

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO  
FLORIDA RULE OF APPELLATE  
PROCEDURE 9.130**

**SC22-**

**REPORT OF THE  
APPELLATE COURT RULES COMMITTEE—RULE 9.130**

Chair of the Appellate Court Rules Committee (“Committee”), the Honorable Andrew D. Manko, and the Executive Director of The Florida Bar, Joshua E. Doyle, file this report under Florida Rule of General Practice and Judicial Administration 2.140(b).

All rule amendments were unanimously approved by the Committee (by a vote of 30-0 with four abstentions) and, as required by Rule 2.140(b), by The Florida Bar Board of Governors (by a vote of 40-0). The voting records of the Committee and the Board of Governors are attached as Appendix A. The amendments in legislative format are attached as Appendix B.

Pursuant to Rule 2.140(b)(2), the amendments were published for comment on March 1, 2021, on *The Florida Bar News* website and in the print edition of *The Florida Bar News*. The Publication Notice is attached as Appendix D. No comments were received.

**RULE 9.130. PROCEEDINGS TO REVIEW NONFINAL ORDERS  
AND SPECIFIED FINAL ORDERS**

The Committee proposes amendments to Florida Rule of Appellate Procedure 9.130 (Proceedings to Review Nonfinal Orders and Specified Final Orders) to resolve an interdistrict conflict as to whether certiorari is the correct method of interlocutory review of nonfinal orders granting or denying motions to dismiss or for summary judgment based on section 768.295, Florida Statutes, which prohibits “Strategic Lawsuits Against Public Participation” known as “SLAPP” suits.

Paul Regensdorf alerted the Committee of the interdistrict conflict. (See Appendix E.) In *WPD Residents for Integrity in*

RECEIVED, 08/19/2022 02:37:21 PM, Clerk, Supreme Court

*Government, Inc. v. Materio*, 284 So. 3d 555 (Fla. 4th DCA 2019), the Fourth District Court of Appeal concluded that certiorari was inappropriate to review these orders because the jurisdictional prong of irreparable harm could not be shown. It also certified conflict with *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019), in which the Second District Court of Appeal determined that certiorari is appropriate to review such nonfinal orders because they meet the jurisdictional prong of irreparable harm.

Other opinions addressing the availability of interlocutory review of such nonfinal orders under the Anti-SLAPP statute also have been issued, furthering the interdistrict conflict. *Compare Davis v. Mishiyev*, 339 So. 3d 449, 452 (Fla. 2d DCA 2022) (holding that an order denying a motion to dismiss a suit for defamation and intentional interference with a business relationship under the Anti-SLAPP statute was reviewable by certiorari, and again certifying conflict with *Materio*), *with Vericker v. Powell*, No. 3D22-645, 2022 WL 3221457, \*1-2 (Fla. 3d DCA Aug. 10, 2022) (holding that an order denying a motion for summary judgment of a defamation claim under the Anti-SLAPP statute was not reviewable by certiorari, certifying conflict with *Davis* and *Gundel*, and referring the “issue of whether rule 9.130’s schedule of appealable nonfinal orders should be amended to include orders that determine motions premised upon Florida’s Anti-SLAPP statute”), *and Geddes v. Jupiter Island Compound*, 341 So. 3d 353, 353 (Fla. 4th DCA 2022) (holding that a nonfinal order denying a motion to dismiss a complaint under the Anti-SLAPP statute was not reviewable by certiorari, and certifying conflict with *Gundel* and *Davis*). Indeed, the Third District Court of Appeal in *Vericker* noted that, by certifying conflict and referring the issue to the Committee, it was “confident of invoking a more deliberative approach to the issue of whether such non-final orders – motions premised on Florida’s Anti-SLAPP statute – should be immediately appealable.” 2022 WL 3221457, at \*2.

The Committee unanimously decided that a nonfinal appeal should be permitted from an order denying a motion to dismiss or for summary judgment under section 768.295, Florida Statutes, because the statute immunizes a defendant from suit (as opposed

to immunity from liability). Permitting immediate review ensures that defendants who should be entitled to immunity from suit are not required to proceed through trial and await a final judgment—a result that would deny them the protection afforded by the statute. In reaching this decision, the Committee analyzed the four primary policy considerations to be examined when determining whether to add another category of nonfinal appeals to Rule 9.130. *See Keck v. Eminisor*, 104 So. 3d 359, 365 (Fla. 2012) (considering the following four factors in deciding whether to allow interlocutory review of an order denying summary judgment based on individual immunity under section 768.28(9)(a), Florida Statutes: (1) the nature of the rights involved; (2) the likelihood that the issue will reoccur; (3) whether the issue of law can be resolved without resolution of factual issues; and (4) the amount of increased workload that expanding Rule 9.130 would have on appellate courts). As detailed in Appendix F, the Committee believed that the four factors weighed in favor of allowing immediate review of orders denying a motion to dismiss or for summary judgment based on section 768.295(4), Florida Statutes.

That said, the Committee does not believe that nonfinal appeals of orders granting motions to dismiss or for summary judgment under the statute need to be permitted. That is because such an order typically result in a partial final judgment as to that defendant, which is already immediately appealable under Florida Rule of Appellate Procedure 9.110(k) (Appeal Proceedings to Review Final Orders of Lower Tribunals and Orders Granting New Trial in Jury and Nonjury Cases).

Additionally, the Committee reviewed rules and case law from across the country to determine how this issue is addressed in other states. (See Appendix F-22–F-24 and F-28–F-33.)

The Committee, therefore, proposes amending Rule 9.130 by adding subdivision (a)(3)(H) to allow for district courts of appeal to review nonfinal orders that “deny a motion under section 768.295(4), Florida Statutes.” As proposed, Rule 9.130(a)(3)(H) would not authorize review of nonfinal orders that grant a motion under section 768.295(4).

The Committee proposes an additional amendment to subdivision (a)(3)(F)(iii) to delete the conjunctive “or” at the end of the subdivision. The Committee also proposes an amendment to subdivision (a)(3)(G) to add a semicolon and the conjunctive “or” to the end of the subdivision to allow for the creation of new subdivision (a)(3)(H).

Further, the Committee proposes additional amendments to subdivisions (a)(1) (replacing “shall” with “must”), (a)(2) (replacing “shall” with “must”), (a)(3)(C)(x) (replacing “shall” with “will” and “pursuant to” with “under”), (b) (replacing “shall” with “must”), (c) (replacing “shall” with “must” in two places within the subdivision), (d) (replacing “shall” with “will”), (e) (replacing “shall” with “must” in two places within the subdivision), (g) (replacing “shall” with “must”), and (h) (replacing “shall” with “will”) are necessary to conform to *In re: Guidelines for Rules Submissions*, AOSC06-14 (Fla. 2006).

WHEREFORE, the Appellate Court Rules Committee respectfully requests that the Court amend Florida Rule of Appellate Procedure 9.130 as detailed above.

Respectfully submitted on August 19, 2022.

/s/Andrew David Manko  
Hon. Andrew David Manko, Chair  
Appellate Court Rules Committee  
Division of Administrative Hearings  
1230 Apalachee Parkway  
Tallahassee, FL 32399-0002  
850/488-9675  
[Andrew.Manko@doah.state.fl.us](mailto:Andrew.Manko@doah.state.fl.us)  
Florida Bar No. 18853

/s/ Joshua E. Doyle  
Joshua E. Doyle  
Executive Director  
The Florida Bar  
651 E. Jefferson Street  
Tallahassee, FL 32399  
850/561-5600  
[jdoyle@floridabar.org](mailto:jdoyle@floridabar.org)  
Florida Bar No. 25902

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was furnished by e-mail, via the Florida Courts E-filing Portal, on August 19, 2022, to:

Paul R. Regensdorf  
Paul R. Regensdorf, Attorney at Law, PLLC  
3494 SW Forest Hills Ct  
Palm City, FL 34990-2602  
954/562-9598  
[paul.regensdorf@gmail.com](mailto:paul.regensdorf@gmail.com)  
Florida Bar No. 152395

## **CERTIFICATE OF COMPLIANCE**

I certify that these rules were read against *Thomson Reuters' Florida Rules of Court—State* (2022 Edition). I certify that this notice was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.045.

/s/ Heather Savage Telfer  
Heather Savage Telfer  
Senior Attorney, Rules  
Program  
Appellate Court Rules  
Committee  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300  
850/561-5833  
[htelfer@floridabar.org](mailto:htelfer@floridabar.org)  
Florida Bar No. 139149