

**IN THE SUPREME COURT OF  
FLORIDA**

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

**(THREE-YEAR CYCLE) Case No. SC11-192**

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**THREE-YEAR CYCLE AMENDMENTS TO THE FLORIDA RULES OF  
APPELLATE PROCEDURE**

Comment by Michael A. Catalano, Attorney, Miami, FL

The Court has before it for commentary proposed amendments to the Florida Rules of Appellate Procedure, and in particular, rule 9.420, “Filing; Service of Copies; Computation of Time,” which proposed amendment would create a new subsection, (b) (2), “Service. By the Court.” The undersigned is an attorney in Miami, Florida and hereby submits the following comments and suggested revision to the proposed amendment.

In the Appellate Court Rules Committee, herein after ACRC’s “THREE-YEAR CYCLE AMENDMENTS” petition, the text of the newly created proposed subsection, rule 9.420 (b) (2), appears as follows in Appendix B at page 98 [underlining indicates new text]:

(2) By the Court. A copy of all orders and decisions shall be transmitted, in the manner set forth for service in rule 9.420(c), by the court or under its direction to all parties at the time of entry of the order or decision, without first requiring payment of any costs for the copies of those orders and decisions. Prior to its entry of an order or decision, the court may require that the parties furnish the court with stamped, addressed envelopes for transmittal of the order or decision.

The *purpose* for the proposal appears at Appendix C 37 as follows:

Created to prevent the *clerk's office* from withholding copies of orders pending statutorily defined fees for copies under section 119.07, Florida Statutes. [Emphasis added].

Consistent with this stated purpose, the ACRC's petition itself posits at page 7 thereof: "This provision will require the *clerk* to provide copies, but also provides the option of courts to require parties to provide stamped, self-addressed envelopes for service of those copies." [Emphasis added]. The undersigned submits, however, that the *text* of the proposal, is a good step in the right direction but, actually fails to accomplish its stated purpose, and it is for that, and other reasons set forth herein, that the undersigned seeks a minor revision to the proposal pending before the Court.

Counsel files numerous appeals in the 11<sup>th</sup> Judicial Circuit and many are petitions for writ of certiorari. Counsel was shocked to receive the memo from the Clerk creating a simply ridiculous situation where lawyers on appeals would have

no way of effectively knowing the court's rulings. Specifically, *the Eleventh Circuit Clerk has ceased mailing out orders and decisions of the Appellate Division to litigants and or their counsel*, and now requires Administrative Office of the Courts, herein after AOC (including judges and judicial staff) to copy, conform, and serve appellate parties and/or counsel with all such orders and opinions entered by the Appellate Division.

The present proposed amendment before this Court, by its terminology, is limited to “the *Courts*” [emphasis added] transmitting of “all orders and decisions” without requiring prepayment of costs therefor. It does *not*, as presently worded, thereby direct or require the Clerk to perform what the undersigned suggests is a *pure ministerial duty*. It is for this reason that the undersigned joins Miami Circuit Administrative Judge Mark King Leban and proposes a suggested revision of the proposal pending before this Court. Judge Leban has made the same request of this Honorable Court.

The pending amendment to rule 9.420 (b) (2), entitled “(2) By the Court.”, however, fails to recognize this crucial distinction, and appears instead to be directed solely to service of “[a] copy of all orders and decisions . . . *by the court...*”. [Emphasis added].

The history behind the ACRC's proposed amendment to rule 9.420 (b) (2) has, as its genesis, events leading to an exchange of correspondence between a

Counsel below, a private practitioner and the Clerk of Court for Miami-Dade County, wherein, the Clerk advised all counsel that from a date certain, “copies of judicial orders and/or opinions will no longer be automatically mailed to all parties on Appellate cases,” but would henceforth require pre-payment of the statutory fee for such copies. The present proposal before this Court, passed nearly unanimously (47-1) by the ACRC, aims to solve the problems identified in this practitioner’s correspondence by no longer requiring the pre-payment of costs for the transmittal of orders and decisions “by the court” or whichever parties the court directs to receive such orders and opinions. (The undersigned wholeheartedly agrees with the laudatory additional requirement in the existing proposed amendment permitting “the court [to] require [the furnishing of] the court with stamped, addressed envelopes...”, and, indeed urges that the Clerk may also so require that such envelopes be furnished to the Clerk by the parties.)

As is well known, lawyers have deadlines to respond to orders of appellate courts. If the Clerk simply refuses to advise the parties of the rulings of the court, then, all kinds of ridiculous problems and litigation may ensue. The Clerk took the absolutely ridiculous position that attorneys basically could check the court file every day and find out if there was a ruling. They did this simply because they are trying to save money. One has to wonder how they could even think that is appropriate. In addition, in Miami, the appellate docket is not available on line so,

the litigants have no way of knowing of any appellate rulings short of visiting the clerk every single day after briefs are filed. Although counsel has no animosity toward the clerk, counsel must say that this simply is not right and must be stopped by amending the Rules of Appellate Procedure.

I join Judge Mark King Leban and suggest that rule 9.420 (b) (2) , be itself amended to read as follows [insertions indicated by double underlining]:

**(2) By the Court or the clerk.** A copy of all orders and decisions shall be transmitted, in the manner set forth for service in rule 9.420 (c), by the court or under its direction the clerk to all parties at the time of entry of the order or decision, without first requiring payment of any costs for the copies of those orders and decisions. Prior to its entry of an order or decision, the court or clerk may require that the parties furnish the court or clerk with stamped, addressed envelopes for transmittal of the order or decision.

By approving this revision, this Honorable Court will make it clear that the Clerk of the Court in any Circuit cannot create impossible situations and make it almost impossible for the appellate litigants to know the ruling of the court and to know in a timely manner.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that the original and nine (9) copies of the foregoing have been served, both electronically and by U.S. Mail, upon Tom D. Hall, Clerk of the Court, 500 South Duval Street, Tallahassee, FL 32399-1925, and a true and correct copy has been served upon ACRC Committee Chair, John Crabtree, Esq., 240 Crandon Blvd., Ste. 234, Key Biscayne, FL 33149-1624; and Judge Mark King Leban by US Mail, this 23<sup>th</sup> day of March, 2011.

## CERTIFICATION OF FONT COMPLIANCE

I certify that this comment was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

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Michael A. Catalano, Esq.