

SUPREME COURT OF FLORIDA

In re Amendments to Florida Rules of Appellate Procedure

1 So. 3d 166 (Fla. 2009) · No. SC08-2357 · Decided January 29, 2009

SUMMARY

The Supreme Court of Florida amended Florida Rules of Appellate Procedure 9.110 and 9.360 to conform to 2008 legislation concerning filing fees for cross-appeals, joinder notices, and certain intervenor motions. The amendments also clarified filing-copy requirements and the timing and manner of filing notices, and became effective immediately upon release of the opinion.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Quince, C.J.; Wells, J.; Pariente, J.; Lewis, J.; Canady, J.; Polston, J.; Anstead, Senior Justice
JURISDICTION	Florida
DECIDED	January 29, 2009
DOCKET	SC08-2357
DISPOSITION	other
PROCEDURAL POSTURE	The Florida Bar's Appellate Court Rules Committee filed an out-of-cycle report proposing amendments to the Florida Rules of Appellate Procedure to conform the rules to 2008 legislation. The Supreme Court of Florida reviewed the proposed amendments and adopted them.
PRECEDENTIAL VALUE	binding
PARTIES	The Florida Bar's Appellate Court Rules Committee

TOPICS

- appellate procedure
- appellate jurisdiction
- civil procedure
- joinder

PRACTICE AREAS

- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court of Florida should amend Florida Rules of Appellate Procedure 9.110 and 9.360 to conform to chapter 2008-111, Laws of Florida.
2. What procedural requirements should govern filing fees, copies, service, and filing deadlines for notices of appeal, cross-appeal, and joinder.

HOLDINGS

1. The Supreme Court of Florida adopted the proposed amendments to rules 9.110 and 9.360 to conform the appellate rules to the statutory changes enacted in chapter 2008-111, Laws of Florida.
2. Rule 9.110 was amended to require an original and one copy of a notice of appeal or cross-appeal, accompanied by any filing fees prescribed by law, and to clarify that a cross-appeal must be filed in the same manner as a notice of appeal.
3. Rule 9.360(a) was amended to require an original and one copy of a notice of joinder, accompanied by any filing fees prescribed by law, and to clarify the permissible filing deadlines for joinder in appellate and original proceedings.

KEY QUOTATIONS

“After considering the Committee's proposals and reviewing the relevant legislation, we amend the rules as proposed by the Committee.” (167)

“These amendments shall become effective immediately upon the release of this opinion.” (167)

FACTUAL BACKGROUND

The Florida Legislature enacted chapter 2008-111, Laws of Florida, effective July 1, 2008, requiring filing fees for cross-appeals and certain joinder notices or intervenor motions. The Florida Bar's Appellate Court Rules Committee submitted an out-of-cycle report proposing conforming amendments to rules 9.110 and 9.360. The Supreme Court reviewed the legislation and proposals and adopted amendments concerning filing fees, copies, service, and filing deadlines.

PROCEDURAL HISTORY

The Rules Committee proposed amendments to Florida Rules of Appellate Procedure 9.110 and 9.360 in response to chapter 2008-111, Laws of Florida. The Florida Bar's Board of Governors approved the proposals by a vote of thirty-nine to zero. The Supreme Court of Florida considered the proposals and relevant legislation, amended the rules as proposed, and made the amendments effective immediately, subject to a sixty-day period for public comments.

DISPOSITION

other

OPINION

PER CURIAM.

1 So.3d 166 (2009) In re AMENDMENTS TO FLORIDA RULES OF APPELLATE PROCEDURE. No. SC08-2357. Supreme Court of Florida. January 29, 2009. John Stewart Mills, Chair, Florida Appellate Court Rules Committee, Jacksonville, FL, John F. Harkness, Jr., Executive Director, and Krys Godwin, Staff Liaison, The Florida Bar, Tallahassee, FL, for Petitioner. PER CURIAM.

The Florida Bar's Appellate Court Rules Committee (Committee) has filed an out-of-cycle report proposing amendments to the Florida Rules of Appellate Procedure to conform the rules to 2008 legislation. We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.140(e).

The Committee proposes amendments to rules 9.110 (Appeal Proceedings to Review Final Orders of Lower Tribunals and Orders Granting New Trial in Jury and Non-Jury Cases), and 9.360 (Parties) in response to legislation requiring a filing fee for cross-appeals and certain joinder *167 notices or intervenor motions. See ch. 2008-111, §§ 1, 11, 13, Laws of Fla. (amending §§ 25.241, 34.041, 35.22, Fla. Stat.).

The legislation became effective July 1, 2008. See ch. 2008-111, § 48, Laws of Fla. The Board of Governors of The Florida Bar approved the proposals by a vote of thirty-nine to zero. After considering the Committee's proposals and reviewing the relevant legislation, we amend the rules as proposed by the Committee. Consistent with the recent statutory changes made by chapter 2008-111, Laws of Florida, rule 9.110(g), Cross Appeals, is amended to require that a notice of cross-appeal be accompanied by any filing fee prescribed by law and filed in the same manner as a notice of appeal.

Other amendments to rule 9.110 are intended to improve the clarity and uniformity of the procedures for filing notices of appeal and notices of cross-appeal. The reference to filing "2 copies" of a notice of appeal in subdivision (b) of the rule is replaced by "an original and 1 copy" to clarify the requirement.

The same language is used for notices of cross-appeal in subdivision (g). To account for potential future legislative changes, the phrase "accompanied by filing fees prescribed by law" in subdivision (b) is replaced by "accompanied by any filing fees prescribed by law."

The same language is used for notices of appeal in administrative actions in subdivision (c) and notices of cross-appeal in subdivision (g). Rule 9.360(a), Joinder, which currently is silent as to filing fees, is amended to mirror the requirements for notices of appeal and cross-appeal, including the filing fee requirement. Subdivision (a) is further amended to clarify the time for filing a notice of joinder in original proceedings.

Accordingly, we amend the Florida Rules of Appellate Procedure as reflected in the appendix to this opinion. New language is underscored, and deleted language is struck through. 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.[1] It is so ordered. QUINCE, C.J., WELLS, PARIENTE, LEWIS, CANADY, and POLSTON, JJ., and ANSTEAD, Senior Justice, concur. APPENDIX RULE 9.110. APPEAL PROCEEDINGS TO REVIEW FINAL ORDERS OF LOWER TRIBUNALS AND ORDERS GRANTING NEW TRIAL IN JURY AND NON-JURY CASES (a) [No Change] (b) Commencement.

Jurisdiction of the court under this rule shall be invoked by filing 2 copiesan original and 1 copy of a notice, accompanied by any filing fees prescribed by law, with the clerk of the lower *168 tribunal within 30 days of rendition of the order to be reviewed. (c) Exception; Administrative Action.

In an appeal to review final orders of lower administrative tribunals, the appellant shall file the original notice with the clerk of the lower administrative tribunal within 30 days of rendition of the order to be reviewed, and file a copy of the notice, accompanied by theany filing fees prescribed by law, with the clerk of the court. (d)-(f) [No Change] (g) Cross-Appeal.

An appellee may cross-appeal by serving a notice within 10 days of service of the appellant's timely filed notice of appeal or within the time prescribed in subdivision (b) of this rulefor filing a notice of appeal, whichever is later. No filing fee shall be required for a cross-appeal.

The original and 1 copy of the notice of cross-appeal, accompanied by any filing fees prescribed by law, shall be filed either before service or immediately thereafter in the same manner as the notice of appeal. (h)-(n) [No Change] Committee Notes [No Change] RULE 9.360. PARTIES (a) Joinder. A party to the cause in the lower tribunal who desires to join in a proceeding as a petitioner or appellant shall fileserve a notice to that effect no later than the latest of the following: (i) within 10 days of service of thea timely filed petition or notice of appeal; or (ii) within the time prescribed by rule 9.110(b), whichever is laterfor filing a notice of appeal; or (iii) within the time prescribed in rule 9.100(c).

The original and 1 copy of the notice of joinder, accompanied by any filing fees prescribed by law, shall be filed either before service or immediately thereafter in the same manner as the petition or notice of appeal. (b)-(c) [No Change] Committee Notes [No Change] NOTES [1] An original and nine paper copies of all comments must be filed with the Court on or before March 30, 2009, with a certificate of service verifying that a copy has been served on the committee chair, John S. Mills, 865 May Street, Jacksonville, Florida XXXXX-XXXX, 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 April 20, 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).

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