

Rehearing and Reconsideration

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The Big Picture

- Rehearing vs. reconsideration: how are they different and why do those differences matter for appellate purposes?
- When is a motion for rehearing necessary?
- What if time is running short but I want to try to address an issue before the trial court?
- Obligations of professionalism

Rehearing vs. Reconsideration

- A trial court can **rehear** a final order under rule 1.530
 - Tolls rendition of the final order, hence it tolls the time to file an appeal. Fla. R. App. P. 9.020(h)(1)(B)
- The trial court has inherent authority to **reconsider** any of its nonfinal, interlocutory orders prior to the entry of a final judgment
 - *Does not* toll rendition, thus does not toll time to file an appeal
- Nomenclature does not control. *Seigler v. Bell*, 148 So. 3d 473, 478-79 (Fla. 5th DCA 2014); *T.E.D. v. Dep't of Children & Family Servs. (In the Interest of C.D.)*, 867 So. 2d 405, 406 (Fla. 2d DCA 2003)

Rehearings: Rule 1.530

- Final orders only
- Broad authority to revise ruling on “all or a part of the issues”
- Served within 15 days of order’s entry. Time cannot be enlarged. Fla. R. Civ. P. 1.090(b)(2)
- Jury and non-jury trial, summary judgments
- One bite at the apple (but rule allows amendment of a timely motion)
- Caution: do not confuse with a motion to vacate a final order under rule 1.540
- Pending motion tolls rendition of the final order (thereby tolling the time to appeal) when timely served

Rehearings: Rule 8.265

- Limited in scope: six listed grounds for a motion for rehearing
- Rehearing may be granted to “all or any of the parties on all or any part of the issues”
- Must be made within 10 days of the entry of the order and the court shall rule on the motion for rehearing within 10 days of filing **or it is deemed denied**
- **Does not** toll the time for the filing of an appeal. Fla. R. Juv. P. 8.265(b)(3)
- The rule therefore allows “10 days for filing a motion, and 10 days for the court to rule on it or for it to be deemed denied, leaving 10 days in the appeal period in which to file a timely notice of appeal.” *J.R.B. v. Dep't of Children & Families*, 300 So. 3d 808, 810 (Fla. 1st DCA 2020)

Reconsideration

- Inherent authority of the trial court. *Silvestrone v. Edell*, 721 So. 2d 1173 (Fla. 1998)
- Interlocutory, nonfinal orders
- Considerable discretion by trial court *before* entry of a final judgment
- Does not toll time for appeal
- No express limit on the number of motions
- *Helmich v. Wells Fargo Bank, N.A.*, 136 So. 3d 763 (Fla. 1st DCA 2014) (reviewing the differences between reconsideration and rehearing)

Do I *have*
to file
a motion for
rehearing
before
seeking
appellate
review?

- Preservation requires that a party bring an error to the trial court's attention
- Otherwise: review is for fundamental error
- Rule 1.530(e): "When an action has been tried by the court without a jury, **the sufficiency of the evidence** to support the judgment may be raised on appeal ***whether or not*** the party raising the question has made any objection thereto in the trial court or made a motion for rehearing, for new trial, or to alter or amend the judgment."

What about other kinds of errors?

- Where an error appears for the first time on the face of a final order, a motion for rehearing may be necessary to preserve the issue for an appeal.
 - *Pensacola Beach Pier, Inc. v. King*, 66 So. 3d 321, 324 (Fla. 1st DCA 2011)
 - *D.T. v. Fla. Dep't of Children & Families.*, 54 So. 3d 632, 633 (Fla. 1st DCA 2011)
- Motions for new trial are required in certain situations to preserve error (for example, to preserve a challenge to the inadequacy/excessiveness of damages awarded in a jury verdict).
 - *Ellender v. Bricker*, 967 So. 2d 1088, 1091 (Fla. 2d DCA 2007)

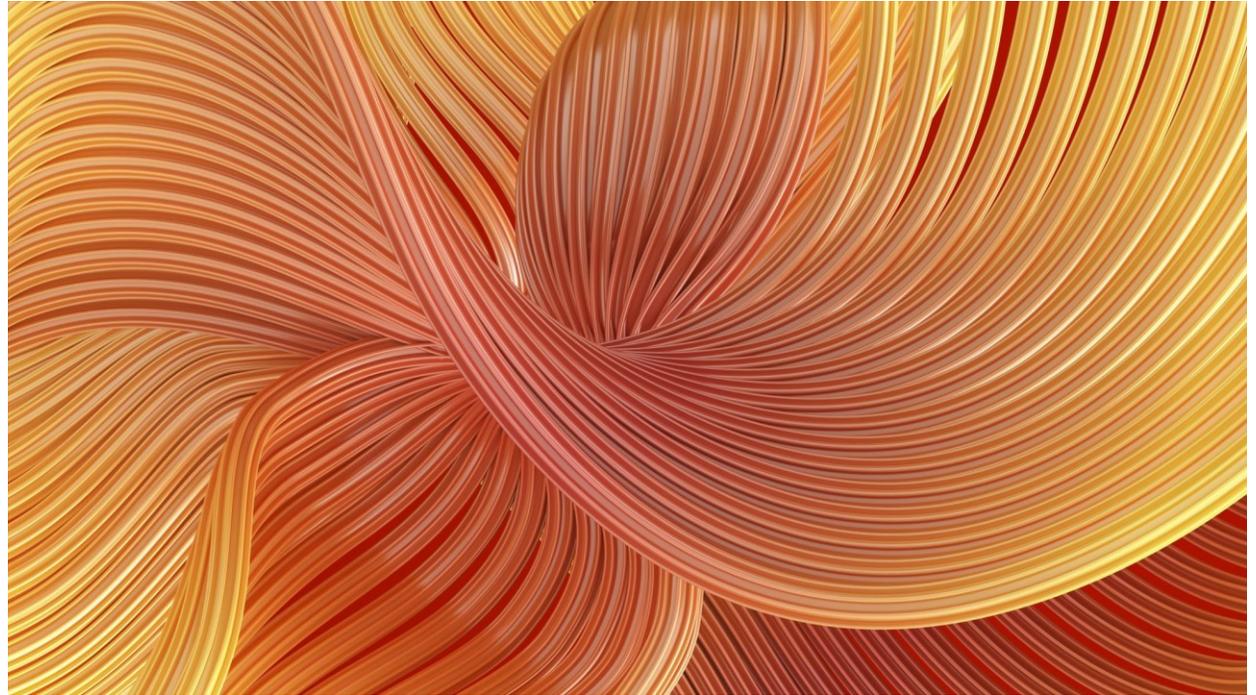
Partial Final Judgments

- Rule 9.110(k): can appeal a partial final judgment immediately or at the end of the action
- Caution with counterclaims!
- If “a partial final judgment totally disposes of an entire case as to any party, it must be appealed within 30 days of rendition.” Fla. R. App. P. 9.110(k)

The filing of a notice of appeal does not abandon *pending, timely, and authorized* post-trial motions.

The appeal will be held in abeyance until the motion is resolved.

Fla. R. App. P.
9.020(h)(2)(C).



Other Areas of Law

Administrative actions: The Administrative Procedure Act does not authorize motions for rehearing in general (Chapter 120).

Check to see if the agency has a specific rule. Also be aware that there may be circuit splits on whether such rules toll rendition.

The rules of juvenile procedure provide that motions for rehearing do not toll rendition in dependency proceedings. Fla. R. Juv. P. 8.265(b)(3).



Professionalism

- “A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials.” Preamble, Chapter 4, Rules of Professional Conduct.
- A lawyer is obligated “to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.” Preamble, Chapter 4.
- A motion for rehearing is not to be used to express bottomless displeasure with the court. *Ayala v. Gonzalez*, 984 So. 2d 523, 526 (Fla. 5th DCA 2008) (in the context of an appellate motion for rehearing).

Thank you!

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