HOLIDAY GIFTS FROM THE HIGH COURT

Important amendments to the Florida rules of appellate procedure

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Just before the winter holidays, the Florida Supreme Court adopted numerous amendments to the appellate rules. *In re Amendments to Florida Rules of Appellate Procedure*, No. SC14-227, 39 Fla. L. Weekly S665, 2014 WL 5714099 (Fla. Nov. 6, 2014). These amendments became effective on January 1, 2015. *Id.* at *3. Most are simply cosmetic. But several are noteworthy.

The most significant change concerns the interplay between moving to rehear a trial court's order and appealing it. Before the amendment, a notice of appeal would automatically cut off any pending motions for rehearing. *In re Forfeiture of $104,591 in U.S. Currency*, 589 So. 2d 283, 285 (Fla. 1991). The notice of appeal divested the trial court of jurisdiction and the motion for rehearing was deemed abandoned. *Id*. The Court eliminated this harsh rule by amending Florida Rule of Appellate Procedure 9.020(i)(3). *In re Amendments*, 2014 WL 5714099, at *2, *4. Now, if you simultaneously move for rehearing and appeal the trial court's order—maybe because you're unsure whether the order is final—then the appellate court will hold the appeal in abeyance until the trial court disposes of the rehearing. *Id*. This is true for all postjudgment motions listed in Rule 9.020(i), such as motions for new trial, to correct a sentence, etc. *Id.*

While practitioners will welcome this more lenient rule, the Supreme Court did not offer any guidance on how it will work in practice. For example, how will the appellate court know that a postjudgment motion remains pending? How does this affect the briefing schedule? You should include some reference to any pending postjudgment motions in the notice of appeal and expressly invoke Rule 9.020(i)(3), even if it is in a footnote. As for appellate deadlines, such as the briefing schedule and preparing the appellate record, all appellate deadlines probably become effective immediately after a signed, written order disposing of the postjudgment motion, unless otherwise ordered by the appellate court.

Another important change is the effect of one party's postjudgment motion on an aligned party's deadline to appeal. Before the amendment, a postjudgment motion would only toll the deadline to file a notice of appeal for the party filing the motion. *See, e.g., Coats v. Climatic Products Corp.*, 756 So. 2d 1104, 1104 (Fla. 1st DCA 2000). All other parties either had to file their own postjudgment motion or file their appeal within 30 days of the judgment. *Id*. The Supreme Court cured this trap for the unwary by amending Rule 9.020(i)(1). Now, when a party files one of the postjudgment motions identified in Rule 9.020(i), then the appellate deadline is tolled for all parties until the trial court disposes of the last postjudgment motion. *In re Amendments*, 2014 WL 5714099, at *4.

But the Court did not address what happens when one party moves for rehearing and another files an appeal. Likely, a court would read the first two amendments together to hold the appeal in abeyance until the first party's rehearing is decided. Thereafter, if the first party desired to appeal, then it could simply file a notice of joinder under Rule 9.360(a). This not only comports with the canons of interpretation, but it also preserves both the litigants' and the judiciary's resources by resolving all issues in one appeal.

The Court also amended Rule 9.100(h), which concerns the procedures for responding in original proceedings, such as petitions for certiorari, mandamus, and prohibition. The amendment gives courts the discretion to either simply order a response or order the opposing party to show cause why relief should not be granted. *In re Amendments*, 2014 WL 5714099, at *2, *6. The only substantive difference in these two types of orders lies in the prohibition context, such as when challenging judicial disqualification or subject-matter jurisdiction. If the court issues a show-cause order in that context, then the proceedings below are automatically stayed. *Id.* If the court merely orders a response, then the trial court retains jurisdiction to proceed with all matters, even trial

and judgment. *Id.* Again, this nuance is only important to prohibition proceedings. *Id.*; *see also Alonso v. State*, 879 So. 2d 80, 81 (Fla. 3d DCA 2004) (discussing this nuance). In all other original proceedings, there is no automatic stay or loss of jurisdiction in the trial court. *See Curry v. State*, 880 So. 2d 751, 755–56 (Fla. 2d DCA 2004).

Five additional substantive changes are straightforward. They include:

- Rule 9.110(k) was amended to define a "partial final judgment" as one that either "disposes of an entire case as to any party" or "disposes of a separate and distinct cause of action that is not interdependent with other pleaded claims." *In re Amendments*, 2014 WL 5714099, at *2 & *6.
- Rule 9.110(l) was amended to explain that if an appeal is filed before a final order's rendition, then (1) a trial court retains jurisdiction to render a final order and (2) the appellate court may grant the parties additional time to obtain the final order, rather than dismissing the appeal as premature. *In re Amendments,* 2014 WL 5714099, at *6.
- Rule 9.300(d) was amended to add the following three additional categories of appellate motions that do not toll appellate deadlines: motions for sanctions under Rule 9.410, motions for mediation filed more than 30 days after the notice of appeal under Rule 9.700(d), and all motions filed in an appeal under Rule 9.147, which concerns waiver of parental notice in pregnancy-termination actions. *In re Amendments*, 2014 WL 5714099, at *17.
- Rule 9.320 was amended to extend the deadline for requesting oral argument. It was originally due by the reply brief. Now, the requests are due 10 days after the last brief. *In re Amendments*, 2014 WL 5714099, at *17.
- Rule 9.350(d) was added to clarify that stipulations for dismissal and notices of dismissal automatically stay the part of the appeal being dismissed. *In re Amendments*, 2014 WL 5714099, at *19.

These important changes became effective on January 1, 2015. It will be interesting to follow how courts and practitioners apply and interpret the new rules. RG

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