

§2.E.00 | EFFECT OF FILING MOTIONS⁴⁵

Florida Rule of Appellate Procedure 9.300(b) provides that the filing of certain motions will operate to “toll the time schedule of any proceeding in the court until disposition of the motion.”⁴⁶ Thus, it is important to determine whether a motion is the type that will suspend the time schedule for filing or service of other papers in the appellate court.

Motions tolling the time schedule imposed by the appellate rules are identified in Rule 9.300(b) by the process of elimination.⁴⁷ The Rule states that, “[e]xcept as prescribed by subdivision (d) of this rule, service of a motion shall toll the time schedule of any [appellate] proceeding.”⁴⁸ The latter section of the Rule specifically lists those motions that do not toll the running of any time period. The exceptions listed in Rule 9.300(d) are as follows:

- (1) [m]otions for post-trial release, [R]ule 9.140(g) [;]
- (2) [m]otions for stay pending appeal, [R]ule 9.310 [;]
- (3) [m]otions relating to oral argument, [R]ule 9.320 [;]
- (4) [m]otions relating to joinder and substitution of parties, [R]ule 9.360 [;]
- (5) [m]otions relating to amicus curiae, [R]ule 9.370 [;]
- (6) [m]otions relating to attorney[s'] fees on appeal, [R]ule 9.400 [;]
- (7) [m]otions relating to service, [R]ule 9.420 [;]
- (8) [m]otions relating to admission or withdrawal of attorneys, [R]ule 9.440 [;]
- (9) [m]otions relating to expediting the appeal; [and]
- (10) [a]ll motions filed in the supreme court, unless accompanied by a separate request to toll time.⁴⁹

The final exception listed in Subsection (d) effectively limits the automatic tolling procedure in Subsection (b) to proceedings in the district courts of appeal and appellate proceedings in the circuit courts.⁵⁰ A motion in the Florida Supreme Court does not automatically toll the time for filing and serving other documents required by the Rules.⁵¹ Counsel for the moving party must file a separate motion to toll the time periods pending resolution of the



motion in question, and the matter of suspending the time is discretionary with the Supreme Court.

If the motion is in the general class of motions that operates to toll the appellate time schedule, it will have that effect even if it appears to be unmeritorious.⁵² Whether the time periods will be extended automatically under Rule 9.300(b) is a question that is resolved by considering the nature of the motion and not its relative merit. However, the motion must be one that is authorized or it will not toll the time for filing other papers in the appellate court. An unauthorized appellate motion will be treated as a nullity, and it will be ineffective to toll the time periods that otherwise would apply to the case.⁵³

If the appellate court has extended the time for filing the record on appeal, it is not necessary to obtain an extension for filing the initial brief. Rule 9.300(b) provides in part that “[a]n order granting an extension of time for preparation of the record, or the index to the record, or for filing of the transcript of proceedings, shall extend automatically, for a like period, the time for service of appellant’s initial brief.”⁵⁴ An order extending the time for filing the record is sufficient to extend the time for service of the initial brief, even though the time for service of the brief is measured from the date of filing the notice of appeal and not from the date the record is submitted. By the terms of Rule 9.300(b), the order extending the time for filing the record is an automatic extension of the time for service of the brief.⁵⁵

(Stetson Law Review © 2002 // Volume 32, Issue 2, Article 4 // Phillip J. Padovano)



Footnotes

⁴⁵. See Padovano, *supra* n. 1, at § 14.6 for the source of the material that is adapted in this Subsection.

⁴⁶. Motions not listed in Rule 9.300(d) toll the time for performance of other acts under the appellate rules. A motion for extension of time tolls the time period in question until disposition of the motion. *Anderson v. Willis*, 402 S.2d 1344, 1345 (Fla. Dist. App. 1st 1981); *Kuznik v. State*, 604 S.2d 37, 37 (Fla. Dist. App. 2d 1992); *Ike's Carter Pool & Maint. Co. v. Roberts*, 432 S.2d 137, 137 (Fla. Dist. App. 4th 1983).

⁴⁷. Fla. R. App. P. 9.300(b).

⁴⁸. *Id.*

⁴⁹. *Id.* 9.300(d).

⁵⁰. *Id.* 9.300(d)(10).

⁵¹. A motion filed in the Supreme Court will not toll the appellate time periods “unless accompanied by a separate request to toll time.” *Id.* 9.300(d)(10). The committee notes explain that this section of the Rule “codifies current practice in the supreme court, where motions do not toll time unless the court approves a specific request, for good cause shown, to toll time for the performance of the next act.” *Id.* 9.300 comm. nn. 1977 amend. The Appellate Rules Committee further observed that “[v]ery few motions filed in [the Supreme Court] warrant a delay in further procedural steps to be taken in a case.” *Id.*

⁵². Rule 9.300(b) does not distinguish between meritorious motions and frivolous motions. In *Anderson*, 402 S.2d at 1345, the court held that a motion to dismiss tolled the appellate time schedule even though the motion was of questionable merit. *Id.*

⁵³. An unauthorized motion does not toll the running of time. *State v. Kilpatrick*, 420 S.2d 868, 868 (Fla. 1982) (holding that a motion for rehearing en banc unaccompanied by a motion for rehearing directed to the panel was a nullity and was therefore ineffective to toll the jurisdictional time limit for seeking discretionary review in the Supreme Court).

⁵⁴. Fla. R. App. P. 9.300(b). Before the adoption of this procedure in 1992, an order extending the time for filing the record had no effect on the time for service of the initial brief. *Id.* 9.300 comm. nn. 1992 amend.

⁵⁵. *Id.* 9.300.

