

SUPREME COURT OF FLORIDA

In re Amendments to Florida Rules of Appellate Procedure-Rule 9.141 & Rule 9.142

969 So. 2d 357 (Fla. 2007) · Decided November 15, 2007

SUMMARY

The Florida Supreme Court adopts amendments to Florida Rules of Appellate Procedure 9.141 and 9.142. The amendments revise the deadline for petitions alleging ineffective assistance of appellate counsel in noncapital cases and establish procedures for reviewing orders dismissing capital postconviction proceedings and discharging collateral counsel. The amendments took effect immediately upon release of the opinion.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; Lewis, C.J.; Wells, J.; Anstead, J.; Pariente, J.; Quince, J.; Cantero, J.; Bell, J.
JURISDICTION	Florida
DECIDED	November 15, 2007
DISPOSITION	approved
PROCEDURAL POSTURE	The Florida Appellate Court Rules Committee filed an out-of-cycle report proposing amendments to Florida Rules of Appellate Procedure 9.141 and 9.142. The Supreme Court of Florida reviewed and adopted the proposed amendments pursuant to its rulemaking jurisdiction.
PRECEDENTIAL VALUE	Published precedential rulemaking opinion

TOPICS

- appellate procedure
- post-conviction relief
- criminal procedure
- ineffective assistance

PRACTICE AREAS

- appellate procedure
- criminal procedure
- post-conviction relief

QUESTIONS PRESENTED

1. Whether Florida Rule of Appellate Procedure 9.141(c)(4)(B) should be amended so that the two-year period for filing a noncapital ineffective-assistance-of-appellate-counsel petition begins when both the

judgment and sentence become final on direct review.

2. Whether Florida Rule of Appellate Procedure 9.142 should be amended to establish an expedited procedure for Supreme Court review of capital postconviction orders dismissing proceedings and discharging collateral counsel.
3. Whether the proposed amendments should be adopted and made effective immediately.

HOLDINGS

1. The Court adopted an amendment to Florida Rule of Appellate Procedure 9.141(c)(4)(B) providing that, in noncapital cases, the two-year period for filing a petition alleging ineffective assistance of appellate counsel on direct review begins when the judgment and sentence become final on direct review, rather than when the conviction alone becomes final.
2. The Court adopted new Florida Rule of Appellate Procedure 9.142(c), establishing an expedited procedure for review of capital-case orders dismissing postconviction proceedings and discharging collateral counsel, including specified deadlines for notice, transcription, transmission of the record, and briefing.
3. The Court adopted the amendments to Florida Rules of Appellate Procedure 9.141 and 9.142 and made them effective immediately upon release of the opinion.

KEY QUOTATIONS

“The amendments shall become effective immediately upon release of this opinion.” (969 So. 2d at 359)

“The existing rule creates a problem when a conviction is affirmed but the matter is remanded for resentencing; the two-year period would begin to run while resentencing proceedings continued, giving rise to the possibility that the deadline for postconviction relief could run before resentencing is even completed.”
(969 So. 2d at 358)

FACTUAL BACKGROUND

The Florida Appellate Court Rules Committee submitted proposed amendments concerning postconviction and collateral criminal proceedings. One amendment addressed the problem that the filing period for ineffective-assistance-of-appellate-counsel petitions could begin before resentencing was complete. The other created an expedited Supreme Court review procedure for capital cases involving dismissal of postconviction proceedings and discharge of collateral counsel.

PROCEDURAL HISTORY

At the Court's request, the Committee proposed amendments addressing the filing deadline for petitions alleging ineffective assistance of appellate counsel in noncapital cases and a new review procedure for capital postconviction dismissal and counsel-discharge orders. The proposals were published in The Florida Bar News, and the Court adopted the amendments, making them effective immediately while allowing sixty days for post-adoption comments.

DISPOSITION

approved

CASES CITED

- In re Amendments to Fla. Rules of Crim. Pro. 3.851 & 3.590, 945 So. 2d 1124 (Fla. 2006)

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