

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

GEORGE H. DECKER,

Plaintiff/Petitioner,

v.

Case No: 5:15-cv-24-Oc-30PRL

CITRUS COUNTY, a political
Subdivision of the State of Florida,

Defendant/Respondent.

ORDER

THIS CAUSE comes before the Court upon Petitioner George H. Decker's Motion for the Entry of an Order to Show Cause as to Count VIII Petition for the on the Record Review (Doc. 25) and Respondent's response¹ (Doc. 26). Pursuant to Florida Rule of Appellate Procedure 9.100(h), Petitioner's motion requests that the Court enter an order to show cause directing Respondent to demonstrate why the relief sought in the petition should not be granted. (Doc. 25).

Florida Rule of Appellate Procedure 9.100(h) provides in pertinent part, "If the petition demonstrates a preliminary basis for relief, . . . the court may issue an order either directing the respondent to show cause, within the time set by the court, why relief should not be granted or directing the respondent to otherwise file, within the time set by the court,

¹Although the response indicates that Respondent believes that no preliminary basis for relief exists and the Court should not issue an order to show cause directing a response to the petition, the response is not directly in opposition to Petitioner's motion.

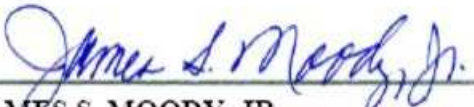
a response to the petition.” But neither party has addressed at any point during the pendency of this case whether Florida Rule of Appellate Procedure 9.100, either in its entirety or in part, governs a petition for writ of certiorari being litigated in federal court. Generally, “federal courts are to apply state substantive law and federal procedural law.” *Hanna v. Plumer*, 380 U.S. 460, 465 (1965). When no comparable procedural provision exists in the federal rules, a federal district court “should apply the state’s rule if it is *outcome determinative*.” *Tiara Condo Ass’n v. Marsh USA, Inc.*, 697 F. Supp. 2d 1349, 1358 (S.D. Fla. 2010) (emphasis added).

CONCLUSION

Accordingly, it is therefore **ORDERED AND ADJUDGED** that:

1. Within twenty-one (21) days of the date of this Order, the parties shall confer and each party may file a memorandum of law addressing whether Florida Rule of Appellate Procedure 9.100, either in whole or in part, or the Federal Rules of Civil Procedure should govern the adjudication of the petition.
2. The Court DEFERS ruling upon Petitioner’s Motion for the Entry of an Order to Show Cause as to Count VIII Petition for the on the Record Review (Doc. 25) until this issue has been addressed by the parties.

DONE and **ORDERED** in Tampa, Florida, this 2nd day of February, 2016.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record