

§2.C.00 | CONTENTS OF MOTION²⁸

Motions filed under the Rules are unlike those submitted to the trial courts in that they must contain all of the information necessary for a decision. Because the Rules do not afford the moving party an opportunity to present evidence and argument in a hearing, as would ordinarily be the case at the trial level, a motion filed in an appellate court must be a self-contained statement of the claim for relief.

Rule 9.300(a) provides that an appellate motion must include an application for relief, a statement of the grounds on which the motion is based, and an argument with appropriate citations of authority.²⁹ A party is not entitled to file a brief in support of a motion.³⁰ Consequently, the proper method of presenting the legal argument in support of a motion filed in an appellate court is to include the argument in the text of the motion.

In addition to the requirements set by Rule 9.300(a), a motion filed in an appellate court should include certain formal elements. All appellate motions should contain the following basic parts: (1) a caption including the case number in both the appellate court and the lower tribunal, (2) a title describing the type of motion, (3) a body containing the factual basis and the argument, (4) a request for relief, (5) a signature, and (6) a certificate of service. As prescribed by the Florida Rules of Judicial Administration, a motion filed in the appellate court must be submitted on letter-size paper measuring eight and one-half by eleven inches.³¹

If the motion is one that seeks an extension of time, it also must include a certificate stating the opposing party's position on the request.³² Failure to include a certificate regarding the position of opposing counsel in a motion for extension of time may result in the summary denial of the motion.³³

The appellate courts rely on the representations of counsel in routine requests for extensions of time.³⁴ Given the inherent ethical considerations, counsel for the moving party should exercise particular care in representing the opposing attorney's position. If the opposing attorney has orally consented to the extension or other request for relief, the movant's attorney should confirm the consent in writing. A confirmation letter may help demonstrate the accuracy of the representation in the motion if a subsequent dispute about the consent arises.³⁵

The practice of consulting with opposing counsel is required with respect to motions for extensions of time, but it is a good idea to ascertain the opponent's position on any motion.³⁶ There are other types of motions that could be simplified greatly by an agreement on one or more of the issues. In this regard, the nonmoving party should consider carefully the need to oppose an appellate motion. Opposition should not be raised merely out of the mistaken belief that the adversary process requires some form of controversy regarding every issue before the court.

It is appropriate to submit an appendix in support of an appellate motion, and, in some situations, preparing and filing an appendix would be the best method of providing a factual basis for the arguments presented to the court.³⁷ An appendix to a motion should be prepared in the same fashion as an appendix to an appellate brief, and it should be filed and served along with the motion, either as an attachment or as a separate document.³⁸ Unless the appendix contains documents or other exhibits of nonconforming sizes, it should be prepared on letter-size paper measuring eight and one-half by eleven inches.³⁹

The need for an appendix often depends on the stage of the proceedings in which the motion is filed. A motion that presents a substantive issue to the appellate court before the record has been transmitted by the lower tribunal is likely to require an appendix. At that point, the appellate court would not have access to the material facts necessary to resolve the issue raised in the motion. On the other hand, a motion presented to an appellate court after the record has been transmitted is less likely to require an appendix. For example, it is unlikely that an appendix would ever be required in support of a motion for rehearing. At that point, any fact necessary to support the motion would be in the record already before the court.

An appellate motion may present a jurisdictional or procedural issue that was not addressed in the lower tribunal and thus was not based on the evidence contained in the record. To account for this possibility, Rule 9.300(a) authorizes the submission of an appendix containing affidavits or other documents that were not part of the record of the proceeding before the lower tribunal.⁴⁰ To illustrate, a party who seeks to dismiss an appeal on the ground that the issue has become moot may find it necessary to submit an appendix with an affidavit or other evidence showing the change in circumstance that renders the case moot. An event occurring after

the appeal has been filed would not be reflected by anything in the record.

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Footnotes

²⁸. See Padovano, *supra* n. 1, at §§ 14.4, 14.11 for the source of the material that is adapted in this Subsection.

²⁹. Fla. R. App. P. 9.300(a).

³⁰. The committee notes to Rule 9.300(a) express the view that briefs on motions are cumbersome and unnecessary. Id. 9.300 comm. nn. 1977 amend. The notes explain further that “[a]ny matters that formerly would have been included in a brief on a motion should be included in the motion.” Id.

³¹. Fla. R. Jud. Admin. 2.055(a) (2002).

³². Rule 9.300(a) provides that “[a] motion for an extension of time shall, and other motions if appropriate may, contain a certificate that the movant’s counsel has consulted opposing counsel and that the movant’s counsel is authorized to represent that opposing counsel either has no objection or will promptly file an objection.”

³³. Id.; Mills v. Heenan, 382 S.2d 1317, 1318 (Fla. Dist. App. 5th 1980). A representation by an attorney that opposing counsel does not object to a motion for extension of time is a representation by the attorney and not a representation by a member of the attorney’s staff. In Publix Supermarkets, Incorporated v. Arnold, 707 S.2d 1161 (Fla. Dist. App. 5th 1998), the court fined an attorney \$250.00 for incorrectly representing that opposing counsel did not object to a motion for extension of time. Id. at 1161.

³⁴. In Hilltop Developers, Incorporated v. Masterpiece Homes, Incorporated, 455 S.2d 1155 (Fla. Dist. App. 5th 1984), the court noted that “[i]t is essential to the expeditious handling of motions under [R]ule 9.300 that [the] court be able to rely upon the accuracy of representations of counsel.” Id. at 1156. The court reprimanded the appellant’s attorney for misrepresenting that opposing counsel had consented to a motion for extension of time. Id. For an example of another instance in which an attorney was personally charged for a misrepresentation, see Merritt v. Promo Graphics, Incorporated, 679 S.2d 1277, 1229 (Fla. Dist. App. 5th 1996), which imposed sanctions on the ground that the representation was not correct.

³⁵. It is best to confirm the consent to a motion by a letter or memorandum. In Hilltop Developers, the appellant was unable to verify an alleged oral agreement that was the subject of a certificate of counsel under the provisions of Rule 9.300(a). 455 S.2d at 1156.

³⁶. Rule 9.300(a) states that “[a] motion for an extension of time shall, and other motions if appropriate may, contain a certificate that the movant’s counsel has consulted opposing counsel and that the movant’s counsel is authorized to represent that opposing counsel either has no objection or will promptly file an objection.” (Emphasis added.)

³⁷. The material portion of Rule 9.300(a) states that “[a] motion may be accompanied by an appendix, which may include affidavits and other appropriate supporting documents not contained in the record.”

³⁸. Id. 9.220.

³⁹. Although Florida Rule of Judicial Administration 2.055 provides that letter-size paper shall be used in all Florida courts, it contains an exception in Subdivision (b) that allows any “exhibit or attachment” to be filed in its original size.

⁴⁰. According to Rule 9.300(a), an appendix to a motion “may include affidavits and other appropriate supporting documents not contained in the record.” Matters that are outside the record should not be included unless they are necessary to provide a complete presentation of the motion. “Although affidavits and other documents not appearing in the record may be included in the appendix, it is to be emphasized that such materials are limited to matter[s] germane to the motion, and are not to include matters related to the merits of the case.” Id. comm. nn. 1977 amend.

