

§2.D.00 | NOTICE AND SERVICE⁴¹

An appellate motion must be served on all parties to the review proceeding, but there is no other notice requirement.⁴² Unlike a motion filed in the trial court, an appellate motion is not set for hearing. It is possible, but very unlikely, that an appellate court will hear oral argument on a motion, but even if that is to occur, the court, not counsel, will schedule the argument. Because an appellate motion is likely to be considered without a hearing or any further argument, the moving party need only serve the motion itself.

Some issues that arise in the course of an appellate proceeding must be presented to the trial court by motion before they are considered in the appellate court. Depending on the local practice, it may be proper to schedule such a motion for a hearing before the trial court. When that occurs, the party requesting the hearing also must serve a notice of hearing on all other parties to the case.⁴³ For example, in most jurisdictions the moving party would be required to schedule a hearing on a motion for stay pending review and to serve a notice of the hearing under the rules of civil procedure.

A special notice procedure applies to all emergency motions filed in the appellate court or in the lower tribunal during the course of an appellate proceeding.⁴⁴ Even though an emergency motion filed in the appellate court would not be set for hearing by a party, counsel should attempt some form of actual notice so that the opposing party will have an opportunity to file a written response before the appellate court's decision. Notice of a motion requesting emergency relief can be made by any practical form including actual notice by telephone. An emergency motion must include a statement explaining the nature of the emergency and a statement regarding counsel's efforts to give actual notice to all interested parties.

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Footnotes

⁴¹. See Padovano, *supra* n. 1, at § 14.3 for the source of the material that is adapted in this Subsection.

⁴². Rule 9.420(b) provides that “[a]ll original papers shall be filed either before service or immediately thereafter. A copy of all documents filed under these rules shall, before filing or immediately thereafter, be served on each of the parties.” Because an appellate motion is an original paper, it must be served on all parties of record at the time of filing. All of the acceptable methods of service are given in Rule 9.420(c). Read in conjunction with Rule 9.300(a), Rule 9.420(d) generally provides for an additional five days to serve a response to a motion served by mail. *Infra* nn. 59–60 and accompanying text. The certificate of service on a motion should indicate the method of service. *N. Fla. Regl. Med. Ctr. v. Witt*, 616 S.2d 614, 615 (*Fla. Dist. App. 1st* 1993).

⁴³. Fla. R. Civ. P. 1.090(d) (2001); *id.* 1.100(b).

⁴⁴. Florida Rule of Appellate Procedure 9.300(c) states that “[a] party seeking emergency relief shall, if practicable, give reasonable notice to all parties.”

