

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO FLORIDA
RULE OF APPELLATE PROCEDURE
9.200**

CASE NO.: SC15-765

**COMMENT OF THE
FLORIDA COURT REPORTERS ASSOCIATION**

Rosa Naccarato, President of Florida Court Reporters Association (“FCRA”), and Holly Kapacinskas, Immediate Past President and Chair of FCRA Government Relations Committee, file this comment on behalf of Florida Court Reporters Association. The FCRA Board of Directors has unanimously approved this comment and accompanying proposed minor rule modifications.

For purposes of these comments, the term “entity” means the court reporting firm, department, or individual responsible for compiling and filing the appellate trial transcript.

In the opinion issued in this case on May 14, 2015, the Court asked FCRA to comment on the Court’s amendments to Florida Rule of Appellate Procedure 9.200. FCRA agrees with the amendments adopted by the Court, with the exception of two suggested minor modifications to Rule 9.200(b)(2) which address the index. FCRA recommends, first, that the term “index” be changed to “master trial index”; secondly, that the master trial index placement be moved to the end of the trial transcript. The rationale for the minor modifications is as follows:

The term “index” is used throughout Rule 9.200 to refer both to the reporter’s trial index and the clerk’s complete record index. Replacing the word “index” in 9.200(b)(2) with “master trial index” distinguishes not only between the clerk’s record index and the reporter’s trial index but, most importantly, distinguishes between the volume indexes that reporters are accustomed to producing and the master trial index that is contemplated by the proposed rule. This will help to avoid any misinterpretation of the rule.

To understand the rationale for moving the master trial index to the end of the transcript, it is important to understand how appellate transcripts

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are currently produced and how a trial transcript with a master index is produced.

It is very common for several court reporters to report a trial to ensure that a timely turnaround on appeal can occur, especially on trials of longer duration. It is possible that reporters on a trial may be independent contractors that do not work for the same entity. Reporters may utilize different software for producing their portion of the proceedings. Each reporter produces a transcript, complete with an index of the witnesses, exhibits in evidence, and pages where each may be found in their portion of the proceedings. The reporter submits his or her final transcript to the entity responsible for compiling the appellate transcript, and each reporter's portion is placed chronologically into the larger appellate trial transcript.

In order to produce a master index, which is not required under the current rules, the index can only be created after each reporter has submitted their final transcript to the entity responsible for combining the individual reporter files into the complete appellate trial transcript to be filed with the Court. If the master index is required to be placed in the front of the trial transcript, now every page number after the index changes, making the pagination and index numbers submitted by each reporter inaccurate. The reporter must go back and correct their page numbers and their index page numbers and resubmit them to the production entity, who will then adjust the master index numbers, and the entity must recompile the transcript before the appeal can be filed. This can slow down production considerably and affect timely filing of appellate transcripts. The margin for error is significantly increased as index numbers and pagination start shifting between many individuals, growing exponentially the longer the trial.

FCRA would request that the Court consider amending the rule to require the master trial index be placed at the end of the appellate trial transcript. Thus, each reporter would submit their final transcript one time with correct pagination and accurate index page numbers, and the master index can then be compiled at the end with consecutive pagination.

The advantages to the Court are the avoidance of unnecessary delays in filing of the appellate transcripts and a decreased rate of pagination and index numbering errors in transcripts. The change in placement of the index should have no effect on the functionality to the Court or attorneys utilizing the transcript and will relieve the reporters and entities from having to

redouble efforts in an already labor-intensive process. Moving the master trial index to the end of the transcript will allow the Court to reach its goal of having one continuous, consecutively paginated transcript.

FCRA makes note that placement of the index at the end of the transcript is the preferred method in the federal courts per United States Courts Guide to Judicial Policy, Volume 6, Chapter 5 §520.46.

An amendment incorporating this change to the end of 9.200(b)(2) might read:

The transcript of the trial shall be ~~prefaced~~ followed by an master trial index containing the names of the witnesses, a list of all exhibits offered and introduced in evidence, and the pages where each may be found. The pages, including the index pages, shall be consecutively numbered, beginning with page 1.

If the Court were averse to locating the master index at the end of the trial transcript, FCRA would then alternatively propose that the master trial index be transmitted as a separate document with its own pagination so that a PDF containing the master trial index would be submitted immediately before the PDF containing the trial transcript. In this way, the pagination of the trial would always start on page 1 and never change. This, too, would eliminate the pagination problems previously discussed.

In further comment, although the trial transcript will no longer be divided into electronic volumes, FCRA maintains it is critical for each day's proceedings to contain the following: title page, appearance page, index, and reporter's certificate. When a reporter produces a transcript of their portion of the proceedings, that transcript is certified by the reporter, which ensures, protects, and preserves the integrity of the record. No one should be able to alter, manipulate, or redact any portion of an individual reporter's certified transcript. Further rationale for inclusion of these administrative pages is as follows:

Title Page. The title page indicating the caption of the case, date, time, and name of reporter reporting the proceeding is necessary so the entity combining all the reporters' files into one continuous PDF file will have a way to identify each reporter's portion of the proceedings and can ensure said files are being inserted into the final appellate transcript in the

correct chronological order. Without that delineation of a title page, much confusion can occur when combining multiple files from a multi-day trial, or cross-contamination may occur between cases when numerous appellate transcripts are being prepared.

Appearance Page. The customary practice has always been to place an appearance page in each day's proceedings to notate the attorneys present as well as additional participants, such as interpreters or corporate representatives. Participants can and do change during the course of a trial, especially trials of longer duration. Part of preserving the record is documenting who was present on a particular day of a proceeding.

Index Page. Reporters submit their portion of the trial containing their individual index. The person compiling the master index then copies and uses the individual index to compile the master index. In this way, the master index can be produced without altering the certified transcript of the reporter or affecting the pagination of each individual file.

Reporter's Certificate. FCRA strongly maintains that in order to maintain the integrity of the record, it will continue to be necessary for each reporter involved in a trial to certify their portion of the proceedings; indicate which portion of the proceedings they are certifying; sign off that the portion they submitted is a true and complete record of their stenographic notes; and that they have no relationship to the parties nor have a financial interest in the action.

The appellate transcript is also used by attorneys, pro se litigants, paralegals, etc., who may want the option of printing one or more trial days and/or working with electronic files by date, as has been customary. Keeping the above-referenced pages intact allows the entity and the attorneys flexibility without compromising the Court's ability to have the transcript submitted as one consecutively numbered PDF file.

Florida Court Reporters Association would like to extend our thanks to the Court for requesting and considering our comments.

WHEREFORE, the Florida Court Reporters Association respectfully requests that the Court amend Florida Rule of Appellate Procedure 9.200 as detailed above.

Respectfully submitted on August 3, 2015.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by e-mail, via the Portal, on August 3, 2015, to:

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I further certify the comment has been prepared in MS Word using Times Roman 14-point font, which complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.100(1).

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