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INSIDE:

Chair's Message –

By: Ceci Berman

C. BERMAN

In this issue of The Record, I want to address the Appellate Practice Section's long-range planning. In particular, I would like to focus on the Section's budgeted reserves and the Section's long-term goals for those reserves. Those of you who are long-serving Section members can remember a time when the Section did not have any extra money. Some of you might even recall a few years when the Section operated in the red. While the Section was never close to bankruptcy, our leadership during these lean years recognized the need to build up the Section's reserves by working hard and making tough decisions to ensure we could get back (and stay) in the black.

Since then, the Section has flourished financially. After much careful stewardship, our reserves now hover around $400,000. And that has prompted some discussion. On the one hand, there are many in the Section who would like to continue to grow the reserves. Those folks have good goals in mind and have suggested a variety of meaningful uses of the Section's resources down the road, not the least of which is assuring the Section's solvency for many years to come, even in the tough times. Some have also discussed growing the Section's money until we are able to make a meaningful splash: establishing an endowed scholarship, or making a large gift to pro bono appellate service, or doing something else altogether (yet equally deserving).

On the other hand, some members are of the opinion that we should spend the money now. Our Section has at its disposal the largest level of reserves in our history, and there are those who want to feel as though their dues are accomplishing something larger in the here and now. Perhaps there are greater benefits the Section can provide its members—even if that's just one more drink ticket at the dessert reception, or a gift to a worthy cause that needs help right now.

Your leadership has heard this debate. And, the Section is finally, and thankfully, at a point where it can comfortably discuss the options. Even among leadership, opinions are mixed: the result of being faced with a number of good options. So, in the coming months, Section leadership is hoping to send out a survey seeking input from you, the individual members, as to how *you* would like to see the Section handle its reserves. Do you have a minimum amount of money you think we should always have on hand? Do you have an idea for a long-term project, and, if so, what is it? Do you want to maintain the status quo for now, continuing to build our resources while knowing there is a little more freedom to fund smaller events and projects here and there? We want to hear from you.

Please be on the lookout for the survey and let your opinions be heard. This project will take some time, and might even roll into next year under Chris Carlyle's leadership. But please do know that your Section leadership is reevaluating its missions and goals, and we want our members to be a part of that process.

Changes to the Florida Rules of Appellate Procedure Effective January 1, 2015

By: David Knapp


D. KNAPP

Winston Churchill once said: "To improve is to change; to be perfect is to change often."[1] The Florida Rules of Appellate Procedure may not be perfect, but as part of the regular three-year rule cycle, a number of them will be changing effective January 1, 2015.[2]

The Florida Supreme Court issued an opinion on November 6, 2014, in which it adopted a number of new amendments to the appellate rules that took effect January 1st.[3] Five of the amendments warranted a specific discussion by the Florida Supreme Court, while the remaining changes were "for the most part, either technical corrections, clarifications, or reorganizations, or [] necessary to conform language to current terminology or amended provisions in other rules..."[4] This article presents an overview of the five amendments specifically addressed by the Florida Supreme Court – amendments to 9.020(i) & 9.110(l), 9.147 & 9.110(n), 9.100(h), 9.100(k), and 9.420. Additionally, this article discusses several changes to Rule 9.130 that were not specifically addressed in the Court's November 6, 2014 opinion, as well as two out-of-cycle additions to Rule 9.130 that were adopted by the Florida Supreme Court in a subsequent opinion dated November 13, 2014.[5] For a complete discussion of all the amendments and changes to the Florida Rules of Appellate Procedure, practitioners should review the Florida Supreme Court's opinions at *In re: Amendments to the Florida Rules of Appellate Procedure,* 39 Fla. L. Weekly S665 (Fla. Nov. 6, 2014), and *In re: Amendments to Florida Rule of Appellate Procedure,* 39 Fla. L. Weekly S675 (Fla. Nov. 13, 2014), which both include appendices outlining the specific changes to each affected appellate rule and form. Practitioners may also want to review the *Three-Year Cycle Report of the Appellate Court Rules Committee* that can be downloaded at http://www.floridasupremecourt.org/clerk/comments/2014/14-227_020314_Petition.pdf.

1. Rule 9.020(i) & 9.110(l): Rendition and Premature Appeals

The amendments to Rule 9.020(i), Rendition, and 9.110(l), Premature Appeals, work together to reduce the difficulties associated with a prematurely-filed notice of appeal. Currently, Rule 9.020(i) indicates that the filing of a notice of appeal results in the abandonment of any authorized and timely motions for: new trial; rehearing; certification; to alter or amend; for judgment in accordance with prior motion for directed verdict; for arrest of judgment; to challenge the verdict; to correct a sentence or order of probation pursuant to 3.800(b)(1); to withdraw a plea after sentencing per 3.170(l); or to vacate an order based upon the recommendations of a hearing officer pursuant to 12.491. Once the new amendment takes effect, the filing of a premature notice of appeal in any of these situations will no longer result in abandonment. Instead, a final order shall not be deemed rendered until the last of any such motion has been disposed of per the filing of a signed, written order, and the appeal "shall" be held in abeyance until a signed, written final order has been filed.

Similarly, Rule 9.110(l) addresses situations other than those specifically covered by amended Rule 9.020(i), in which a notice of appeal has been prematurely filed before the entry of a final order. In its current form, Rule 9.110(l) states that such an appeal "shall" be subject to dismissal, although the appellate court can review the matter if a final order is rendered before the dismissal occurs. The Appellate Court Rules Committee noted that "the decisions from the district courts of appeal are unclear on the question of whether a relinquishment of jurisdiction is necessary for the effective rendition of a final order when a notice of ap-

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Harmless Error Redefined

By: Ezequiel Lugo


E. LUGO

The harmless error standard applicable to civil cases has changed. Late last year, the Florida Supreme Court held that an error is harmless if "the error complained of did not contribute to the verdict" or "there is no reasonable possibility that the error complained of contributed to the verdict." *Special v. W. Boca Med. Ctr.*, No. SC11-2511, 2014 WL 5856384, at *1 (Fla. Nov. 13, 2014). This new test is a modified version of the standard from *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986), that applies in criminal cases.

The *Special* test places the burden of proving harmless error on the beneficiary of an error. It also places an obligation on the appellate court to examine the entire record and to focus on the effect of an error on the fact-finder. The court cannot focus solely on the outcome of a case to decide whether an error is harmless. An error is harmful unless the beneficiary of the error proves there is no reasonable possibility the error contributed to the verdict. The harmless error analysis from *Special* is concerned with the process of arriving at a result and is not limited to the result itself.

The *Special* test supersedes the earlier harmless error standard in civil cases that applied in the Second District. The Second District Court of Appeal had formulated a test that focused only on the result: an error required reversal only if it was "reasonably probable that a result more favorable to the appellant would have been reached if the error had not been committed." *Damico v. Lundberg*, 379 So. 2d 964, 965 (Fla. 2d DCA 1979). The *Damico* standard differs from the *Special* test in two ways: (1) *Damico* focused on the effect of an error on the result regardless of any effect on the fact-finder and (2) a reversal under *Damico* required a "reasonable probability" instead of the mere "reasonable possibility" from *Special*.

At first blush, the *Special* test may increase the number of reversals. Appellate courts will now reverse when an error affects the fact-finder, even if the error had no impact on the result. And appellees will have to meet the "reasonable possibility" standard derived from *DiGuilio*, which is based on the higher burden of proof in criminal cases and reflects "the strictest formulation of the harmless error test." *Special*, 2014 WL 5856384, at *16 (Pariente, J., concurring in part and dissenting in part). A case will now be reversed if there is any "reasonable possibility" that the error contributed to the verdict. *E.g., Landmark Am. Ins. Co. v. Pinson Corp.*, Nos. 4D12-3997 & 4D12-4002, 2015 WL 71849 (Fla. 4th DCA Jan. 7, 2015) (applying the *Special* standard to reverse a jury verdict)

Further, *Special* may have an impact on motions for new trial. A trial judge ruling on such a motion effectively acts as an appellate judge, immediately correcting a prejudicial error. *Krolick v. Monroe ex rel. Monroe*, 909 So. 2d 910, 914 (Fla. 2d DCA 2005). Therefore, if *Special* makes it easier to show prejudicial error, then trial courts may also be more likely to grant motions for new trial.

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Unexpected Time Commitments:
Complying with Florida's Electronic Filing-and-Serving Protocol When Submitting Large Documents

By: Jay A. Yagoda & Brigid F. Cech Samole

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While most appellate practitioners are aware of Florida's mandatory electronic filing ("e-filing") and service ("e-service") procedures, there are important differences between the two e-filing applications used by the appellate courts. By understanding these differences and investing a little more time upfront, practitioners can save substantial time and resources in the long run.

In 2012, the Florida Supreme Court issued two highly anticipated opinions adopting recommendations to implement mandatory e-filing and e-service procedures in Florida.[1] Intended to provide practitioners with access to "a fully electronic court system" with "increase[d] efficiency," the new and amended Florida Rules of Judicial Administration – which became mandatory on staggered dates throughout 2012 and 2013 –require attorneys, with limited exceptions, to file case-related documents with the trial and appellate courts by electronic means, as well as to serve those documents on other parties by e-mail.[2] These rules of court certainly are deserving of great praise for allowing the Florida courts and practitioners to efficiently operate "in an electronic environment."[3] Nevertheless, appellate practitioners – who frequently are tasked with e-filing and e-serving voluminous record-based materials – must sometimes undertake the process of e-filing documents with the appellate court in one file size, and then e-serving those same documents on other parties in smaller, broken down file sizes, to properly comply with the differing file-size restrictions imposed by the rules and the appellate courts. And oftentimes, this electronic file-and-serve protocol can become a cumbersome and time-consuming process that appellate practitioners should, but often do not, take into account.

In their current forms, Florida Rules of Judicial Administration 2.516(b)(1)(E)(iv) and 2.525(d)(5) set forth differing maximum file-size requirements for e-serving and e-filing documents, respectively. Rule 2.516(b)(1)(E)(iv), a provision of the e-service rule, is mandatory and states that "[a]ny e-mail which, together with its attached documents, exceeds five megabytes (5MB) in size, must be divided and sent as separate e-mails, no one of which may exceed 5MB in size and each of which must be sequentially numbered in the subject line." Rule 2.525(d)(5), a provision of the e-filing rule, on the other hand, is permissive in nature and actually reads as an exception to the e-filing requirement. That rule provides that "when the filing involves documents in excess of 25 megabytes (25MB) in size," those "documents may be transmitted using an electronic storage medium that the clerk has the ability to accept, which may include a CD-ROM, flash drive, or similar storage media." When read together, the e-service and e-filing rules have the potential to create additional, and perhaps unintentional, burdens on attorneys: e-filing case-related documents that have large file sizes, only to be met with the requirement of breaking down those large files into separate 5MB increments and then e-serving each of those broken down pieces upon the parties in multiple e-mails, requiring the e-mail recipient to, in turn, put those pieces back together to make that file whole again.

How does this happen? To begin with, as of January 2015, Florida's appellate courts currently use two different web-based, e-filing applications – the ePortal and the eDCA – depending upon the court before which one is practicing (although at least one article has indicated that all Florida appellate courts are expected to begin accepting filings through the ePortal in the future).[4] The ePortal services the Florida Supreme Court and the Second District Court of Appeal, and the eDCA services the remaining appellate courts: the First, Third, Fourth, and Fifth District Courts of Appeal. Both e-filing applications are built to accept submissions that are 25MB or larger.

In terms of document file size, the eDCA has a slight advantage over the ePortal. Except for the Third District's current eDCA application, which limits uploads to 25MB per submission, every court using the eDCA has no document-size restriction per submission. The ePortal, by contrast, is similar to the Third District's eDCA, in that it limits the aggregate size of document uploads to 25MB per submission.

Practically speaking, practitioners who wish to file something such as an appendix that exceeds 25MB could file the document as one file in the First, Fourth, and Fifth District Courts of Appeal, but would have to take the extra step of separating that large document

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into multiple document submissions, each at or under 25MB, when e-filing it in the Florida Supreme Court and the Second and Third District Courts of Appeal. Although, in this latter scenario, Florida Rule of Administration 2.525(d)(5) does provide attorneys with the alternative of transmitting documents that exceed 25MB to the court "using an electronic storage medium that the clerk has the ability to accept," such as "a CD-ROM, flash drive, or similar storage medium," in the authors' experience, most attorneys choose instead to go through the time-consuming process of filing large documents via multiple submissions – unless the appellate proceeding (non-final appeals, petitions for writs of certiorari, and the like) involves a large record that a litigant must file directly with the appellate court.

Yet, even when it comes to multiple submissions of large documents, e-filing with the ePortal does have a major, time-saving benefit over e-filing with the eDCA: automated e-service. In contrast to the eDCA, which is not currently responsible for serving e-filed documents upon the parties to a case, the ePortal will undertake the task of e-serving documents uploaded to its database. And the ePortal application does not stop there: it also automatically breaks down documents into 5MB-per-e-mail increments in order to comply with Rule 2.516. Indeed, Rule 2.516(b)(1) expressly recognizes that practitioners can rely on the ePortal's automated e-service system as a process that constitutes service under the Rule's e-mail service requirement.

The eDCA, however, has no such automation and cannot be used as a substitute for service. In other words, once a document is e-filed with the eDCA, practitioners must themselves undertake the process of breaking down a large document into 5MB increments and then e-serving that document upon the parties one e-mail at a time, in order to comply with Rule 2.516's e-service requirements. The only alternative to this cumbersome method of e-service is for the attorney to stipulate with the other party or parties that another form of service, outside of e-mail, is suitable.[5] Alternative forms of service may include delivery upon the parties of an electronic storage medium, like a CD-ROM or flash drive. But keep in mind that employing alternative methods of service, too, can be a time-consuming process.

Until the time comes when all of Florida's appellate courts accept filings through the ePortal, the lesson to learn is that appellate practitioners should make sure they understand the important differences between the ePortal and the eDCA *before* they choose to e-file, and then e-serve, large documents that ultimately will require a breakdown in order to comply with the Florida Rules of Judicial Administration. Nevertheless, whether e-filing through the ePortal or the eDCA, it would be wise to build extra time into the preparation process that provides peace of mind when breaking down large documents one plans to e-file and later e-serve. And this is particularly relevant now more than ever, as the Florida Supreme Court recently has amended the Florida Rules of Judicial Administration to require that all electronic files "be filed in a format capable of being electronically searched,"[6] adding another layer of time commitment to the e-filing process. Practitioners should also consult the appellate courts' local rules and administrative orders for further guidance. Those who do will benefit from greater efficiency and effectiveness.

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Endnotes

1. *In re Amends. to Fla. R. Jud. Admin., Fla. R. Civ. P., Fla. R. of Crim. P., Fla. Prob. R., Fla. R. Traff. Ct., Fla. Sm. Cl. R., Fla. R. Juv. P., Fla. R. App. P., Fla. Fam. L. R. P.*— E-Mail Serv. R., 102 So. 3d 505 (Fla. 2012); *In re Amends. to Fla. R. Civ. P., Fla. R. Jud. Admin., Fla. R. of Crim. P., Fla. Prob. R., Fla. Sm. Cl. R., Fla. R. Juv. P., Fla. R. App. P., & Fla. Fam. L. R. P.—Elec. Filing* (E-Filing Amends.), 102 So. 3d 451 (Fla. 2012).
2. E-Filing Amends., 102 So. 3d at 452-54.
3. *Id.* at 452.
4. Gary Blenkenship, *E-filing software updates to address uniformity concerns*, Fla. Bar News, Oct. 15, 2014.
5. Fla. R. Jud. Amin. 2.516(b)(1).
6. *See In re Amends. to Fla. R. Jud. Admin. 2.520*, No. SC14-721, 2014 WL 6675417, at *1 (Fla. Nov. 26, 2014). This amendment went into effect on January 1, 2015. Id.
7. Much of the information conveyed here was obtained from the clerks of the various appellate courts.

Chart on E-Filing Procedures[7]

Court	ePortal	eDCA	e-Filing Restrictions	Automated e-Service
Florida Supreme Court	Yes	No	25MB per submission	Yes
First District Court of Appeal	No	Yes	None	No
Second District Court of Appeal	Yes	No	50MB per submission	Yes
Third District Court of Appeal	No	Yes	25MB per submission	No
Fourth District Court of Appeal	No	Yes	None	No
Fifth District Court of Appeal	No	Yes	None	No

peal has been filed prematurely."[6] The amended Rule resolves this uncertainty and clarifies that the lower tribunal retains jurisdiction to enter a final order, even if a notice of appeal was filed prematurely. The amended Rule also specifies that the appellate court "may" grant the parties additional time to obtain a final judgment from the lower tribunal, so that the appeal may proceed.

2. New Rule 9.147 & Rule 9.110(n): Appeal Proceedings to Review Final Orders Dismissing Petitions for Judicial Waiver of Parental Notice of Termination of Pregnancy

New Rule 9.147 is simply a renumbering and reorganization of existing Rule 9.110(n). Essentially, Rule 9.110(n) becomes its own separate rule. Additionally, Rule 9.147 sections (d) and (g) clarify that certified copies of certificates, which the clerk may issue in instances governed by the rule, shall be provided to appellants "without charge."

3. Rule 9.100(h): Orders to Show Cause

Rule 9.100(h) governs orders to show cause in appeals that constitute original proceedings. The current rule indicates that, if the court issues an order to show cause in a prohibition proceeding, the order "shall stay proceedings in the lower tribunal." The Appellate Court Rules Committee expressed concern that appellate courts were, at times, avoiding the automatic stay provision in prohibition proceedings by requiring a "response" instead of issuing an order to show cause. To address this concern, the committee suggested that Rule 9.100(h) be amended to either: (1) provide that the only way an appellate court can request a response to a writ petition is by issuing an order to show cause; or (2) specifically acknowledge that appellate courts have the discretion to either issue an order to show cause (that will stay the underlying proceedings in prohibition cases) or request a response (that will not create a stay). The Florida Supreme Court adopted the latter option, which it stated "would make explicit that which up to now has been the unwritten but well understood effect of the language of subdivision (h)."[7]

4. Rule 9.110(k): Review of Partial Final Judgments

Rule 9.110(k) was added to Florida's Rules of Appellate Procedure in 1984 to specifically address a pitfall created by the Florida Supreme Court's decisions in *Mendez v. West Flagler Family Ass'n, Inc.*, 303 So. 2d 1 (Fla. 1974), and *S.L.T. Warehouse Co. v. Webb*, 304 So. 2d 97 (Fla. 1974).[8] This pitfall is known to appellate practitioners as the "*Mendez* Trap." The *Mendez* trap generally involves whether a partial final judgment qualifies as a non-final order that can be appealed either immediately or at the end of the case, or a final judgment that must be appealed within 30 days of rendition. A full discussion of the *Mendez* trap is beyond the scope of this article. However, a clear and detailed outline of the issue can be found in the Stetson Law Review article - Direct Appeal Jurisdiction of Florida's District Court of Appeal.[9]

Although Rule 9.110(k) was intended to resolve the issue of when a partial final judgment becomes appealable, the term "partial final" is not defined anywhere in the current Rule. Therefore, to clarify this issue, the Appellate Court Rules Committee proposed amending Rule 9.110(k) "to more clearly define a final partial judgment as one involving claims unrelated to still-pending claims."[10] The Florida Supreme Court declined to adopt the Committee's proposed language, and instead inserted its own language defining a partial final judgment as follows: "A partial final judgment, other than one that disposes of an entire case as to any party, is one that disposes of a separate and distinct cause of action that is not interdependent with other pleaded claims."

5. Rule 9.420(a)(2): Inmate Filing

As currently written, Rule 9.420(a)(2) indicates that a document is "presumed" to be timely filed by a pro se inmate "if it contains a certificate of service certifying that the inmate placed the document in the hands of an institution official for mailing on a particular date, and if the document would have been timely filed had it been received and file-stamped by the court on that date." Since this rule was implemented, the Department of Corrections has created an inmate mailing system, complete with date stamp capabilities.[11] Therefore, the Appellate Court Rules Committee recommended changes to the rule providing that, if an institution has a legal mail system that records the date a document is placed in the hands of an institution official for mailing and the inmate uses that system, the date of filing will be presumed to be the date recorded by the system. If the institution does not have a legal mail system, or does not have a system that records the date, then the current presumption based on the inmate's certificate of service remains applicable. The Florida Supreme Court agreed with the committee's recommendations, and adopted them "as proposed."

Additionally, Rule 9.420 section (a)(1), was amended to indicate that filing may be accomplished by conforming with the requirements of Florida Rule of Judicial Administration 2.525 – Electronic Filing. Previously, 9.420(a)(1) referred to Florida Rule of Judicial Administration 2.516.

6. Rule 9.130: Proceedings to Review Non-Final Orders and Specified Final Orders

a. Rule 9.130(a)(3)(C)(iii)(a), (b) & (c): Family Law Matters

In family law matters, Rule 9.130(a)(3)(C)(iii) has been expanded and divided into three subsections – (a), (b) and (c). Previously, Rule 9.130(a)(3)(C)(iii) did not have any subsections, and simply allowed for the immediate appeal of non-final orders that determined "the right to immediate monetary relief or child custody in family law matters." As amended, the rule now consists of three subsections that provide for the immediate appeal of non-final orders that determine:

(a) the right to immediate monetary relief; (b) the rights or obligations of a party regarding child custody or time-sharing under a parenting plan; or (c) that a marital agreement is invalid in its entirety.

b. Rule 9.130(a)(4): Non-final Orders Entered After Final Order

The purpose behind the changes to Rule 9.130(a)(4) is described succinctly in the Committee Notes that follow the rule. The Committee Notes state:

> **2014 Amendment.** Subdivision (a)(4) has been amended to clarify that an order disposing of a motion that suspends rendition is reviewable, but only in conjunction with, and as a part of, the review of the final order. Additionally, the following sentence has been deleted from subdivision (a)(4): "Other non-final orders entered after final order on authorized motions are reviewable by the method prescribed by this rule." Its deletion clarifies that non-final orders entered after a final order are no more or less reviewable than the same type of order would be if issued before a final order. Non-final orders entered after a final order remain reviewable as part of a subsequent final order or as otherwise provided by statute or court rule. This amendment resolves conflict over the language being stricken and the different approaches to review during post-decretal proceedings that has resulted. *See, e.g., Tubero v. Ellis,* 469 So. 2d 206 (Fla. 4th DCA 1985) (Hurley, J., dissenting). This amendment also cures the mistaken reference in the original 1977 committee note to "orders granting motions to vacate default" as examples of non-final orders intended for review under the stricken sentence. An order vacating a default is generally not reviewable absent a final default judgment. *See, e.g., Howard v. McAuley,* 436 So. 2d 392 (Fla. 2d DCA 1983). Orders vacating final default judgments remain reviewable under rule 9.130(a)(5). Essentially, this amendment will delay some courts' review of some non-final orders entered after a final order until rendition of another, subsequent final order. But the amendment is not intended to alter the Court's ultimate authority to review any order.[12]

c. Rule 9.130(g): Cross-Appeal

Rule 9.130, prior to being amended, did not expressly authorize cross-appeals. As amended, subdivision (g) now includes specific language providing for the cross-appeal of matters brought under this rule. Additionally, a new form entitled "Notice of Cross-Appeal of Non-Final Order" has been added to Rule 9.900 as subdivision (c)(2).

d. Rule 9.130(a)(3)(C)(x) & (xi): Non-final Orders that Determine Immunity as a Matter of Law

Pursuant to a request made by the Florida Supreme Court in *Keck v. Eminisor,* 104 So. 3d 359, 369 & 370 (Fla. 2012), The Appellate Court Rules Committee submitted an out-of-cycle report proposing two new types of non-final orders that can now be immediately appealed pursuant to Rule 9.130.[13] New subdivision (a)(3)(C)(x) permits the immediate appeal of a non-final order which determines "that, as a matter of law, a party is not entitled to immunity under section 768.28(9), Florida Statutes."[14] Similarly, subdivision (a)(3)(C)(xi) authorizes the immediate appeal of a non-final order determining "that, as a matter of law, a party is not entitled to sovereign immunity."[15] These two out-of-cycle amendments, like the three-year cycle amendments, take effect on January 1, 2015.[16]

Conclusion

There is nothing permanent except change.[17] As a result, practitioners should familiarize themselves with the most recent changes to the Florida Rules of Appellate Procedure that took effect on January 1, 2015. While this article attempts to discuss the most significant recent rule changes and amendments, to be fully informed practitioners should review all of the amendments discussed by the Florida Supreme Court in *In re: Amendments to the Florida Rules of Appellate Procedure,* 39 Fla. L. Weekly S665 (Fla. Nov. 6, 2014), and *In re: Amendments to Florida Rule of Appellate Procedure,* 39 Fla. L. Weekly S675 (Fla. Nov. 13, 2014). Only by keeping abreast of all rule changes can appellate practitioners be completely prepared to fully serve their clients.

David C. Knapp is a partner at James A. Coleman, P.A., in Orlando, Florida, where his practice focuses primarily on appeals, insurance defense and pharmacy defense. He is a member of the Florida Bar Appellate Section's Outreach Committee, and a charter member of the Orange County Bar Association's Appellate Practice Committee. He received both his B.S.B.A. with High Honors, and his J.D. from the University of Florida.

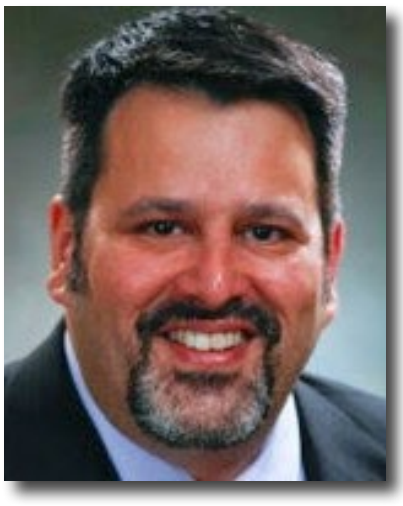
Endnotes

1. Rosenberg, Jennifer. "Winston Churchill Quotes: Sample His Wit and Wisdom." *About.com*. N.p., n.d. Web. 01 Dec. 2014.
2. *In re: Amendments to the Florida Rules of Appellate Procedure,* 39 Fla. L. Weekly S665 at *9 (Fla. Nov. 6, 2014).
3. *Id.*
4. *Id.*
5. *In re: Amendments to Florida Rule of Appellate Procedure,* 39 Fla. L. Weekly S675 (Fla. Nov. 13, 2014).
6. Three-Year Cycle Report of the Apellate Court Rules Committee, received 2/3/2014.
7. *In re: Amendments to the Florida Rules of Appellate Procedure,* 39 Fla. L. Weekly S665 at *6.
8. Vance & Piccard, *Direct Appeal Jurisdiction of Florida's District Court of Appeal,* 33 Stetson L. Rev. 154, 158-160 (2003).
9. *Id.* at 157-160.
10. Three-Year Cycle Report of The Appellate Court Rules Committee, received 2/3/2014, at page 4.
11. *Id.* at p. 18.
12. *In re: Amendments to the Florida Rules of Appellate Procedure,* 39 Fla. L. Weekly at *20-*21.
13. *In re: Amendments to Florida Rule of Appellate Procedure,* 39 Fla. L. Weekly S675 at *1-2.
14. *Id.* at *3-4.
15. *Id.*
16. *Id.* at *3.
17. "Change Quotes – There Is Nothing Permanent except Change. Heraclitus."*Very Best Quotes*. N.p., 29 Aug. 2012. Web. 01 Dec. 2014.

John A. Tomasino
Clerk of the Court, Florida Supreme Court

By: Kristen M. Fiore and Ryan D. O'Connor

John A. Tomasino was sworn in as the Florida Supreme Court's 21st Clerk of Court on November 4, 2013. Mr. Tomasino was born and raised in Tampa, where he completed his undergraduate studies at the University of South Florida. He then attended the Florida State University College of Law in Tallahassee, where he has resided ever since.



While in law school, Mr. Tomasino interned with Legal Services of North Florida and in the felony division of the Second Judicial Circuit's Public Defender's Office ("PD") in Gadsden County. He continued volunteering with the PD's office after his internship ended, and began his legal career there after taking the Florida Bar Exam. As a new lawyer, Mr. Tomasino was assigned to the juvenile, misdemeanor, and traffic divisions for Gadsden County, and all of the PD divisions for Liberty County.

Mr. Tomasino worked in this position for nine months before he made the "very difficult decision to leave a job [he] loved" to work as an attorney with the Capital Collateral Representatives ("CCR") in the Northern Region. In a position he found "very difficult but very rewarding," Mr. Tomasino represented Florida death row inmates in collateral post-conviction proceedings. It was during his time with CCR that he first became interested in the intersection of technology and the law. This interest led to Mr. Tomasino's selection as Technology Director for CCR. He held this position in the late 1990's "when everyone was worried about Y2K." In addition to implementing numerous technology advancements for CCR, he oversaw the upgrade of the network, servers, and computers to ensure Y2K compliance. He noted, "one good thing to come from Y2K was that the Legislature provided CCR funding to update its computer system." "Before this, they had one computer with a dial-up internet connection to do legal research."

Mr. Tomasino drew on his technology management experience at CCR when he rejoined the PD's office for the Second Judicial Circuit as Technology Director in 2001, a position he held for seven years. Just as he did during his time with CCR, he implemented countless technological advancements at the PD, not the least of which was designing and implementing over 30 Polycom conferencing stations throughout the circuit which enabled all PD staff to conduct secure, confidential videoconferencing with their clients in six county jails and the juvenile detention center. While serving as Technology Director, Mr. Tomasino also handled daily first appearances for the PD's office and assisted in various divisions on an as-needed basis.

In July 2008, Mr. Tomasino was promoted to Administrative Director for the PD, a position that allowed him to utilize his management experience in a much broader role while still maintaining involvement with the rapid technological advancements impacting the practice of law. He also continued to assist in representing clients during this time.

Although he never imagined he would become a clerk of court one day, he became intrigued about the position when he got to know his predecessor, Tom Hall, through their mutual involvement in various committees. Because of Mr. Tomasino's longstanding interest in technology and managing different systems in the past, the Clerk position, which is on the forefront of electronic filing and recordkeeping, seemed like a perfect fit.

Mr. Tomasino has now been the Florida Supreme Court's Clerk for more than a year. He greatly enjoys working with the seven different justices and all of the court staff. He notes he is "still learning" and addressing the multiple challenges of the position. These challenges include making the transition to electronic filing and recordkeeping, continuing to develop the Court's internal appellate case management system, and ensuring more consistency statewide. For example, he noted the unique challenge of simultaneously dealing with two different filing systems currently in use in the state (eDCA and ePortal).

Mr. Tomasino believes his prior experience prepared him well for his role as Clerk. He is still responsible for "putting out fires," but the fires are now different in nature. While his career had pre-

viously been focused on assisting indigent clients and marshalling technology to provide more efficient services, the transition to Clerk has built on that foundation. He is now in a position to assist the Court, the parties, and the general public, and aspires to have a positive impact on Florida's entire court system.

When asked what an aspiring court clerk can do to prepare themselves for the position, Mr. Tomasino stated he believes the most beneficial preparation is to "get involved" with other members of the court system and legal community and place oneself in a geographical location where this type of work is possible. He also noted it was useful to have a basic interest and background in the type of work court clerks do. Finally, he stressed the importance of maintaining a good working relationship with the people working in the court system.

In his free time, Mr. Tomasino enjoys spending time with his wife and two dogs. He is also an avid reader who enjoys science fiction, historical fiction, and many other types of books.

Mr. Tomasino is optimistic about the future of Florida's court system. After reflecting on his time as Clerk, Mr. Tomasino stated he believes accepting the Clerk's position "was the best decision in the world."

The Honorable F. Rand Wallis

By: Christopher Carlyle

Judge F. Rand Wallis joined the Fifth District Court of Appeal on June 5, 2013, after serving as a judge for five years in the Circuit Court for the Ninth Judicial Circuit. Judge Wallis has strong ties to Central Florida as a fourth-generation Central Floridian. He practiced law for seventeen years in Orlando, first as an assistant state attorney before practicing products-liability defense. His ties to the legal community reach farther back than his own career. Judge Wallis said that as a child, "I always knew I wanted to be a lawyer, and my dream was to become a judge." He was inspired by his uncle, long-time Orange County Circuit Judge Frederick "Fritz" Pfeiffer. Back when Judge Wallis was just "Rand," he spent many weekend hours with his uncle at the courthouse.

Judge Wallis' interest in law continued while he attended Winter Park High School. He worked as a runner for Mateer Harbert & Bates and Dean Mead during summers and Christmas breaks. Judge Wallis remembers his work with these two firms helping him see the reality of the daily practice of law through the eyes of two highly respected law offices. Focused on becoming a lawyer, Judge Wallis attended Furman University, where he majored in political science. During his junior year, he interned with the Department of Justice in Washington, D.C.

After graduation in 1989, Judge Wallis began law school at Stetson University. There, litigation piqued his interest, and he never looked back. After law school, he worked in Sanford as an assistant state attorney for over two-and-a-half years. During this time, Judge Wallis had his most important introduction to date—a blind date with Allison Pope, his future wife.

In 1995, Judge Wallis married and left the state attorney's office to begin working in civil litigation. He worked at two firms, Cameron Marriott Walsh Hodges & D'Assaro, P.A., practicing insurance defense, and then Cabaniss & Burke, P.A., where he worked primarily in products-liability defense. At Cabaniss, Judge Wallis made partner in 2001. He traveled the country, litigating in almost every contiguous state. Of his multi-month trials, Judge Wallis' longest occurred in California and took four months to complete. Judge Wallis will always remember his experience at Cabaniss as providing him with the opportunity of working alongside Ron Cabaniss and the other gifted partners while litigating complex cases in different jurisdictions across the United States.

In 2008, Judge Wallis left private practice to realize his long-time judicial dream. Upon the encouragement and advice of his

long-term friend, Third District Court of Appeal Judge Rick Suarez, Judge Wallis submitted his name to be considered for an available Circuit Court appointment. Governor Charlie Crist appointed Judge Wallis to the Circuit Court, for the Ninth Judicial Circuit, where he presided over a criminal docket during his first four years.

In 2010, Judge Wallis faced an opponent in his bid for reelection, but 84% of the voters decided Judge Wallis should remain in his seat. After four years of presiding over criminal cases, Judge Wallis took over a civil docket for a year and a half.

In 2012, Judge Wallis submitted his name for appointment to Florida's Fifth District Court of Appeal. In spring of the following year, Governor Rick Scott appointed Judge Wallis. When asked what he enjoys most about the Fifth DCA, Judge Wallis commented that he enjoys the collegiality among the judges. He noted that "the other judges on the court gladly and willingly offer advice and make a new appellate judge feel very welcome." Judge Wallis also expressed his appreciation for the complexity of the cases. "It is important work, and I think all the judges strive greatly to reach the right result," he said. Since his appointment, Judge Wallis has served on the Education Committee of the District Court of Appeal Conference and the Florida Supreme Court Committee on Standard Jury Instructions in Criminal Cases.

Judge Wallis and Allison are blessed with five wonderful children from the ages of five to fifteen. They are actively involved with Grace Church in Orlando. Judge Wallis is active in the community, volunteering his time as a guest speaker for students at all grade levels, a volunteer coach in youth baseball and basketball, and as a member of the board for the Maitland Little League.