exception to Exclusive Remedy of Workers' Compensation)
- SC09-304 – In Re: Standard Jury Instructions in Civil Cases – Report No. 09-08 (Professional Negligence)
- SC09-306 – In Re: Standard Jury Instructions in Civil Cases – Report No. 09-09 (Punitive Damages)

FEBRUARY 25, 2010

**Opinions Released 02/25/2010**

ZIP | EXE

- SC07-1071 – The Florida Bar v. Ann Bitterman
- SC07-2111 – Alwin C. Tumblin v. State of Florida
- SC08-2087 – Christy Aills v. Luciano Boemi, M.D., Et Al - Corrected Opinion 03/04/2010
- SC10-320 – In Re: Certification of Need For Additional Judges

FEBRUARY 18, 2010

**Opinions Released 02/18/2010**

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- SC08-483 – Javier Dejesus Ventura v. State of Florida
- SC08-884 – Kurt S. Browning, Etc., Et Al v. Florida Hometown Democracy, Inc., PAC, Et Al
- SC09-263 – The Florida Bar Re: Linda Thompson - Order

FEBRUARY 11, 2010

**Opinions Released 02/11/2010**

ZIP | EXE

- SC06-1998 – Rory Enrique Conde v. State of Florida
- SC07-1648 – Inquiry Concerning A Judge, No. 07-64 Re: Ralph E. Eriksson
- SC07-2074 – Sarasota Alliance For Fair Elections, Inc., Etc., Et Al v. Kurt S. Browning, Etc., Et Al
- SC07-2297 – Derrick Melean v. State of Florida
- SC09-1460 – In Re: Amendments To The Florida Rules of Civil Procedure - Revised on Rehearing 06/03/2010
- SC09-1579 In Re: Amendments To The Florida Rules Of Civil Procedure - Form 1.996 (Final Judgment Of Foreclosure)
- SC09-1747 – Inquiry Concerning A Judge, Nos. 08-392 and 08-350 Re: Angela Dempsey – Notice of Correction 04/01/2010
- SC09-1747 – Inquiry Concerning A Judge, Nos. 08-392 and 08-350 Re: Angela Dempsey – Corrected Opinion 04/01/2010

FEBRUARY 08, 2010

**Opinions Released 02/08/2010**

ZIP | EXE

- SC10-118 – Martin Edward Grossman v. State of Florida

FEBRUARY 04, 2010

**Opinions Released 02/04/2010**

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- SC08-63 – James Phillip Barnes v. State of Florida
- SC08-789 – Louis R. Menendez, Jr., Et Al v. Progressive Express Insurance Co., Inc. - Revised Opinion released 4/22/10
- SC09-1427 – In Re: Amendments To The Rules Regulating The Florida Bar – Rules 6-12.3 and 6-12.4 (Basic Skills Course Requirements)
- SC09-1747 – Inquiry Concerning A Judge, Nos. 08-392 and 08-360 Re: Angela Dempsey - Corrected Opinion 04/01/2010
- SC09-1822 – In Re: Amendments To The Florida Family Law Rules of Procedure – Notice of Correction
- SC09-1822 – In Re: Amendments To The Florida Family Law Rules of Procedure –Corrected Opinion

JANUARY 28, 2010

**Opinions Released 01/28/2010**

[ZIP](#) | [EXE](#)

- [SC08-2068 – Michael Penzer, Etc. v. Transportation Insurance Company](#)
- [SC09-1822 – In Re: Amendments To The Florida Family Law Rules of Procedure - Corrected Opinion 02/04/2010](#)

JANUARY 21, 2010

**Opinions Released 01/21/2010**

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- [SC08-1204 – State of Florida v. Fredrick Hines - Order](#)
- [SC09-839 – David Eugene Johnston v. State of Florida](#)

JANUARY 14, 2010

**Opinions Released 01/14/2010**

[ZIP](#) | [EXE](#)

- [SC07-92 – Ronnie Ferrell v. State of Florida; SC07-1447 Ronnie Ferrell v. Walter A. McNeil, etc.](#)
- [SC08-1213 – Paul Beasley Johnson v. State of Florida](#)
- [SC08-1317 – Florida Birth-Related Neurological Injury Compensation Association v. Department of Administrative Hearings, Et Al; and](#)
- [SC08-1318 Florida Birth-Related Neurological Injury Compensation Association v. Bayfront Medical Center](#)
- [SC08-1319 Mike Kocher, et. al. v. Bayfront Medical Center, Inc.](#)
- [SC08-1675 – Shawn M. Arthur v. Josette A. Arthur](#)
- [SC08-2325 - State of Florida v. Andrew Nelson](#)

JANUARY 07, 2010

**Opinions Released 01/07/2010**

[ZIP](#) | [EXE](#)

- [SC07-1622 – Mark A Twilegar v. State of Florida](#)
- [SC07-1964 – Donald Bradley v. State of Florida - Revised Opinion released 4/22/10; and](#)
- [SC08-1813 - Donald Bradley v. Walter A. McNeil, etc. - Revised Opinion released 4/22/10](#)
- [SC07-2101 – Norman Blake Mckenzie v. State Of Florida](#)
- [SC07-2398 – The Florida Bar v. John Vernon Head](#)
- [SC08-2326 – J.A.B. v. State Of Florida](#)
- [SC09-622 – In Re: Standard Jury Instructions in Criminal Cases – Report No. 2009.01](#)

**Substantive Contact:**

Judy Neel, (850) 488-0125, [supremecourt@flcourts.org](mailto:supremecourt@flcourts.org)

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# Supreme Court of Florida

No. SC05-179

## IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE (TWO YEAR CYCLE).

[December 15, 2005]

PER CURIAM.

The Civil Procedure Rules Committee of the Florida Bar (Committee) has submitted its biennial report of proposed amendments to the Florida Rules of Civil Procedure. We have jurisdiction. See art. V, § 2(a), Fla. Const. Pursuant to Florida Rule of Judicial Administration 2.130(c), the Committee published the proposals for comment and also submitted the proposals to the Board of Governors of The Florida Bar for its recommendation. The Board approved the proposals and the Committee then submitted the proposals to this Court. The Court also published the proposals for comment and received comments. We adopt the amendments to the rules recommended by the Committee. We also adopt an amendment to rule 1.525 that was not presented in the Committee's report.

We briefly review the proposed amendments. Subdivision (a)(2), Motion, of



rules as set forth in the appendix to this opinion. Deletions are indicated by struck-through type, and new language is indicated by underscoring. Committee notes are included for explanation and guidance only and are not adopted as an official part of the rules. We conditionally adopt the amendment to rule 1.525 and direct that this amendment also be published in The Florida Bar News and any interested person may file comments with this Court within sixty days of the date of this opinion. Otherwise the amendments shall become effective on January 1, 2006, at 12:01 a.m.

It is so ordered.

PARIENTE, C.J., and ANSTEAD, LEWIS, QUINCE, and CANTERO, JJ.,  
concur.  
WELLS, J., concurs in part and dissents in part with an opinion, in which BELL,  
J., concurs.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE  
EFFECTIVE DATE OF THESE AMENDMENTS.

WELLS, J., concurring in part and dissenting in part.

I concur in respect to the adoption of the amendments with the exception that I dissent to the adoption of the amendment proposed to Florida Rules of Civil Procedure 1.420.

I agree that rule 1.420 requires significant changes, but I do not believe that this amendment encompasses the changes that are needed.

# Supreme Court of Florida

\_\_\_\_\_  
No. SC09-141  
\_\_\_\_\_

## IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE.

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[December 17, 2009]

PER CURIAM.

We have for consideration the regular cycle report of proposed rule amendments filed by The Florida Bar's Juvenile Court Rules Committee. We have jurisdiction. [REDACTED]; Fla. R. Jud. Admin. 2.140(b).

### BACKGROUND

The Juvenile Court Rules Committee (Committee) has filed its regular cycle report proposing amendments to the following rules: 8.010 (Detention Hearing); 8.070 (Arraignments); 8.080 (Acceptance of Guilty or Nolo Contendere Plea); 8.100 (General Provisions for Hearings); 8.115 (Disposition Hearing); 8.130 (Motion for Rehearing); 8.225 (Process, Diligent Searches, and Service of Pleadings and Papers); 8.235 (Motions); 8.257 (General Magistrates); 8.265 (Motion for Rehearing); 8.310 (Dependency Petitions); 8.400 (Case Plan

Finally, section 1009.25(2)(c), Florida Statutes (2008), provides a tuition and fees exemption, under certain circumstances, for students in DCF's or a relative's custody when they turn eighteen or who were adopted from DCF or placed in a guardianship after spending at least six months in DCF custody after turning sixteen. New form 8.978(a) (Order Concerning Youth's Eligibility for Florida's Tuition and Fee Exemption) is adopted to provide a form order to be entered by a court certifying a youth's eligibility for this tuition and fee exemption.

### CONCLUSION

Accordingly, the Florida Rules of Juvenile Procedure are hereby amended as set forth in the appendix to this opinion. New language is underscored; deleted language is struck through. The amendments shall become effective on January 1, 2010, at 12:01 a.m.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, POLSTON, LABARGA, and PERRY, JJ., concur.  
CANADY, J., concurs in part and dissents in part with an opinion.

~~THE BOARD OF JUDICIAL ADMINISTRATION SHALL NOT VOUCHER FOR THE  
RELIABILITY OF ANY INFORMATION CONTAINED HEREIN.~~

CANADY, J., concurring in part and dissenting in part.

I concur with the majority's decision to adopt amendments to Florida Rules of Juvenile Procedure 8.010, 8.070, 8.080, 8.115, 8.130, 8.235, 8.257, 8.265, 8.310, 8.400, 8.410, and 8.505. I dissent, however, from the majority's decision to

# Supreme Court of Florida

\_\_\_\_\_  
No. SC07-2050  
\_\_\_\_\_

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**IN RE: AMENDMENTS TO FLORIDA RULE OF JUDICIAL  
ADMINISTRATION 2.420 AND THE FLORIDA RULES OF APPELLATE  
PROCEDURE.**

[March 18, 2010]

PER CURIAM.

We have for consideration three sets of proposed amendments to Florida Rule of Judicial Administration 2.420, the rule that governs public access to judicial branch records.<sup>1</sup> A thorough understanding of these proposals is critical to ensure the integrity of court records as we move inevitably into the electronic age. The amendments we adopt address procedures for the clerks to identify a narrow set of records as confidential, procedures for sealing and unsealing records, specific procedures targeted at criminal cases, and related appellate procedures.

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<sup>1</sup> ~~State v. [REDACTED]~~ See *State v. [REDACTED]*, Fla. Const.

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from public view, and we thank the committee for its recommendations regarding the transition to providing electronic access. See Access Committee Report.

Accordingly, we amend the Florida Rules of Judicial Administration and the Florida Rules of Appellate Procedure as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The committee notes are offered for explanation only and are not adopted as an official part of the rules. Our adoption of these rule amendments is not a determination of the merits of any substantive arguments concerning the new procedures and does not preclude the raising of those arguments in a proper case and controversy. As suggested by the Access Subcommittee, new rule 2.420(d) shall become effective October 1, 2010, at 12:01 a.m. The remainder of the amendments shall become effective immediately upon the release of this opinion.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA,  
and PERRY, JJ., concur.

~~THESE RULE AMENDMENTS SHALL NOT ALTER ANY  
PROVISIONS OF THE FLORIDA RULES OF JUDICIAL ADMINISTRATION~~

Original Proceeding – Florida Rules of Judicial Administration Committee and  
Florida Rules of Appellate Procedure Committee

Judge Lisa Davidson, Chair, Rules of Judicial Administration Committee,  
Eighteenth Judicial Circuit, Viera, Florida, Scott M. Dimond, Past Chair, Miami,  
Florida; John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee,  
Florida; Judge Judith L. Kreeger, Chair, Committee on Access to Court Records,

F

Eleventh Judicial Circuit, Miami, Florida, and Jonathan D. Kaney, Jr.,  
Subcommittee on Access to Court Records, Daytona Beach, Florida,

for Petitioners

Carol Jean LoCicero and Deanna K. Shullman of Thomas and LoCicero, PL, on behalf of the Florida Media Organizations, Tampa, Florida; Carol M. Touhy and Laura E. Roth, on behalf of Diane M. Matousek, Clerk of the Circuit Court, Seventh Judicial Circuit, Deland, Florida; Beth C. Weitzner, Assistant Public Defender, Eleventh Judicial Circuit, Miami, Florida, and Robert Dewitt Trammell, General Counsel on behalf of The Florida Public Defender Association, Tallahassee, Florida; Barbara A. Petersen, President and Adria E. Harper, Director, on behalf of First Amendment Foundation, Tallahassee, Florida; ~~Matthew B. Pollack~~, on behalf of The Reporters Committee on Freedom of the Press, Arlington, Virginia; Fleur J. Lobree, Chair, H. Scott Fingerhut, Past Chair, Miami, Florida, and Thomas H. Bateman, III, Past Chair, Tallahassee, Florida, Criminal Procedure Rules Committee; Arthur I. Jacobs, General Counsel, Fernandina Beach, Florida and Penny H. Brill, Assistant State Attorney, Eleventh Judicial Circuit, Miami, Florida, on behalf of Florida Prosecuting Attorneys; John G. Crabtree, Chair, Miami, Florida, Steven L. Brannock, Past Chair, Holland, and Knight, Tampa, Florida, and John S. Mills, Past Chair, Jacksonville, Florida, on behalf of the Appellate Court Rules Committee; Irene G. Plank, Director of Court Services, Twelfth Judicial Circuit, Sarasota, Florida, on behalf of Karen E. Rushing, Clerk of Circuit Court and County Comptroller, Sarasota County; Mark Martinez, Chief, Family Court Division, Eleventh Judicial Circuit, Miami, Florida, on behalf of Harvey Ruvin, Clerk of Courts, Miami-Dade County; Stanford R. Solomon, Chair, Special Joint Committee on Rule 2.420, Tampa, Florida;

Responding with comments

"A"

# Supreme Court of Florida

\_\_\_\_\_  
No. SC09-159  
\_\_\_\_\_

## IN RE: AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE.

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[November 19, 2009]  
CORRECTED OPINION

PER CURIAM.

The Florida Criminal Procedure Rules Committee has filed with the Court its triennial report of regular-cycle proposed rule amendments in accordance with Florida Rule of Judicial Administration 2.140(b)(4). [REDACTED]

[REDACTED] § 2(a), Fla. Const.

### Background

The Committee proposes amendments to Florida Rules of Criminal Procedure 3.131 (Pretrial Release); 3.132 (Pretrial Detention); 3.190 (Pretrial Motions); 3.191 (Speedy Trial); 3.203 (Defendant's Mental Retardation as a Bar to Imposition of the Death Penalty); 3.210 (Incompetence to Proceed: Procedure for Raising the Issue); 3.211 (Competence to Proceed: Scope of Examination and

for proposing amendments to rule 3.984, because the Florida Clerks of Court Operations Corporation is responsible for developing the form and obtaining final approval from the Court. See § 27.52(1), Fla. Stat. (2009).

Subdivision (c) (Forms for Charges, Costs, and Fees) of rule 3.986 (Forms Related to Judgment and Sentence) is amended to correct statutory references and to remove obsolete statutory references.<sup>2</sup> Subdivision (d) of rule 3.986 (Form for Sentencing) of the rule is also amended and includes corrected statutory citations, with a qualifying parenthetical where applicable, e.g., "Offenses committed before January 1, 1994," and adds a section for including sexual offender/sexual predator determinations pursuant to chapter 2007-209, §§ 1-2, Laws of Florida.

We hereby adopt the amendments to the Florida Rules of Criminal Procedure as set forth in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The committee notes are offered for explanation only and are not adopted as an official part of the rules. All amendments set forth in the appendix shall become effective on January 1, 2010, at 12:01 a.m.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA,  
and PERRY, JJ., concur.

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2. The Court's modification of the Committee's proposal is limited to correcting a statutory citation.

" F "



HEARING OF A MOTION FOR REHEAR SHALL NOT AFFECT THE  
EFFECTIVE DATE OF THESE AGREEMENTS

Original Proceeding – Florida Rules of Criminal Procedure Committee

Fleur J. Lobree, Chair, Florida Criminal Procedure Rules Committee, Miami, Florida, and Judge Thomas H. Bateman, III, Past Chair, Second Judicial Circuit, Tallahassee, Florida; John F. Harkness, Jr., Executive Director and Jodi Jennings, Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioners

~~Nancy A. Daniels, Public Defender, and Glen P. Gifford, Assistant Public Defender, Second Judicial Circuit, Tallahassee, Florida, and John Eddy Morrison, Assistant Public Defender, Eleventh Judicial Circuit, Miami, Florida, on behalf of the Florida Public Defender Association, Inc.,~~

Responding with Comments

"A"

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR MANATEE, COUNTY, FLORIDA

HSBC BANK USA, as trustee for  
MANA 2007-AF1,  
Plaintiff,

v.

Case No. 41 2010 CA 002993

JEROME L. NORDQUIST, et al.,  
Defendant(s).

FINAL ORDER DISMISSING SUA SPONTE, DUE TO INCOMPLETELY  
VERIFIED COMPLAINT, ACTION TO FORECLOSE RESIDENTIAL  
MORTGAGE

Florida Rule of Civil Procedure 1.110(b) now requires that a complaint to foreclose a mortgage on residential property be verified. *In re Amendments to Fla. R. Civ. P.*, 2010 WL 455295, at \*1, \*4-5 (Fla. Feb. 11, 2010). In adopting this amendment, the supreme court summarized its purposes as follows:

The primary purposes of this amendment are (1) to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded "lost note" counts and inconsistent allegations; (3) to prevent the wasting of judicial resources and harm to defendants resulting from suits brought by plaintiffs not entitled to enforce the note; and (4) to give trial courts greater authority to sanction plaintiffs who make false allegations.

*Id.* at \*1. The clear import of the amendment itself, in light of the above purposes, is that all of the factual allegations in the complaint must be verified.

Upon review of the record, the Court has determined that Plaintiff's complaint is to foreclose a residential mortgage and that certain portions of it are not verified.

Although Plaintiff filed a "Verification" page regarding certain subject matters within the



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Orders (kjoyner)



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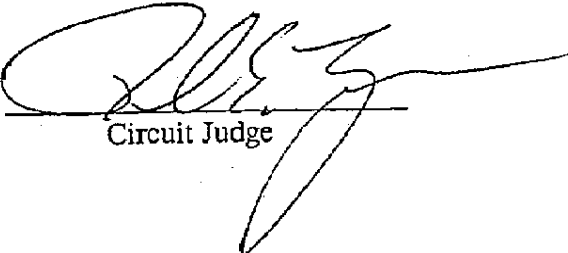
#6

complaint, the "Verification" leaves other subject matters unverified. Specifically, the "Verification" does not verify the allegations in paragraphs 2 (subject matter jurisdiction), 3 (execution and delivery of note and mortgage), 4 (recording of mortgage), 6 (property ownership), 10 (amounts owed), and 12 through 16 (other defendants).

**THEREFORE**, as a sanction for noncompliance, **IT IS ORDERED THAT:**

1. Plaintiff's action is **DISMISSED** with leave to file a new action. No other pleadings by Plaintiff will be permitted in this case. If Plaintiff elects to re-file to foreclose the same property, a new complaint and filing fee will be required.
2. Plaintiff may move for reconsideration, on the sole ground that the subject property is not residential, within ten days from the date of this order. A copy of the motion and any supporting memorandum shall be provided to the undersigned judge at the following address: 1051 Manatee Ave. West, Bradenton, FL 34205. The Court may rule on the motion without a hearing. Thus, no hearing shall be set on the motion for reconsideration unless approved by the Court through its Judicial Assistant.
3. To avoid dismissal of any future action to foreclose a residential mortgage, Plaintiff's counsel is also advised to confirm that its client's standing, via ownership of the note and mortgage, is evident from the face of the complaint's exhibits.

**DONE AND ORDERED** in Bradenton, Manatee County, Florida, this 10 day of May, 2010.

  
Circuit Judge

cc: Plaintiff's counsel  
Property owner or property owner's counsel

rev. 5/5/2010

"G"

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR MANATEE COUNTY, FLORIDA

HSBC BANK USA,

Plaintiff,

v.

Case No. 41 2010 CA 002993

JEROME L. NORDQUIST, et al.,

Defendant(s).

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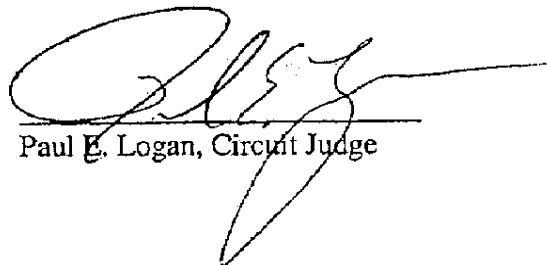
**ORDER GRANTING REHEARING AND VACATING FINAL ORDER SUA  
SPONTE DISMISSING ACTION**

THIS CAUSE comes before the Court on Plaintiff's motion for rehearing. The Court finds cause in this case to vacate its earlier order dismissing the action.

**THEREFORE, IT IS ORDERED THAT:**

1. The Plaintiff's motion for rehearing is **GRANTED**.
2. The Court's final order *sua sponte* dismissing the action is **VACATED**.

**DONE AND ORDERED** in Bradenton, Manatee County, Florida, this 18 day  
of June 2010.

  
Paul E. Logan, Circuit Judge

cc: Plaintiff's counsel  
HOA's counsel

rev. 6/10/2010

"G"