

§1.0.00 | INTRODUCTION²

The general procedures governing the preparation and filing of appellate motions are contained in Rule 9.300 of the Florida Rules of Appellate Procedure.³ In some instances, these procedures must be applied in conjunction with additional requirements established by a more specific rule relating to the subject matter of the motion. This Article discusses appellate motion practice in general and the special requirements that apply to the most common types of motions.

A party may file a motion in an appellate court to resolve any matter that is not addressed by some other remedy established by the Florida Rules of Appellate Procedure. Rule 9.300(a) states that “[u]nless otherwise prescribed by these rules, an application for an order or other relief available under these rules shall be made by filing a motion therefor.”⁴ This broad statement authorizes the use of motions in a variety of situations.

Despite the broad scope of Rule 9.300(a), the parties should attempt to minimize the need for filing motions in an appellate court. Motion practice is necessarily more limited in appellate courts than it is in trial courts. A final judgment is entered at the trial level only after many issues have been resolved through the pretrial and trial stages of the proceeding by orders and rulings on motions. In contrast, the merits of an appeal can be decided without preliminary rulings or decisions. The parties conceivably could obtain a decision on the merits of a well-presented appeal without filing a single motion.

Given these differences, the appellate courts repeatedly have cautioned lawyers to exercise restraint when filing motions in appellate proceedings.⁵ Many of the motions filed in appellate courts are unnecessary.

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Footnotes

¹. The material from this Article is adapted from Philip J. Padovano, Florida Appellate Practice chs. 12, 14, 15, 19, 20 (2001–2002 ed., West 2001).

². See *id.* § 14.1 for an introduction on motions.

³. Fla. R. App. P. 9.300 (2001).

⁴. *Id.* 9.300(a).

⁵. *Sarasota County v. Ex*, 645 S.2d 7, 7–8 (Fla. Dist. App. 2d 1994); *Perez v. Perez*, 769 S.2d 389, 392 (Fla. Dist. App. 3d 1999); *Dubowitz v. Cent. Village E.*, 381 S.2d 252, 254 (Fla. Dist. App. 4th 1979). Motions should not be used to present argument that can be presented in the briefs. *Slizyk v. Smilack*, 734 S.2d 1166, 1167 (Fla. Dist. App. 5th 1999).

