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## Current Amendments to Florida Rules

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# CURRENT AMENDMENTS TO FLORIDA RULES

LINDA M. RIGOT\*

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## I. INTRODUCTION

Recently, the Supreme Court of Florida approved changes in all of Florida's procedural rules. Those sets of rules affected are Florida Rules of Criminal Procedure, Florida Rules of Civil Procedure, Florida Summary Claims Procedure Rules, Florida Probate and Guardianship Rules, and Florida Appellate Rules. Although three of these five sets of rules only became effective as of January 1, 1968, they have each been amended twice since their originally approved forms. This paper, however, will be limited to those amendments which became effective on September 30, 1968.

As can be seen from the outline at the beginning of this comment, the changes which were effectuated are, for the most part, classified as substantive and stylistic or grammatical changes. Wherever a rule was amended to incorporate both types of changes in an inseparable manner, that rule will be discussed under the subsection dealing with substantive changes.

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## II. FLORIDA RULES OF CRIMINAL PROCEDURE

A. *Scope of Coverage and Effective Date*

The Florida Rules of Criminal Procedure, which became effective on January 1, 1968, were again amended as of midnight on September 30, 1968. The amendments are applicable to all criminal actions which were pending then or which were filed after that date.<sup>1</sup>

Rule 1.010, which governs the scope of the Rules, was broadened to include direct and indirect criminal contempt of any court acting in other than an appellate capacity. The Rules now also regulate proceedings under Rule 1.850 of the Florida Rules of Criminal Procedure (formerly Rule One).<sup>2</sup>

B. *Substantive Changes*

A committing magistrate is now empowered by Rule 1.120 to issue a summons where the person complained against is charged with a misdemeanor only, pursuant to Rule 1.150(b).<sup>3</sup>

Rule 1.140 regulates indictments, informations, and affidavits; four sections of this Rule were affected by the current amendments. Subsection (a)(2) now provides that where authorized by statute, prosecution of a misdemeanor for violating a statute regulating vehicular traffic may be had upon a traffic ticket, provided that it be in a court where the Constitution does not require such prosecution to be upon information.<sup>4</sup> In addition to slight language changes, subsection (c)(2) of Rule 1.140 now requires that "[a]ffidavits shall state the name of the affiant making the charge."<sup>5</sup>

The title of Rule 1.150 was changed, and section (b) thereof was amended to encompass the amendment to Rule 1.120 broadening the power of a committing magistrate. At present either the judge or a committing magistrate may issue a summons where the defendant is charged with the commission of a misdemeanor only, unless the judge or the magistrate deems that an arrest warrant or a *capias* is necessary.<sup>6</sup>

Rule 1.200 was amended only as to the time required for the prosecuting attorney to serve upon the defendant the list of witnesses to rebut alibi evidence produced by the defendant at trial. Previously, the list had to be filed and served no sooner than five days after the defendant's list of alibi witnesses had been received. However, the amended Rule provides that the exchange list must be filed and served upon the defendant *within* five days after receipt of the defendant's list.<sup>7</sup>

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1. *In re* Florida Rules of Criminal Procedure, 211 So.2d 203, 205 (Fla. 1968).

2. *Id.* at 203.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at 204.

7. *Id.* at 204-05.

Rule 1.790(b) formerly forbade any pronouncement or imposition of sentence upon a defendant who would be placed on probation. Now, the Rule contains an exception for a sentence of imprisonment in the county jail imposed at the time of sentencing; if such a sentence is imposed, the court may order that the defendant be placed upon probation at the completion of any specified portion of that sentence.<sup>8</sup>

Subsection (6) of Rule 1.840(a) was amended to delete references to and provisions for a jury in prosecutions for indirect criminal contempt. The new language provides for findings by a judge rather than by a jury, and terminology relating to a judgment has been substituted for that relating to a verdict.<sup>9</sup>

The only other change in the Florida Rules of Criminal Procedure since their inception became effective on February 28, 1968, and should also be noted at this time. The original Rule governing indirect criminal contempt (Rule 1.840) provided in subsection (a)(4) that at the hearing of such a charge issues of fact were for the jury, while issues of law were to be determined by the judge. However, as amended, the Rule dispenses with the provision for the jury and provides that the judge shall determine both issues of law and issues of fact.<sup>10</sup>

### C. Stylistic Changes

The only changes in both sections (*l*) and (*o*) of Rule 1.140, which regulates indictments, informations, and affidavits, were in the language with which the Rule was set forth.<sup>11</sup> Likewise, the only change made in the discovery rules appears in Rule 1.220(f) and is due to grammatical structure rather than substance or content.<sup>12</sup>

## III. FLORIDA RULES OF CIVIL PROCEDURE

### A. Scope of Coverage and Effective Date

These amendments became effective at midnight, September 30, 1968, and are applicable to all civil actions either then pending or filed after that time.<sup>13</sup> Rule 1.010 was amended to exclude specific application of the Florida Rules of Civil Procedure to actions in the County Judges' Courts and in the County Courts. The Rules apply to actions in civil courts with the exception of those actions in which the Probate and Guardianship Rules or the Summary Claims Procedure Rules apply.<sup>14</sup>

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8. *Id.* at 205.

9. *Id.*

10. *In re* Florida Rules of Criminal Procedure, 207 So.2d 430 (Fla. 1968).

11. *In re* Florida Rules of Criminal Procedure, 211 So.2d 203, 203-04 (Fla. 1968).

12. *Id.* at 205.

13. *In re* Florida Rules of Civil Procedure, 211 So.2d 206, 208 (Fla. 1968).

14. *Id.* at 206.

### B. Substantive Changes

Rule 1.250, regulating misjoinder and non-joinder of parties, has been expanded and correlated with Rules 1.420(a)(1) (voluntary dismissal) regarding dropping parties and 1.190(a) (amended and supplemental pleadings) as to adding parties. Parties may now be added once as a matter of course.<sup>15</sup>

One minor change and one major change were made in Rule 1.340, which governs interrogatories to parties. The three pre-existing paragraphs were subtitled. In addition, a fourth paragraph was added which specifically provides that interrogatories do *not* have a continuing effect.<sup>16</sup>

The language in Rule 1.370 regulating requests for admissions has been changed as far as readability is concerned. In addition, there has also been a change in the time within which the party upon whom the request for admission has been served can either deny the request or object to it. Each admission sought in the request shall be deemed admitted unless the denial or objection is made within twenty days after service. The second portion of the Rule dealing with the effect of admissions was deleted.<sup>17</sup>

Section (a) of Rule 1.410 was subdivided and contains two changes. The first change merely provides that the name of the court and the title of the action be filled in if requested. The second change is that blank subpoenas, signed and sealed by the clerk, are obtainable by a party or attorney upon oral request.<sup>18</sup>

Two changes in Rule 1.420 regulating dismissal of actions are now in effect. In addition to slight language changes, section (b), providing for involuntary dismissal, now requires notice of hearing on the motion for involuntary dismissal in accordance with Rule 1.090(d), *i.e.*, within a reasonable time. Furthermore, section (e) was amended to allow a party five days before the hearing on the motion to dismiss for failure to

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15. *Id.*

16. *Id.* This amendment overrules *Passino v. Sanburn*, 190 So.2d 61 (Fla. 3d Dist. 1966). In that case no interrogatories were served, and the court held that:

when interrogatories are appropriately utilized, the answering party is under an obligation to furnish the propounding party with any data discovered subsequent to the filing of the original answers if such data would have been appropriately furnished in the initial answers. . . . [t]he defendant had taken the plaintiff's deposition and had secured production of certain documents. Subsequently, the plaintiff had further medical examinations which indicated more serious injuries. When evidence as to the plaintiff's more serious injuries was introduced at the trial, the defendant claimed surprise. The judge allowed the evidence and refused to grant a mistrial. In affirming, the appellate court held that an order for production may be construed to be continuing in nature only if its wording makes it so. Further, a party cannot claim surprise if he has not taken steps to protect himself, such as the use of a pre-trial conference, interrogatories to the plaintiff, a deposition of the plaintiff's physician or a request that the motion to produce be continuing. Had interrogatories been propounded, the party would have been under an obligation to furnish subsequent information.

Massey & Bridges, *Civil Procedure, Florida Survey*, 22 U. MIAMI L. REV. 449, 481 (1968).

17. *In re Florida Rules of Civil Procedure*, 211 S.2d 206, 206-07 (Fla. 1968).

18. *Id.* at 207.

prosecute in which to show good cause why the action should not be dismissed.<sup>19</sup>

Rule 1.440 was substantially re-written. A notice for trial may be filed: (1) after the disposition of motions directed to the last pleading; (2) twenty days after service of the last pleadings if no motions were filed, or (3) at any time by the party entitled to serve pleadings directed to the last pleading, if he chooses to waive that right. A notice that the action is at issue and ready to be set for trial must include an estimate of trial time. After the clerk submits the notice and file to the court, the court shall set the time for pre-trial conference or trial or both. The pre-trial conference and trial may not be less than twenty days and thirty days, respectively, from the service of the notice for trial. The new Rule provides that the court may set the pre-trial conference and trial on its own motion by giving such notice. However, the new Rule does not apply in those actions governed by Chapter 51, Florida Statutes (1967).<sup>20</sup>

A new Rule governing verdicts is now in effect. Rule 1.481 provides that: "In all actions when punitive damages are sought, the verdict shall state the amount of punitive damages separately from the amounts of other damages awarded."<sup>21</sup> In a previous consideration of such verdicts, the Supreme Court of Florida declared in *Lehman v. Spencer Ladd's, Inc.*<sup>22</sup> that:

in all cases tried after the effective date of this opinion, and in which the element of punitive damages against joint tortfeasors is an issue for determination, a special or separate verdict shall be used for the assessment of punitive damages against each tortfeasor. Verdicts for compensatory damages shall continue as at present to be joint and several.<sup>23</sup>

Thus, the amendment goes beyond the situation where joint tortfeasors are involved and requires that the amount be returned separately in all situations where punitive damages are sought.

Section (e) of Rule 1.500, regulating final judgments after default, was also amended. Previously, no final judgment after default could be entered against an infant or incompetent unless his legal representative appeared in the action. However, the court, pursuant to Rule 1.210(b), can now order that no representative for that infant or incompetent person is necessary.<sup>24</sup>

As before, Rule 1.530(f) requires that orders granting a new trial state specifically the grounds upon which they are based. In addition, the new Rule provides that if such an order is appealed and the order does

19. *Id.*; State *ex. rel.* Avery v. Williams, 222 So.2d 477 (Fla. 3d Dist. 1969).

20. *In re* Florida Rules of Civil Procedure, 211 So.2d 206, 207-08 (Fla. 1968).

21. *Id.* at 208.

22. 182 So.2d 402 (Fla. 1966).

23. *Id.* at 403-04. The Supreme Court thus adopted the suggestion of the District Court of Appeal. See *Spencer Ladd's, Inc. v. Lehman*, 167 So.2d 731, 738 (Fla. 1st Dist. 1964).

24. *In re* Florida Rules of Civil Procedure, 211 So.2d 206, 208 (Fla. 1968).

not contain the specific grounds for the granting, then the appellate court must relinquish its jurisdiction so that the trial court may then enter an order which does state the specific grounds.<sup>25</sup> Thus, the Supreme Court of Florida in approving this express provision has overruled a long line of cases which culminated in *Lehman v. Spencer Ladd's, Inc.*<sup>26</sup>

Rule 1.550(a) was amended to specify that executions on judgments shall issue upon oral request. The requirement of allowance of time for recording the judgment and for service of motions remains the same. However, provision is made in the Rule for execution or other final process upon special order of the court at any time after the judgment.<sup>27</sup>

### C. Stylistic Changes

Local rules may be passed by trial courts, and the manner in which these must be approved is provided for in Rule 1.020(d). Subsections (2) and (3) of this Rule have merely been consolidated.<sup>28</sup> Rule 1.100(c), setting forth the required contents of every pleading, has been changed only insofar as the language now reads ". . . pleading or other paper. . ." <sup>29</sup>

The language in Rule 1.530(b) was clarified, but the Rule still requires that a motion either for a new trial or for rehearing be served within ten days ". . . after the rendition of verdict in a jury action or the entry of judgment in a non-jury action."<sup>30</sup>

### D. Repealed Rules

The following Florida Rules of Civil Procedure have been expressly repealed: 1.650, 1.670, 1.690, 1.700, 1710 and 1.720.<sup>31</sup>

### E. Approved Forms

Rules 1.900 through 1.993 of the Florida Rules of Civil Procedure are forms which have been approved by the Supreme Court of Florida as sufficient for the purpose of pleading civil matters in this state. Forms 1.901 through 1.948 remain the same, save that the language has been modernized and clarified.<sup>32</sup>

In addition, forms have been added for the following: complaint for an action based upon implied warranty,<sup>33</sup> a general form for a bond,<sup>34</sup>

25. *Id.*

26. 182 So.2d 402 (Fla. 1966); see Massey & Westen, *Civil Procedure, Florida Survey*, 20 U. MIAMI L. REV. 594, 707 (1966).

27. *In re* Florida Rules of Civil Procedure, 211 So.2d 206, 208 (Fla. 1968).

28. *Id.* at 206.

29. *Id.*

30. *Id.* at 208. *Kash N'Karry Wholesale Supermarkets, Inc. v. Garcia*, 221 So.2d 786 (Fla. 2d Dist. 1969); *Bescar Enterprises, Inc. v. Rotenberger*, 221 So.2d 801 (Fla. 4th Dist. 1969). See also *A-1 Truck Rentals, Inc. v. Vilberg*, 222 So.2d 442 (Fla. 3d Dist. 1969).

31. *In re* Florida Rules of Civil Procedure, 211 So.2d 206, 208 (Fla. 1968).

32. *In re* Florida Rules of Civil Procedure, 211 So.2d 174, 175-91 (Fla. 1968).

33. *Id.* at 191-92.

34. *Id.* at 192.

sample bond conditions,<sup>35</sup> defenses to civil claims,<sup>36</sup> motion for default,<sup>37</sup> motion and notice of contempt hearing,<sup>38</sup> verdicts,<sup>39</sup> and final judgments.<sup>40</sup>

Furthermore, the Standard Jury Instructions form has been re-numbered, and the language has been up-dated.<sup>41</sup> It is now Rule 1.985.

#### IV. FLORIDA SUMMARY CLAIMS PROCEDURE RULES

##### A. *Scope of Coverage and Effective Date*

The Florida Summary Claims Procedure Rules became effective on January 1, 1968.<sup>42</sup> Amendments to several of these have recently become effective and apply to all summary claims pending at midnight, September 30, 1968, or filed after that date.<sup>43</sup> Rule 7.120 was amended only insofar as the actions to which it applies.<sup>44</sup>

##### B. *Clarified and Revised Rules*

Section (e) of Rule 7.110, regulating dismissal of actions for failure to prosecute, has been amended. An action will be dismissed upon motion by the court or by motion of any interested person, whether or not a party to the action, if nothing affirmative has been done for a period of one year. Previously, the Rule provided that a party could have the action reinstated for good cause within one month after its dismissal. However, under the amended Rule, after receipt of the motion to dismiss, a party to the action must show cause in writing why the action should remain pending until the motion is heard. Thus, the provision for reinstatement by a party has been deleted.<sup>45</sup>

Rule 7.180 governs motion for new trial in any of the courts to which these rules apply. Section (c) of the Rule required that every order granting such a motion specifically state the grounds therefor. Under the current Rule not only has the language been polished, but provision also

35. *Id.* at 192-93.

36. *Id.* at 193-94.

37. *Id.* at 194.

38. *Id.* at 194-95.

39. *Id.* at 195.

40. *Id.* at 196-97.

41. *Id.* at 195.

42. Rule 7.010 provides that:

These rules are applicable to all actions of a civil nature in the County Judges' Courts, County Courts, Justice of Peace Courts, Small Claims Courts, and in all other courts in which civil jurisdiction is limited to actions at law in which the demand or value of property involved does not exceed \$1,000.00 exclusive of costs, interest and attorneys' fees.

*In re* Summary Claims Procedure Rules, 203 So.2d 616, 618 (Fla. 1967), *as amended*, 205 So.2d 297 (Fla. 1967).

43. *In re* Florida Summary Claims Procedure Rules, 211 So.2d 553 (Fla. 1968).

44. *Id.*

45. *Id.* This Rule is now the same as Rule 1.420(e), Florida Rules of Civil Procedure, 211 So.2d 206, 207 (Fla. 1968) (*see* note 19, *supra*, and accompanying text).



has been made requiring that upon appeal of such an order, the appellate court shall relinquish jurisdiction for the entry of an order specifying the grounds if the order does not do so.<sup>46</sup>

Rule 7.200 governs executions under these rules. As amended, the language is clearer and more specific. Execution will not issue until the judgment has been recorded and until the motion for new trial is determined, if one has been filed. However, special order of the court may be obtained for execution or other final procedure any time after the judgment. In addition, the Rule now provides that execution shall issue upon oral request of the party seeking execution, and no praecipe is required.<sup>47</sup>

## V. FLORIDA PROBATE AND GUARDIANSHIP RULES

### A. *Scope of Coverage and Effective Date*

Only one change was made in the Florida Probate and Guardianship Rules, which became effective on January 1, 1968. The amendment became effective at midnight on September 30, 1968, and became applicable to probate and guardianship proceedings either then pending or filed after that date.<sup>48</sup>

### B. *Amended Rules*

The amended Rule is Rule 5.150, which governs proceedings involving a caveat. For the most part, the changes in sections (b), (c), and (d) concern use of either clearer or more proper language. In addition, references to caveats opposing the issuance of letters of administration were deleted from these three sections.<sup>49</sup> Thus, the amendment eliminates the effect of the caveat in intestate estates and corrects an extension of the caveat that was unintended.

### C. *Approved Forms*

It should be noted here that forms for use with these new Rules have also been approved and are sufficient for meeting the requirements of the Rules.

## VI. FLORIDA APPELLATE RULES

### A. *Scope of Coverage and Effective Date*

The Florida Appellate Rules, 1962 Revision, were last amended in 1965. The current amendments, as discussed below, were effective as of

46. *In re* Florida Summary Claims Procedure Rules, 211 So.2d 553 (Fla. 1968). This amendment causes the Rule to read the same as its counterpart, Rule 1.530(f), Florida Rules of Civil Procedure, 211 So.2d 206, 208 (Fla. 1968) (*see* note 25, *supra*, and accompanying text). *See* Prince v. Jefferson Nat'l Bank, 222 So.2d 806 (Fla. 3d Dist. 1969).

47. *In re* Florida Summary Claims Procedure Rules, 211 So.2d 553 (Fla. 1968). Note should be made of the identical language in Rule 1.550(a), Florida Rules of Civil Procedure, 211 So.2d 206, 208 (Fla. 1968) (*see* note 27, *supra*, and accompanying text).

48. *In re* Florida Probate and Guardianship Rules, 211 So.2d 202 (Fla. 1968).

49. *Id.*

midnight, September 30, 1968.<sup>50</sup> The initial order setting forth the applicability of the amendments was withdrawn, and the new Rules apply as follows:

Decisions, orders, judgments or decrees in civil actions and judgments or sentences in criminal actions rendered or entered prior to October 1, 1968 shall be governed by the rules heretofore in effect. Decisions, orders, judgments or decrees in civil actions and judgments or sentences in criminal actions rendered or entered after September 30, 1968 shall be governed by these rules. . . .<sup>51</sup>

Specifically, any former rule or statute conflicting with a current amendment is superseded.<sup>52</sup>

In addition, as provided by Florida Statute § 59.081 (1967), the Supreme Court of Florida was given the power to pass rules prescribing the time limitations, the manner of computing time, and the methods by which the jurisdiction of a state court sitting as a court of review shall be invoked. Florida Statute § 59.081(3) (1967) specifically provides that any statute regulating the time for appeal which might conflict with any of the current amendments is repealed, and the section requires that the conflicting statute be removed from the official statutes by the statutory revision department of the state.<sup>53</sup> Thus, all Florida Statutes regulating time for appeal are repealed. The passage of this statute and the exercise by the Supreme Court of Florida in these current amendments of its power to establish the time in which any appeal may be taken will prevent the occurrence of the situation where a rule provides one time for taking an appeal and a statute provides another.<sup>54</sup>

It should be noted that in passing the current 1968 amendments the Supreme Court reiterated the mandatory language of Florida Statute § 59.081(2), providing that a failure to invoke the jurisdiction of a court sitting in review within the required time limits *shall* automatically prevent, or even divest, that court's assertion of jurisdiction over the subject matter. Thus, the loss of jurisdiction is mandatory, and no proceedings may be conducted.

### B. *Substantive Changes*

Florida Appellate Rule 1.3 defines the terminology appearing throughout the Florida Appellate Rules. Nothing heretofore contained within this Rule was changed; only one term was newly defined. The Rule now contains a definition of a "civil action" as the term is used throughout the Rules.<sup>55</sup>

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50. *In re* Florida Appellate Rules, 211 So.2d 198, 201 (Fla. 1968).

51. *Id.*

52. *Id.*

53. *Id.*

54. *City of Belle Glade v. Blackman*, 217 So.2d 148 (Fla. 4th Dist. 1969).

55. *In re* Florida Appellate Rules, 211 So.2d 198 (Fla. 1968).

Rule 2.1 regulates proceedings and procedures in the Supreme Court of Florida. Section (g) dealing with the Advisory Committee on Rules has been amended.<sup>56</sup> The composition of the committee has been expanded. Previously, the committee consisted of one justice of the Supreme Court, one judge of the district courts of appeal, one circuit judge, and three members of the Florida Bar. Now, one judge from each district court of appeal sits on the committee rather than merely one judge from all of the district courts of appeal. Also, the committee membership includes one or more circuit judges rather than only one. Thus, rather than a committee composed of six members, at least nine persons will form the committee. In addition, the committee was formerly restricted to a study of the appellate rules; now, however, the subject matter of the committee's study has been expanded to include all rules of procedure. The amended section also deleted the required times and place for committee meetings which had been set forth within the Rule prior to the current amendment.

Article IV, Section 1(c) of the new Florida Constitution, adopted on November 5, 1968, provides that the governor may request an advisory opinion from the justices of the Supreme Court of Florida regarding the interpretation of the new Constitution on any question concerning his powers and duties. Pursuant to this provision, an additional Rule was passed which regulates and establishes the procedure whereby such an opinion shall be sought, argued, and rendered. This new Rule is now codified as Florida Appellate Rule 2.1(h), and became effective with the new Constitution.<sup>57</sup>

Rule 3.2 regulates the commencement of proceedings. Section (b), setting forth the time for appeals, has been modified in two respects. First, the time for commencing an appeal has been reduced from sixty to thirty days. Second, the prior section allowed sixty days in which to take an appeal unless some other period of time was specifically provided by statute or rule; however, this section now allows an appellant only thirty days to take an appeal unless the Rules specifically provide a shorter period of time. Thus, under the amended section, thirty days is the maximum time allowed for taking an appeal, and any statute granting a longer period of time for any subject matter must now be repealed.<sup>58</sup>

Rule 3.2(f) has been completely changed. Previously, it set forth detailed requirements for the prepayment of costs before an appeal. However, now section (f) provides that: "[t]he mere nonpayment of

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56. *Id.*

57. *In re Florida Appellate Rules*, 216 So.2d 1 (Fla. 1968); see *In re Advisory Opinion to Governor*, 217 So.2d 289 (Fla. 1968), wherein the opinion of the Court was sought concerning the Governor's power and duty to appoint a Lieutenant Governor under the new Constitution; *In re Advisory Opinion to the Governor*, 223 So.2d (Fla. 1969), concerning the Governor's duty to reorganize the Florida Public Service Commission.

58. *In re Florida Appellate Rules*, 211 So.2d 198 (Fla. 1968).

costs, accruing before the appeal is taken and taxed against the appellant shall not affect his right to an appeal."<sup>59</sup>

Rule 3.11(e)(1) governs the voluntary substitution of parties. Previously, it provided for a party's personal representative to replace the decedent only if an appeal were then pending. The scope of the amended Rule has been broadened. Now, it is no longer necessary that an appeal be already pending in order for a personal representative to replace the original party. The appeal may be *filed* by the personal representative in his own name as long as the order or judgment appealed from was rendered before the party died.<sup>60</sup> If no personal representative has qualified within the time for filing the appeal, the appeal may be taken in the name of the decedent,<sup>61</sup> but in such a situation, the personal representative must file copies of his letters with the court within thirty days after his qualification and be substituted as the appellant. No motion is necessary to effect this substitution.<sup>62</sup>

Section (a) of Rule 4.2, which governs interlocutory appeals, has been changed, in part, by use of language which is clearer than that used in the prior format of the Rule and which now conforms with the merger of law and equity.<sup>63</sup> Also, the proper situations for use of an interlocutory appeal have been expressly delineated. Much of the language in the amended Rule is important in its provision that an interlocutory appeal may be taken from an order ". . . granting partial summary judgment on liability in civil actions"<sup>64</sup> in addition to those interlocutory appeals which may be taken from

decisions, orders, judgments or decrees entered in civil actions after final judgment, except those relating to motions for new trial, rehearing or reconsideration; from orders granting or denying motions to vacate defaults and from orders granting or denying dismissal for lack of prosecution or denying reinstatement under Rule 1.420 R.C.P. [Dismissal of Actions]  
 . . . .<sup>65</sup>

Thus, the Court not only further defined those orders from which an interlocutory appeal may be taken, but also provided an addition to those previously available interlocutory appeals.<sup>66</sup> Common law certiorari may still be used for review of any appropriate interlocutory order.

59. *Id.*

60. *Id.*

61. However, the Rule does not suggest by whom the appeal may be taken under such circumstances. *Bohannon v. McGowan*, 222 So.2d 60 (Fla. 2d Dist. 1969).

62. *In re Florida Appellate Rules*, 211 So.2d 198, 199 (Fla. 1968).

63. Rule 1.040, *In re Florida Rules of Civil Procedure*, 1967 Revision, 187 So.2d 598, 600 (Fla. 1966), provides that: "There shall be one form of action to be known as [a] 'civil action'."

64. *WKAT, Inc. v. Rubin*, 221 So.2d 21 (Fla. 3d Dist. 1969, *cert. denied*, 222 So.2d 496 (Fla. 1969)).

65. *In re Florida Appellate Rules*, 211 So.2d 198, 198-99 (Fla. 1968).

66. However, the question remains open as to whether orders granting a new trial are now appealable. By statute, such an order is appealable in a civil action, *FLA. STAT.*

As with other appeals, the time for filing an interlocutory appeal has been reduced to thirty days.<sup>67</sup> On the other hand, the twenty-day appeal time previously allowed in Rule 4.3, which regulates bond validation proceedings, has been expanded to thirty days, thus achieving uniformity for all appeals.<sup>68</sup>

Rule 4.5 controls application for and issuance of the extraordinary writs, and section (c) governs the most sought and best known writ, *i.e.*, certiorari. Subsection (1) has been changed only insofar as it now requires a petition for writ of certiorari to be filed within thirty days after the ". . . rendition of the decision, order, judgment or decree sought to be reviewed."<sup>69</sup> Likewise, subsection (6) has been amended only as to the reduction from sixty to thirty days of the time for filing in the Supreme Court of Florida a petition for writ of certiorari to a district court of appeal.<sup>70</sup> Again, uniformity throughout the appellate rules has been achieved.

Florida Appellate Rule 4.5(g) regulates application for a constitutional writ. Subsection (1) has been amended so as to delete the requirement that an appeal be commenced before such a petition could be considered by the court.<sup>71</sup> However, the petition must clearly show that resort to such an extraordinary writ is necessary, and it must be filed only in a court which would have proper jurisdiction over the subject matter by way of review.

As Rule 6.2 now reads, the defendant in a criminal action must file his appeal within thirty days after the *sentence* is entered if he is appealing from the judgment or sentence. However, if, for example, sentencing is withheld and the defendant wishes to appeal the judgment, he may do so within thirty days after the *judgment* is entered.<sup>72</sup>

Rule 6.3 remained unchanged in content except that now the Rule as it read previously has become section (a), and a section (b) has been added. The latter section provides that appeals taken by the state as provided in Florida Statute § 924.071 shall be taken within the time provided under section (a) of this Rule or before the trial commences, whichever would be sooner. Such appeals are regulated by Florida Appellate Rule 4.2 which governs the procedure for interlocutory appeals, and these appeals are given priority on the docket.<sup>73</sup>

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§ 59.04 (1967), and in a criminal action, FLA. STAT. § 924.07 (1967). On the other hand, FLA. APP. R. 4.2 specifically provides that an interlocutory appeal may not be taken from such an order. Since the order is not a final order, and since a rule of procedure controls over a conflicting statute, it would appear that an order granting a new trial cannot be appealed, and both statutes are superseded by the new amendment pursuant to the scope set forth by the court in the current amendments to the Florida Appellate Rules. See note 52 *supra*.

67. FLA. APP. R. 4.2(b), *as amended*, *In re* Florida Appellate Rules, 211 So.2d 198, 199 (Fla. 1968).

68. *In re* Florida Appellate Rules, 211 So.2d 198, 199 (Fla. 1968).

69. *Id.* See *Overstreet v. Davis*, 219 So.2d 34 (Fla. 1969).

70. *In re* Florida Appellate Rules, 211 So.2d 198, 199 (Fla. 1968).

71. *Id.* at 199-200.

72. *Id.* at 200. *But cf.* *McDaniel v. State*, 219 So.2d 421 (Fla. 1969).

73. *In re* Florida Appellate Rules, 211 So.2d 198, 200 (Fla. 1968).

### C. *Stylistic Changes*

Formerly, Rule 4.3, which regulates bond validation proceedings, referred to the final decree in such a proceeding. The language has been corrected so that the Rule refers to a final judgment.<sup>74</sup>

### D. *Approved Forms*

Only section (a) of Rule 7.2, which sets forth the approved forms, has been changed, and the change was minor. The Notice of Appeal form now suggests that the book and page should be given where the order, judgment, or decree appealed from is recorded.<sup>75</sup> Use of these forms is not mandatory; however, they are official and may be used with impunity.

## VII. CONCLUSION

The different committees and sub-committees have endeavored through the current amendments not only to modernize the different sets of rules by clearer language and more practical provisions, but also to conform the rules in their overlapping and tangential areas. Unfortunately, problems in interpretation which will necessarily arise cannot always be foreseen and thereby prevented, and so the work of the committees continues.

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74. *Id.* at 199.

75. *Id.* at 200.