

§3.E.02 | CORRECTING OR MODIFYING APPELLATE DECISIONS - CLARIFICATION

A party who fears that an appellate decision might be interpreted more than one way may request a clarification by the court. Florida Rule of Appellate Procedure 9.330(a) provides that a motion for clarification “shall state with particularity the points of law or fact” in the decision that the moving party believes “are in need of clarification.”¹⁴³ The opposing party may serve a response to a motion for clarification within ten days of service of the motion.

Rehearing and clarification are different remedies. A motion for rehearing may be appropriate in a case in which the appellate court clearly stated its opinion, yet apparently missed a key point, while a motion for clarification may be called for in a case in which the appellate court failed to explain its decision adequately, but evidently did not overlook or misunderstand any of the controlling points.

Although the rules do not prohibit the filing of a motion for clarification when the appellate court has decided the case without an opinion, the moving party has a more difficult task in presenting the motion in this situation. The need for clarification implies that there is something about an opinion that requires further explanation. Asking the court to clarify a per curiam decision summarily affirming a case is tantamount to asking the court to write an opinion in the case.

A request for rehearing and a request for clarification may be made together in a single motion styled as a motion for rehearing or clarification. The practice of filing both motions may be advantageous if clarification of a district court decision would resolve an ambiguity about what should occur on remand or if clarification would provide a possible basis for supreme court review.

Rule 9.330(b) provides that a party may file only one motion for rehearing or clarification.¹⁴⁴ Thus, an appellate decision is subject to only one request for clarification, whether the motion for clarification is made on its own or as a part of a motion for rehearing. However, the rule does permit the filing of both a motion for clarification and a motion for certification.¹⁴⁵ Clarification and certification are remedies that may be pursued separately or in conjunction with each other.



If the district court's decision conflicts with decisions of other district courts, although not expressly so, it may be a good strategy to file a motion for clarification as a preliminary step in an overall plan to seek discretionary review in the Supreme Court. If there is a conflict that was not dealt with directly in the opinion, the district court may expressly acknowledge the conflict in the opinion on clarification. The danger in this strategy, however, is that the court may attempt to distinguish the conflicting cases in the process of clarifying its decision. That would make it more difficult to obtain discretionary review in the Supreme Court.

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Footnotes

¹⁴³. Fla. R. App. P. 9.330(a). For cases addressing motions for clarification, see Sherburne v. School Board of Suwannee County, 455 S.2d 1057, 1062 (Fla. Dist. App. 1st 1984); Cenvill Investors, Incorporated v. Columbus, 483 S.2d 751, 753 (Fla. Dist. App. 4th 1986); and State v. Banks, 499 S.2d 894, 894 (Fla. Dist. App. 5th 1986). In Hampton v. A. Duda & Sons, Incorporated, 511 S.2d 1104, 1104 (Fla. Dist. App. 5th 1987), the court granted a motion for clarification of a per curiam affirmance to discuss an intervening decision of the Florida Supreme Court. In Pizza USA of Pompano, Incorporated v. R/S Associates of Florida, 665 S.2d 237, 241 (Fla. Dist. App. 4th 1995), the court granted a motion for clarification to clear up confusion regarding the court's instructions on remand. In Tench v. American Reliance Insurance Company, 671 S.2d 801, 802 (Fla. Dist. App. 3d 1996), the court granted a motion for clarification to explain that an order granting a motion for appellate attorneys' fees in an appeal from a nonfinal order was conditional and that it could not be enforced unless the prevailing party in the appeal also prevailed in the case on remand. Finally, in Allstate Insurance Company v. Bradley, 690 S.2d 694, 694–695 (Fla. Dist. App. 1st 1997), the court granted a motion for clarification after a per curiam affirmance to explain that the court had affirmed an order granting a new trial on only one of the two grounds presented on appeal.

¹⁴⁴. Fla. R. App. P. 9.330(b).

¹⁴⁵. Id. Rule 9.330(b) provides that

“[a] party shall not file more than [one] motion for rehearing or for clarification of decision and [one] motion for certification with respect to a particular decision.”

