



Supreme Court of Florida

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October 5, 2016

Ms. Cheryle Dodd, Editor
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

In Re: Amendments to the Florida Rules of Appellate Procedure,
Case No. SC16-1377

Dear Ms. Dodd:

I have provided you with a copy of the proposed Rules in the above case. Please publish said Rules in the November 1, 2016, Bar News. Please publish a statement that the Court has placed the proposed Rules on the Internet at location: **http://jweb.flcourts.org/pls/docket/ds_docket_search**.

Any comments should be filed with the Supreme Court on or before December 1, 2016. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Portal in accordance with AOSC13-7. If filed by a non-lawyer or a lawyer not licensed to practice in Florida, the comment must be electronically filed via e-mail in accordance with AOSC04-84. Electronically filed documents must be submitted in Microsoft Word 97 or higher. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court.

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Thank you for your cooperation in this matter.

Most cordially,

A handwritten signature in dark ink, appearing to be 'JAT', followed by a horizontal line extending to the right.

John A. Tomasino

JAT/sh

Enclosure

cc: Kristin A. Norse, Chair, Appellate Court Rules Committee
Honorable Charles T. Canady, Supreme Court Justice Liaison
Honorable Ramón A. Abadin, President, The Florida Bar
Honorable William J. Schifino, Jr., President-elect, The Florida Bar
John F. Harkness, Jr., Executive Director, The Florida Bar
Heather Telfer, Bar Staff Liaison
Chief Judges of the District Courts of Appeal
Clerks of the District Courts of Appeal
Chief Judges of the Judicial Circuits
Clerks of the Judicial Circuits
Deborah J. Meyer, Central Staff Director

The Florida Bar's Appellate Court Rules Committee (Committee) has submitted to the Florida Supreme Court an out-of-cycle report proposing amendments to Florida Rules of Appellate Procedure 9.020 (Definitions); 9.120 (Discretionary Proceedings to Review Decisions of District Courts of Appeal); 9.141 (Review Proceedings in Collateral Postconviction Criminal Cases); 9.160 (Discretionary Proceedings to Review Decisions of County Courts); 9.180 (Appeal Proceedings to Review Workers' Compensation Cases); 9.200 (The Record); and 9.220 (Appendix). The proposed amendments are in response to a request by the Court related to the recent amendments to rule 9.200 that provide for mandatory statewide electronic records on appeal. See In re Amendments to Rule of Appellate Procedure 9.200, 177 So. 3d 1254 (Fla. 2015).

The Court invites all interested persons to comment on the proposed amendments, which are reproduced in full below, as well as online at <http://www.floridasupremecourt.org/decisions/proposed.shtml>. All comments must be filed with the Court on or before December 1, 2016, with a certificate of service verifying that a copy has been served on the Committee Chair, Ms. Kristin Ann Norse, P.O. Box 3396, Tampa, Florida 33601-3396, knorse@kmf-law.com, and on the Bar Staff Liaison to the Committee, Heather Telfer, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, htelfer@flabar.org, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until December 21, 2016, to file a response to any comments filed with the Court. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal in accordance with In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment must be electronically filed via e-mail in accordance with In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004). Electronically filed documents must be submitted in Microsoft Word 97 or higher. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULES OF APPELLATE PROCEDURE, CASE NO. SC16-1377

RULE 9.020. DEFINITIONS

The following terms have the meanings shown as used in these rules:

(a) – (k) [No Change]

(l) **E-filing System Docket.** The docket where attorneys and those parties who are registered users of the court’s electronic filing (e-filing) system can view the electronic documents filed in their case(s).

Committee Notes

[No Change]

Court Commentary

[No Change]

RULE 9.120. DISCRETIONARY PROCEEDINGS TO REVIEW DECISIONS OF DISTRICT COURTS OF APPEAL

(a) – (d) [No Change]

(e) **Accepting or Postponing Decision on Jurisdiction; Record.** If the supreme court accepts or postpones decision on jurisdiction, the court shall so order and advise the parties and the clerk of the district court of appeal. Within 60 days thereafter or such other time set by the court, the clerk shall electronically transmit the record. The clerk shall transmit separate Portable Document Format (“PDF”) files of:

(1) the contents of the record as described in rule 9.200(a) and (c);

(2) the transcript as described in rule 9.200(b); and

(3) the documents filed in the district court in the record on appeal format described in rule 9.200(a) and (c).

(f) [No Change]

Committee Notes

[No Change]

**RULE 9.141. REVIEW PROCEEDINGS IN COLLATERAL OR
POSTCONVICTION CRIMINAL CASES**

(a) [No Change]

(b) Appeals from Postconviction Proceedings Under Florida Rule of Criminal Procedure 3.800(a), 3.801, 3.802, 3.850, or 3.853.

(1) – (2) [No Change]

(3) Grant or Denial of Motion after an Evidentiary Hearing was Held on One or More Claims.

(A) [No Change]

(B) Record.

(i) [No Change]

(ii) Appellant may direct the clerk to include in the record any other documents that were before the lower tribunal at the hearing. ~~If the clerk is directed to include in the record a previously prepared appellate record involving the appellant, the clerk need not reindex or repaginate it.~~

(iii) [No Change]

(C) [No Change]

(c) – (d) [No Change]

Committee Notes

[No Change]

RULE 9.160. DISCRETIONARY PROCEEDINGS TO REVIEW DECISIONS OF COUNTY COURTS

(a) – (f) [No Change]

(g) **Record.** The record shall be prepared and ~~filed~~transmitted in accord with rule 9.110(e) or 9.140(f), depending on the nature of the appeal.

(h) – (j) [No Change]

Committee Notes

[No Change]

RULE 9.180. APPEAL PROCEEDINGS TO REVIEW WORKERS' COMPENSATION CASES

(a) – (b)

(c) **Jurisdiction of Lower Tribunal.**

(1) [No Change]

(2) **Settlement.** At any time before the record on appeal is ~~filed~~transmitted ~~with~~to the court, the lower tribunal shall have the authority to approve settlements or correct clerical errors in the order appealed.

(3) **Relinquishment of Jurisdiction by Court to Consider Settlement.** If, after the record on appeal is ~~filed~~transmitted, settlement is reached, the parties shall file a joint motion stating that a settlement has been reached and requesting relinquishment of jurisdiction to the lower tribunal for any necessary approval of the settlement. The court may relinquish jurisdiction for a specified period for entry of an appropriate order. In the event the Division of Workers' Compensation has advanced the costs of preparing the record on appeal or the filing fee, a copy of the joint motion shall be furnished to the division by the appellant.

(A) – (B) [No Change]

(d) – (e) [No Change]

(f) Record Contents: Final Orders.

(1) – (6) [No Change]

(7) Preparation, Certification, and ~~Transmittal~~Transmission of the Record. The deputy chief judge of compensation claims shall designate the person to prepare the record. The clerk of the office of the judges of compensation claims shall supervise the preparation of the record. The record shall be ~~delivered~~transmitted to the lower tribunal in sufficient time for the lower tribunal to review the record and ~~send~~transmit it to the court. The lower tribunal shall review the original record, certify that it was prepared in accordance with these rules, and within 60 days of the notice of appeal being filed transmit the record to the court. The lower tribunal shall provide an electronic image copy of the record to all counsel of record and all unrepresented parties.

(8) – (9) [No Change]

(g) – (i) [No Change]

Committee Notes

[No Change]

RULE 9.200. THE RECORD

(a) – (c) [No Change]

(d) ~~Duties of Clerk; Preparation and Transmittal~~Transmission of Electronic Record.

(1) The clerk of the lower tribunal shall prepare the record as follows:

(A) The clerk of the lower tribunal shall assemble the record on appeal and prepare a cover page and a complete index to the record. The cover page shall include the name of the lower tribunal, the style and number of the case, and the caption RECORD ON APPEAL in 48-point bold font. Consistent with Florida Rule of Judicial Administration 2.420(g)(8), the index shall indicate any confidential information in the record and if the information was determined to be confidential in an order, identify such order by date or docket number and record

page number. The clerk of the lower tribunal shall not be required to verify and shall not charge for the incorporation of any transcript(s) into the record. The transcript of the trial shall be kept separate from the remainder of the record on appeal and shall not be renumbered by the clerk. The progress docket shall be incorporated into the record immediately after the index.

(B) All pages of the remainder of the record shall be consecutively numbered. Any transcripts other than the transcript of the trial shall continue the pagination of the record pages. Supplements permitted after the clerk of the lower tribunal has transmitted the record to the court shall be submitted by the clerk as separate Portable Document Format (“PDF”) files in which pagination is consecutive from the original record and continues through each supplement.

(C) The entire record, except for the transcript of the trial, shall be compiled into a single PDF file. The PDF file shall include all filings in their redacted form. The unredacted version of any information in the record shall be provided to the appellate court upon request. The PDF file shall be:

(i) – (iii) [No Change]

(2) – (3) [No Change]

(4) The court shall upload the electronic record to the electronic filing (e-filing) system docket. Attorneys and those parties who are registered users of the court’s e-filing system may download the electronic record in their case(s).

(e) [No Change]

(f) **Correcting and Supplementing Record.**

(1) – (2) [No Change]

(3) If the court finds that the record is not in compliance with the requirements of this rule, it may direct the clerk of the lower tribunal to submit a compliant record, which will replace the previously filed noncompliant record.

Committee Notes

1977 Amendment – 2014 Amendment. [No Change]

2015 Amendment. The amendments in *In re Amendments to Rule of Appellate Procedure 9.200*, 164 So. 3d 668 (Fla. 2015), do not modify the clerk’s

obligation to transmit a separate copy of the index to the parties, pursuant to Rule 9.110(e).

RULE 9.220. APPENDIX

(a) [No Change]

(b) Contents. The appendix shall contain a coversheet, an index, a certificate of service, and a conformed copy of the opinion or order to be reviewed and may contain any other portions of the record and other authorities. Asterisks should be used to indicate omissions in documents or testimony of witnesses. The cover sheet shall state the name of the court, the style of the cause, including the case number if assigned, the party on whose behalf the appendix is filed, the petition, brief, motion, response, or reply for which the appendix is served, and the name and address of the attorney, or pro se party, filing the appendix.

(c) Electronic Format. ~~Unless otherwise authorized by court order or court rule, the appendix shall be prepared and filed electronically with the clerk as an independent PDF file or a series of independent PDF files.~~ The appendix shall be prepared and filed electronically as a separate Portable Document Format ("PDF") file, or a series of separate PDF files, in compliance with the size limitations and other technical requirements established by the supreme court. The electronically filed appendix shall be filed as one document, unless size limitations or technical requirements established by the supreme court require multiple parts. The appendix shall be consecutively paginated, beginning with the cover sheet as page 1. The appendix must be properly indexed, bookmarked, and fully text searchable.

(d) Paper Format. When a paper appendix is authorized, it shall be ~~separately bound or separated from the petition, brief, motion, response, or reply by a divider and appropriate tab, and the following requirements shall apply: (1) if the appendix includes documents filed before January 1991 on paper measuring 8 1/2 by 14 inches, the documents should be reduced in copying to 8 1/2 by 11 inches, if practicable; and (2) if reduction is impracticable, the appendix may measure 8 1/2 by 14 inches, but it should be bound separately from the document that it accompanies. The appendix shall be consecutively paginated, beginning with the cover sheet as page 1. In addition, the following requirements shall apply:~~

(1) if the appendix includes documents filed before January 1991 on paper measuring 8 1/2 by 14 inches, the documents should be reduced in copying to 8 1/2 by 11 inches, if practicable; and

(2) if reduction is impracticable, the appendix may measure 8 1/2 by 14 inches, but must be separated from the 8 1/2 by 11-inch document(s) that it accompanies.

Committee Notes

[No Change]