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RULE 9.010. EFFECTIVE DATE ~~AND~~; SCOPE; APPLICABILITY OF FLORIDA RULES OF JUDICIAL ADMINISTRATION

These rules, cited as "Florida Rules of Appellate Procedure," and abbreviated "Fla. R. App. P.," shall take effect at 12:01 a.m. on March 1, 1978. They shall govern all proceedings commenced on or after that date in the supreme court, the district courts of appeal, and the circuit courts in the exercise of the jurisdiction described by rule 9.030(c); provided that any appellate proceeding commenced before March 1, 1978, shall continue to its conclusion in the court in which it is then pending in accordance with the Florida Appellate Rules, 1962 Amendment.

The Florida Rules of Judicial Administration are applicable in all proceedings governed by these rules, except as otherwise provided by these rules. These rules shall supersede all conflicting statutes and, as provided in Florida Rule of Judicial Administration 2.130, all conflicting rules of procedure.

Committee Notes

1977 Amendment. The rules have been re-numbered to conform with the numbering system adopted by the Florida Supreme Court for all of its rules of practice and procedure, and to avoid confusion with the former rules, which have been extensively revised. The abbreviated citation form to be used for these rules appears in this rule and in rule 9.800.

This rule sets an effective date and retains the substance of former rules 1.1, 1.2, and 1.4. A transition provision has been incorporated to make clear that proceedings already in the appellate stage before the effective date will continue to be governed by the former rules until the completion of appellate review in the court in which it is pending on the effective date. If review is sought after March 1, 1978, of an appellate determination made in a proceeding filed in the appellate court before that date, the higher court may allow review to proceed under the former rules if an injustice would result from required adherence to the new rules. Unnecessary language has been deleted and the wording has been simplified. Specific reference has been made to rule 9.030(c) to clarify those aspects of the jurisdiction of the circuit courts governed by these rules.

1992 Amendment. This rule was amended to eliminate the statement that the Florida Rules of Appellate Procedure supersede all conflicting rules. Other sets of Florida rules contain provisions applicable to certain appellate proceedings, and, in certain instances, those rules conflict with the procedures set forth for other

appeals under these rules. In the absence of a clear mandate from the supreme court that only the Florida Rules of Appellate Procedure are to address appellate concerns, the committee felt that these rules should not automatically supersede other rules. See, e.g., *In the Interest of E.P. v. Department of Health and Rehabilitative Services*, 544 So. 2d 1000 (Fla. 1989).

1996 Amendment. Rule of Judicial Administration 2.135 now mandates that the Rules of Appellate Procedure control in all appellate proceedings.

RULE 9.020. DEFINITIONS

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

(a) Administrative Action. Administrative action shall include:

(1) final agency action as defined in the Administrative Procedure Act, chapter 120, Florida Statutes;

(2) ~~non-final~~nonfinal action by an agency or administrative law judge reviewable under the Administrative Procedure Act;

(3) quasi-judicial decisions by any administrative body, agency, board, or commission not subject to the Administrative Procedure Act; and

(4) administrative action for which judicial review is provided by general law.

(b) Clerk. The person or official specifically designated as such for the court or lower tribunal; if no person or official has been specifically so designated, the official or agent who most closely resembles a clerk in the functions performed.

(c) Court. The supreme court; the district courts of appeal; and the circuit courts in the exercise of the jurisdiction described by rule 9.030(c), including the chief justice of the supreme court and the chief judge of a district court of appeal in the exercise of constitutional, administrative, or supervisory powers on behalf of such courts.

(d) Family Law Matter. A matter governed by the Florida Family Law Rules of Procedure.

(e) Lower Tribunal. The court, agency, officer, board, commission, judge of compensation claims, or body whose order is to be reviewed.

(f) Order. A decision, order, judgment, decree, or rule of a lower tribunal, excluding minutes and minute book entries.

(g) Parties.

(1) Appellant. A party who seeks to invoke the appeal jurisdiction of a court.

(2) Appellee. Every party in the proceeding in the lower tribunal other than an appellant.

(3) Petitioner. A party who seeks an order under rule 9.100 or rule 9.120.

(4) Respondent. Every other party in a proceeding brought by a petitioner.

~~**(h) Applicability of Florida Rules of Judicial Administration.** The Florida Rules of Judicial Administration are applicable in all proceedings governed by these rules, except as otherwise provided in these rules. These rules shall govern where in conflict with the Florida Rules of Judicial Administration.~~

~~(i)~~**(h) Rendition (of an Order).** An order is rendered when a signed, written order is filed with the clerk of the lower tribunal. ~~However, unless another applicable rule of procedure specifically provides to the contrary, if a final order has been entered and there has been filed in the lower tribunal an authorized and timely motion for new trial, for rehearing, for certification, to alter or amend, for judgment in accordance with prior motion for directed verdict, for arrest of judgment, to challenge the verdict, to correct a sentence or order of probation pursuant to Florida Rule of Criminal Procedure 3.800(b)(1), to withdraw a plea after sentencing pursuant to Florida Rule of Criminal Procedure 3.170(*l*), or to vacate an order based upon the recommendations of a hearing officer in accordance with Florida Family Law Rule of Procedure 12.491, the following exceptions apply:~~

(1) Motions Tolling Rendition. The following motions, if authorized and timely filed, toll rendition unless another applicable rule of procedure specifically provides to the contrary:

(A) motion for new trial;

(B) motion for rehearing;

(C) motion for certification;

(D) motion to alter or amend;

(E) motion for judgment in accordance with prior motion for directed verdict, for arrest of judgment;

(F) motion to challenge the verdict;

(G) motion to correct a sentence or order of probation pursuant to Florida Rule of Criminal Procedure 3.800(b)(1);

(H) motion to withdraw a plea after sentencing pursuant to Florida Rule of Criminal Procedure 3.170(*l*); or

(I) motion to vacate an order based upon the recommendations of a hearing officer in accordance with Florida Family Law Rule of Procedure 12.491.

(2) Effect of Motions Tolling Rendition. If an authorized and timely motion listed in subdivision (h)(1) of this rule has been filed in the lower tribunal directed to a final order, the following apply:

~~(1)~~(A) ~~If such a motion or motions have been filed, t~~The final order shall not be deemed rendered as to any existing party until the filing with the clerk of a signed, written order disposing of the last of such motions.

~~(2)~~(B) ~~If such a motion or motions have been filed, a~~A signed, written order granting a new trial shall be deemed rendered when filed with the clerk, notwithstanding that other such motions may remain pending at the time.

~~(3)~~(C) If ~~such a motion or motions have been filed and~~ a notice of appeal is filed before the filing with the clerk of a signed, written order disposing of all such motions, the appeal shall be held in abeyance until the filing with, the clerk of a signed, written order disposing of the last of such motion.

~~(j)~~(i) Rendition of an Appellate Order. If any timely and authorized motion under rule 9.330 or 9.331 is filed, the order shall not be deemed rendered as to any party until all of the motions are either withdrawn or resolved by the filing of a written order.

(j) Conformed Copy. A true and accurate copy.

(k) Signed. A signed document is one containing a signature as provided by Florida Rule of Judicial Administration 2.515(c).

(*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

1977 Amendment. This rule supersedes former rule 1.3. Throughout these rules the defined terms have been used in their technical sense only, and are not intended to alter substantive law. Instances may arise in which the context of the rule requires a different meaning for a defined term, but these should be rare.

The term "administrative action" is new and has been defined to make clear the application of these rules to judicial review of administrative agency action. This definition was not intended to conflict with the Administrative Procedure Act, chapter 120, Florida Statutes (1975), but was intended to include all administrative agency action as defined in the Administrative Procedure Act. The reference to municipalities is not intended to conflict with article VIII, section 1(a), Florida Constitution, which makes counties the only political subdivisions of the state.

The term "clerk" retains the substance of the term "clerk" defined in the former rules. This term includes the person who in fact maintains records of proceedings in the lower tribunal if no person is specifically and officially given that duty.

The term "court" retains the substance of the term "court" defined in the former rules, but has been modified to recognize the authority delegated to the chief justice of the supreme court and the chief judges of the district courts of appeal. This definition was not intended to broaden the scope of these rules in regard to the administrative responsibilities of the mentioned judicial officers. The term is used in these rules to designate the court to which a proceeding governed by these rules is taken. If supreme court review of a district court of appeal decision is involved, the district court of appeal is the "lower tribunal."

The term "lower tribunal" includes courts and administrative agencies. It replaces the terms "commission," "board," and "lower court" defined in the former rules.

The term "order" has been broadly defined to include all final and interlocutory rulings of a lower tribunal and rules adopted by an administrative agency. Minute book entries are excluded from the definition in recognition of the decision in *Employers' Fire Ins. Co. v. Continental Ins. Co.*, 326 So. 2d 177 (Fla.

1976). It was intended that this rule encourage the entry of written orders in every case.

The terms “appellant,” “appellee,” “petitioner,” and “respondent” have been defined according to the rule applicable to a particular proceeding and generally not according to the legal nature of the proceeding before the court. The term “appellee” has been defined to include the parties against whom relief is sought and all others necessary to the cause. This rule supersedes all statutes concerning the same subject matter, such as section 924.03, Florida Statutes (1975). It should be noted that if a certiorari proceeding is specifically governed by a rule that only refers to “appellant” and “appellee,” a “petitioner” and “respondent” should proceed as if they were “appellant” and “appellee,” respectively. For example, certiorari proceedings in the supreme court involving the Public Service Commission and Industrial Relations Commission are specifically governed by rule 9.110 even though that rule only refers to “appellant” and “appellee.” The parties in such a certiorari proceeding remain designated as “petitioner” and “respondent,” because as a matter of substantive law the party invoking the court’s jurisdiction is seeking a writ of certiorari. The same is true of rule 9.200 governing the record in such certiorari proceedings.

The term “rendition” has been simplified and unnecessary language deleted. The filing requirement of the definition was not intended to conflict with the substantive right of review guaranteed by the Administrative Procedure Act, section 120.68(1), Florida Statutes (Supp. 1976), but to set a point from which certain procedural times could be measured. Motions that postpone the date of rendition have been narrowly limited to prevent deliberate delaying tactics. To postpone rendition the motion must be timely, authorized, and one of those listed. However, if the lower tribunal is an administrative agency whose rules of practice denominate motions identical to those listed by a different label, the substance of the motion controls and rendition is postponed accordingly.

The definition of “legal holiday” has been eliminated but its substance has been retained in rule 9.420(e).

The term “bond” is defined in rule 9.310(c)(1).

Terms defined in the former rules and not defined here are intended to have their ordinary meanings in accordance with the context of these rules.

1992 Amendment. Subdivision (a) has been amended to reflect properly that deputy commissioners presently are designated as judges of compensation claims.

Subdivision (g) has been rewritten extensively. The first change in this rule was to ensure that an authorized motion for clarification (such as under rule 9.330) was included in those types of motions that delay rendition.

Subdivision (g) also has been revised in several respects to clarify some problems presented by the generality of the prior definition of "rendition." Although rendition is postponed in most types of cases by the filing of timely and authorized post-judgment motions, some rules of procedure explicitly provide to the contrary. The subdivision therefore has been qualified to provide that conflicting rules shall control over the general rule stated in the subdivision. See *In Re Interest of E. P.*, 544 So. 2d 1000 (Fla. 1989). The subdivision also has been revised to make explicit a qualification of long standing in the decisional law, that rendition of non-final orders cannot be postponed by motions directed to them. Not all final orders are subject to postponement of rendition, however. Rendition of a final order can be postponed only by an "authorized" motion, and whether any of the listed motions is an "authorized" motion depends on the rules of procedure governing the proceeding in which the final order is entered. *See Francisco v. Victoria Marine Shipping, Inc.*, 486 So. 2d 1386 (Fla. 3d DCA 1986), *review denied* 494 So. 2d 1153.

Subdivision (g)(1) has been added to clarify the date of rendition when post-judgment motions have been filed. If there is only 1 plaintiff and 1 defendant in the case, the filing of a post-judgment motion or motions by either party (or both parties) will postpone rendition of the entire final order as to all claims between the parties. If there are multiple parties on either or both sides of the case and less than all parties file post-judgment motions, rendition of the final order will be postponed as to all claims between moving parties and parties moved against, but rendition will not be postponed with respect to claims disposed of in the final order between parties who have no post-judgment motions pending between them with respect to any of those claims. See, e.g., *Phillips v. Ostrer*, 442 So. 2d 1084 (Fla. 3d DCA 1983).

Ideally, all post-judgment motions should be disposed of at the same time. See *Winn-Dixie Stores, Inc. v. Robinson*, 472 So. 2d 722 (Fla. 1985). If that occurs, the final order is deemed rendered as to all claims when the order disposing of the motions is filed with the clerk. If all motions are not disposed of at the same time,

the final order is deemed rendered as to all claims between a moving party and a party moved against when the written order disposing of the last remaining motion addressed to those claims is filed with the clerk, notwithstanding that other motions filed by co-parties may remain pending. If such motions remain, the date of rendition with respect to the claims between the parties involved in those motions shall be determined in the same way.

Subdivision (g)(2) has been added to govern the special circumstance that arises when rendition of a final order has been postponed initially by post-judgment motions, and a motion for new trial then is granted. If the new trial has been granted simply as an alternative to a new final order, the appeal will be from the new final order. However, if a new trial alone has been ordered, the appeal will be from the new trial order. See rule 9.110. According to the decisional law, rendition of such an order is not postponed by the pendency of any additional, previously filed post-judgment motions, nor can rendition of such an order be postponed by the filing of any further motion. See *Frazier v. Seaboard System Railroad, Inc.*, 508 So. 2d 345 (Fla. 1987). To ensure that subdivision (g)(1) is not read as a modification of this special rule, subdivision (g)(2) has been added to make it clear that a separately appealable new trial order is deemed rendered when filed, notwithstanding that other post-judgment motions directed to the initial final order may remain pending at the time.

Subdivision (g)(3) has been added to clarify the confusion generated by a dictum in *Williams v. State*, 324 So. 2d 74 (Fla. 1975), which appeared contrary to the settled rule that post-judgment motions were considered abandoned by a party who filed a notice of appeal before their disposition. See *In Re: Forfeiture of $104,591 in U.S. Currency*, 578 So. 2d 727 (Fla. 3d DCA 1991). The new subdivision confirms that rule, and provides that the final order is rendered as to the appealing party when the notice of appeal is filed. Although the final order is rendered as to the appealing party, it is not rendered as to any other party whose post-judgment motions are pending when the notice of appeal is filed.

1996 Amendment. Subdivision (a) was amended to reflect the current state of the law. When the term "administrative action" is used in the Florida Rules of Appellate Procedure, it encompasses proceedings under the Administrative Procedure Act, quasi-judicial proceedings before local government agencies, boards, and commissions, and administrative action for which judicial review is provided by general law.

Addition of language in subdivision (i) is intended to toll the time for the filing of a notice of appeal until the resolution of a timely filed motion to vacate when an order has been entered based on the recommendation of a hearing officer in a family law matter. Under the prior rules, a motion to vacate was not an authorized motion to toll the time for the filing of an appeal, and too often the motion to vacate could not be heard within 30 days of the rendition of the order. This rule change permits the lower tribunal to complete its review prior to the time an appeal must be filed.

2000 Amendment. The text of subdivision (i) was moved into the main body of subdivision (h) to retain consistency in the definitional portions of the rule.

Court Commentary

1996 Amendment. Subdivision (h) was amended to ensure that a motion to correct sentence or order of probation and a motion to withdraw the plea after sentencing would postpone rendition. Subdivision (h)(3) was amended to explain that such a motion is not waived by an appeal from a judgment of guilt.

NOTE: Amendments shown in double underline and double strikethrough are pending with the Court in *In re: Amendments Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.030. JURISDICTION OF COURTS

(a) Jurisdiction of the Supreme Court of Florida.

(1) Appeal Jurisdiction.

(A) The supreme court shall review, by appeal:

(i) final orders of courts imposing sentences of death;[1] and

(ii) decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.[2]

(B) If provided by general law, the supreme court shall review:

(i) by appeal final orders entered in proceedings for the validation of bonds or certificates of indebtedness;[3] and

(ii) action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.[4]

(2) Discretionary Jurisdiction. The discretionary jurisdiction of the supreme court may be sought to review:

(A) decisions of district courts of appeal that:[5]

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

(iii) expressly affect a class of constitutional or state officers;

(iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;

(v) pass upon a question certified to be of great public importance; or

(vi) are certified to be in direct conflict with decisions of other district courts of appeal;

(B) orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the supreme court, and:[6]

(i) to be of great public importance~~,~~; or

(ii) to have a great effect on the proper administration of justice; or

(C) questions of law certified by the Supreme Court of the United States or a United States court of appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida.[7]

(3) Original Jurisdiction. The supreme court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies. The supreme court or any justice may issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.[8]

(b) Jurisdiction of District Courts of Appeal.

(1) Appeal Jurisdiction. District courts of appeal shall review, by appeal:

(A) final orders of trial courts, [1 2] not directly reviewable by the supreme court or a circuit court, including county court final orders declaring invalid a state statute or provision of the state constitution;

(B) ~~non-final~~nonfinal orders of circuit courts as prescribed by rule 9.130;[9] and

(C) administrative action if provided by general law.[2]

(2) Certiorari Jurisdiction.[8] The certiorari jurisdiction of district courts of appeal may be sought to review:

(A) ~~non-final~~nonfinal orders of lower tribunals other than as prescribed by rule 9.130; or

(B) final orders of circuit courts acting in their review capacity.

(3) Original Jurisdiction.[8] District courts of appeal may issue writs of mandamus, prohibition, quo warranto, and common law certiorari, and all writs necessary to the complete exercise of the courts' jurisdiction; or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof, or before any circuit judge within the territorial jurisdiction of the court.

(4) Discretionary Review.[10] District courts of appeal, in their discretion, may review by appeal:

(A) final orders of the county court, otherwise appealable to the circuit court under these rules, that the county court has certified to be of great public importance; or

(B) ~~non-final~~nonfinal orders, otherwise appealable to the circuit court under rule 9.140(c), that the county court has certified to be of great public importance.

(c) Jurisdiction of Circuit Courts.

(1) Appeal Jurisdiction. The circuit courts shall review, by appeal:

(A) final orders of lower tribunals as provided by general law;[1 2]

(B) ~~non-final~~nonfinal orders of lower tribunals as provided by general law; and

(C) administrative action if provided by general law.

(2) Certiorari Jurisdiction.[8] The certiorari jurisdiction of circuit courts may be sought to review ~~non-final~~nonfinal orders of lower tribunals other than as prescribed by rule 9.130.

(3) Original Jurisdiction.[8] Circuit courts may issue writs of mandamus, prohibition, quo warranto, common law certiorari, and habeas corpus, and all writs necessary to the complete exercise of the courts' jurisdiction.

(4) Panels. Matters within the circuit court's jurisdiction under this rule shall be considered by a panel of 3 judges, and the concurrence of 2 judges shall be necessary to a decision.

1. 9.140: Appeal Proceedings in Criminal Cases.
2. 9.110: Appeal Proceedings: Final Orders.
3. 9.110(i): Validation of Bonds.
4. 9.110: Appeal Proceedings: Final Orders; 9.100: Original Proceedings.
5. 9.120: Discretionary Review of District Court Decisions.
6. 9.125: Discretionary Review of Trial Court Orders and Judgments Certified by the District Court.
7. 9.150: Certified Questions from Federal Courts.
8. 9.100: Original Proceedings.
9. 9.130: Appeal Proceedings: Non-Final Orders.
10. 9.160: Discretionary Review of County Court Decisions.

Committee Notes

1977 Amendment. This rule replaces former rules 2.1(a)(5) and 2.2(a)(4). It sets forth the jurisdiction of the supreme court, district courts of appeal, and that portion of the jurisdiction of the circuit courts to which these rules apply. It paraphrases sections 3(b), 4(b), and, in relevant part, 5(b) of article V of the Florida Constitution. The items stating the certiorari jurisdiction of the supreme court and district courts of appeal refer to the constitutional jurisdiction popularly known as the "constitutional certiorari" jurisdiction of the supreme court and "common law certiorari" jurisdiction of the district courts of appeal. This rule is not intended to affect the substantive law governing the jurisdiction of any court and should not be considered as authority for the resolution of disputes concerning any court's jurisdiction. Its purpose is to provide a tool of reference to the practitioner so that ready reference may be made to the specific procedural rule or rules governing a particular proceeding. Footnote references have been made to the rule or rules governing proceedings invoking the listed areas of jurisdiction.

This rule does not set forth the basis for the issuance of advisory opinions by the supreme court to the governor because the power to advise rests with the justices under article IV, section 1(c), Florida Constitution, and not the supreme court as a body. The procedure governing requests from the governor for advice are set forth in rule 9.500.

The advisory committee considered and rejected as unwise a proposal to permit the chief judge of each judicial circuit to modify the applicability of these rules to that particular circuit. These rules may be modified in a particular case, of course, by an agreed joint motion of the parties granted by the court so long as the change does not affect jurisdiction.

1980 Amendment. Subdivision (a) of this rule has been extensively revised to reflect the constitutional modifications in the supreme court's jurisdiction as approved by the electorate on March 11, 1980. See art. V, § 3(b), Fla. Const. (1980). The impetus for these modifications was a burgeoning caseload and the attendant need to make more efficient use of limited appellate resources. Consistent with this purpose, revised subdivision (a) limits the supreme court's appellate, discretionary, and original jurisdiction to cases that substantially affect the law of the state. The district courts of appeal will constitute the courts of last resort for the vast majority of litigants under amended article V.

Subdivision (a)(1)(A)(i) retains the mandatory appellate jurisdiction of the supreme court to review final orders of trial courts imposing death sentences.

Subdivision (a)(1)(A)(ii) has been substantively changed in accordance with amended article V, section 3(b)(1), Florida Constitution (1980), to eliminate the court's mandatory appellate review of final orders of trial courts and decisions of district courts of appeal initially and directly passing on the validity of a state statute or a federal statute or treaty, or construing a provision of the state or federal constitution. Mandatory supreme court review under this subdivision is now limited to district court decisions "declaring invalid" a state statute or a provision of the state constitution. Jurisdiction to review final orders of trial courts in all instances enumerated in former subdivision (a)(1)(A)(ii) now reposes in the appropriate district court of appeal.

Revised subdivision (a)(1)(B) enumerates the 2 classes of cases that the supreme court may review if provided by general law. See art. V, § 3(b)(2), Fla. Const. (1980). Eliminated from the amended article V and rule is the legislative

authority, never exercised, to require supreme court review of trial court orders imposing sentences of life imprisonment.

Subdivision (a)(1)(B)(i), pertaining to bond validation proceedings, replaces former subdivision (a)(1)(B)(ii). Its phraseology remains unchanged. Enabling legislation already exists for supreme court review of bond validation proceedings. See § 75.08, Fla. Stat. (1979).

Subdivision (a)(1)(B)(ii) is new. See art. V, § 3(b)(2), Fla. Const. (1980). Under the earlier constitutional scheme, the supreme court was vested with certiorari jurisdiction (which in practice was always exercised) to review orders of "commissions established by general law having statewide jurisdiction," including orders of the Florida Public Service Commission. See art. V, § 3(b)(3), Fla. Const. (1968); § 350.641, Fla. Stat. (1979). This jurisdiction has been abolished. In its stead, amended article V limits the supreme court's review of Public Service Commission orders to those "relating to rates or services of utilities providing electric, gas, or telephone service." Enabling legislation will be required to effectuate this jurisdiction. Review of Public Service Commission orders other than those relating to electric, gas, or utility cases now reposes in the appropriate district court of appeal. See art. V, § 4(b)(2), Fla. Const. (1968); Fla. R. App. P. 9.030(b)(1)(C); and § 120.68(2), Fla. Stat. (1979).

Subdivision (a)(2) has been substantially revised in accordance with amended article V, section 3(b)(3), Florida Constitution (1980), to restrict the scope of review under the supreme court's discretionary jurisdiction. Under the earlier constitution, this jurisdiction was exercised by writ of certiorari. Constitutional certiorari is abolished under amended article V. Reflecting this change, revised subdivision (a)(2) of this rule substitutes the phrase "discretionary jurisdiction" for "certiorari jurisdiction" in the predecessor rule. This discretionary jurisdiction is restricted, moreover, to 6 designated categories of district court decisions, discussed below. Amended article V eliminates the supreme court's discretionary power to review "any interlocutory order passing upon a matter which upon final judgment would be directly appealable to the Supreme Court" as reflected in subdivision (a)(2)(B) of the predecessor rule. It also eliminates the supreme court's certiorari review of "commissions established by general law having statewide jurisdiction" as reflected in subdivision (a)(2)(C) of the predecessor rule.

Subdivision (a)(2)(A) specifies the 6 categories of district court decisions reviewable by the supreme court under its discretionary jurisdiction.

Subdivisions (a)(2)(A)(i) and (a)(2)(A)(ii) are new and pertain to matters formerly reviewable under the court's mandatory appellate jurisdiction. Under former rule 9.030(a)(1)(A)(ii), the supreme court's mandatory appellate jurisdiction could be invoked if a lower tribunal "inherently" declared a statute valid. See *Harrell's Candy Kitchen, Inc. v. Sarasota-Manatee Airport Auth.*, 111 So. 2d 439 (Fla. 1959). The 1980 amendments to article V and this subdivision require a district court to "expressly declare" a state statute valid before the supreme court's discretionary jurisdiction may be invoked.

Subdivision (a)(2)(A)(iii), pertaining to supreme court review of district court decisions affecting a class of constitutional or state officers, has been renumbered. It tracks the language of the predecessor constitution and rule, with the addition of the restrictive word "expressly" found in amended article V.

Subdivision (a)(2)(A)(iv) represents the most radical change in the supreme court's discretionary jurisdiction. The predecessor article V vested the supreme court with power to review district court decisions "in direct conflict with a decision of any district court of appeal or of the Supreme Court on the same point of law." These cases comprised the overwhelming bulk of the court's caseload and gave rise to an intricate body of case law interpreting the requirements for discretionary conflict review. With the enunciation of the "record proper rule" in *Foley v. Weaver Drugs, Inc.*, 177 So. 2d 221 (Fla. 1965), the supreme court extended its discretionary review in instances of discernible conflict to district court decisions affirming without opinion the orders of trial courts. Amended article V abolishes the Foley doctrine by requiring an "express" as well as a "direct" conflict of district court decisions as a prerequisite to supreme court review. The new article also terminates supreme court jurisdiction over purely intradistrict conflicts, the resolution of which is addressed in rule 9.331.

Subdivision (a)(2)(A)(v) substitutes the phrase "great public importance" for "great public interest" in the predecessor constitution and rule. The change was to recognize the fact that some legal issues may have "great public importance," but may not be sufficiently known by the public to have "great public interest."

Subdivision (a)(2)(A)(vi) is new and tracks the language of article V, section 3(b)(4), Florida Constitution (1980).

Subdivisions (a)(2)(B) and (a)(2)(C) are new. See art. V, §§ 3(b)(5), (3)(b)(6), Fla. Const. (1980). Certification procedures under these subdivisions are addressed in rule 9.125 and rule 9.150, respectively.

Subdivision (a)(3) is identical to the predecessor article V and rule, except it limits the issuance of writs of prohibition to "courts" rather than "courts and commissions" and limits the issuance of writs of mandamus and quo warranto to "state agencies" rather than "agencies."

1984 Amendment. Subdivision (b)(4) was added to implement legislation authorizing district courts of appeal discretion to review by appeal orders and judgments of county courts certified to be of great public importance.

1992 Amendment. Subdivision (c)(1)(B) was amended to reflect correctly that the appellate jurisdiction of circuit courts extended to all non-final orders of lower tribunals as prescribed by rule 9.130, and not only those defined in subdivision (a)(3) of that rule.

Subdivision (c)(1)(C) was amended to reflect the jurisdiction conferred on circuit courts by article V, section 5, Florida Constitution, which provides that "[t]hey shall have the power of direct review of administrative action prescribed by general law."

2000 Amendment. Subdivision (c)(1)(B) was amended to reflect that the appellate jurisdiction of circuit courts is prescribed by general law and not by rule 9.130, as clarified in *Blore v. Fierro*, 636 So. 2d 1329 (Fla. 1994).

RULE 9.040. GENERAL PROVISIONS

(a) Complete Determination. In all proceedings a court shall have such jurisdiction as may be necessary for a complete determination of the cause.

(b) Forum.

(1) If a proceeding is commenced in an inappropriate court, that court shall transfer the cause to an appropriate court.

(2) After a lower tribunal renders an order transferring venue, the appropriate court to review otherwise reviewable ~~non-final~~nonfinal orders is as follows:

(A) After rendition of an order transferring venue, the appropriate court to review the ~~non-final~~nonfinal venue order, all other reviewable ~~non-final~~nonfinal orders rendered prior to or simultaneously with the venue order, any order staying, vacating, or modifying the transfer of venue order, or an order dismissing a cause for failure to pay venue transfer fees, is the court that would review ~~non-final~~nonfinal orders in the cause, had venue not been transferred.

(B) After rendition of an order transferring venue, the appropriate court to review any subsequently rendered reviewable ~~non-final~~nonfinal order, except for those orders listed in subdivision (b)(2)(A), is the court ~~which~~that would review the order, if the cause had been filed in the lower tribunal to which venue was transferred.

(C) The clerk of the lower tribunal whose order is being reviewed shall perform the procedures required by these provisions regarding transfer of venue, including accepting and filing a notice of appeal. If necessary to facilitate ~~non-final~~nonfinal review, after an order transferring venue has been rendered, the clerk of the lower tribunal shall copy and retain such portions of the record as are necessary for review of the ~~non-final~~nonfinal order. If the file of the cause has been transferred to the transferee tribunal before the notice of appeal is filed in the transferring tribunal, the clerk of the transferee tribunal shall copy and transmit to the transferring tribunal such portions of the record as are necessary for review of the ~~non-final~~nonfinal order.

(c) Remedy. If a party seeks an improper remedy, the cause shall be treated as if the proper remedy had been sought; provided that it shall not be the responsibility of the court to seek the proper remedy.

(d) Amendment. At any time in the interest of justice, the court may permit any part of the proceeding to be amended so that it may be disposed of on the merits. In the absence of amendment, the court may disregard any procedural error or defect that does not adversely affect the substantial rights of the parties.

(e) Assignments of Error. Assignments of error are neither required nor permitted.

(f) Filing Fees. Filing fees may be paid by check or money order.

(g) Clerks' Duties. On filing of a notice prescribed by these rules, the clerk shall forthwith transmit the fee and a certified copy of the notice, showing the date of filing, to the court. If jurisdiction has been invoked under rule 9.030(a)(2)(A)(v) or (a)(2)(A)(vi), or if a certificate has been issued by a district court of appeal under rule 9.030(a)(2)(B), the clerk of the district court of appeal shall transmit copies of the certificate and decision or order and any suggestion, replies, or appendices with the certified copy of the notice. Notices to review final orders of county and circuit courts in civil cases shall be recorded.

(h) Non-Jurisdictional Matters. Failure of a clerk or a party timely to file fees or additional copies of notices or petitions or the conformed copy of the order or orders designated in the notice of appeal shall not be jurisdictional; provided that such failure may be the subject of appropriate sanction.

(i) Request to Determine Confidentiality of Appellate Court Records. Requests to determine the confidentiality of appellate records are governed by Florida Rule of Judicial Administration 2.420.

Committee Notes

1977 Amendment. This rule sets forth several miscellaneous matters of general applicability.

Subdivision (a) is derived from the last sentence of former rule 2.1(a)(5)(a), which concerned direct appeals to the supreme court. This provision is intended to guarantee that once the jurisdiction of any court is properly invoked, the court may

determine the entire case to the extent permitted by substantive law. This rule does not extend or limit the constitutional or statutory jurisdiction of any court.

Subdivisions (b) and (c) implement article V, section 2(a), Florida Constitution. Former rule 2.1(a)(5)(d) authorized transfer if an improper forum was chosen, but the former rules did not address the problem of improper remedies being sought. The advisory committee does not consider it to be the responsibility of the court to seek the proper remedy for any party, but a court may not deny relief because a different remedy is proper. Under these provisions a case will not be dismissed automatically because a party seeks an improper remedy or invokes the jurisdiction of the wrong court. The court must instead treat the case as if the proper remedy had been sought and transfer it to the court having jurisdiction. All filings in the case have the same legal effect as though originally filed in the court to which transfer is made. This rule is intended to supersede *Nellen v. State*, 226 So. 2d 354 (Fla. 1st DCA 1969), in which a petition for a common law writ of certiorari was dismissed by the district court of appeal because review was properly by appeal to the appropriate circuit court, and *Engel v. City of North Miami*, 115 So. 2d 1 (Fla. 1959), in which a petition for a writ of certiorari was dismissed because review should have been by appeal. Under this rule, a petition for a writ of certiorari should be treated as a notice of appeal, if timely.

Subdivision (d) is the appellate procedure counterpart of the harmless error statute, section 59.041, Florida Statutes (1975). It incorporates the concept contained in former rule 3.2(c), which provided that deficiencies in the form or substance of a notice of appeal were not grounds for dismissal, absent a clear showing that the adversary had been misled or prejudiced. Amendments should be liberally allowed under this rule, including pleadings in the lower tribunal, if it would not result in irremediable prejudice.

Subdivision (e) is intended to make clear that assignments of error have been abolished by these rules. It is not intended to extend the scope of review to matters other than judicial acts. If less than the entire record as defined in rule 9.200(a)(1) is to be filed, rule 9.200(a)(2) requires service of a statement of the judicial acts for which review is sought. This requirement also applies under rule 9.140(d). As explained in the commentary accompanying those provisions, such a statement does not have the same legal effect as an assignment of error under the former rules.

Subdivision (f) permits payment of filing fees by check or money order and carries forward the substance of former rule 3.2(a), which allowed payments in cash.

Subdivision (g) is derived from former rules 3.2(a) and 3.2(e). Under these rules, notices and fees are filed in the lower tribunal unless specifically stated otherwise. The clerk must transmit the notice and fees immediately. This requirement replaces the provision of the former rules that the notice be transmitted within 5 days. The advisory committee was of the view that no reason existed for any delays. The term "forthwith" should not be construed to prevent the clerk from delaying transmittal of a notice of criminal appeal for which no fee has been filed for the period of time necessary to obtain an order regarding solvency for appellate purposes and the appointment of the public defender for an insolvent defendant. This provision requires recording of the notice if review of a final trial court order in a civil case is sought. When supreme court jurisdiction is invoked on the basis of the certification of a question of great public interest, the clerk of the district court of appeal is required to transmit a copy of the certificate and the decision to the court along with the notice and fees.

Subdivision (h) is intended to implement the decision in *Williams v. State*, 324 So. 2d 74 (Fla. 1975), in which it was held that only the timely filing of the notice of appeal is jurisdictional. The proviso permits the court to impose sanctions if there is a failure to timely file fees or copies of the notice or petition.

The advisory committee considered and rejected as too difficult to implement a proposal of the bar committee that the style of a cause should remain the same as in the lower tribunal.

It should be noted that these rules abolish the practice of permitting Florida trial courts to certify questions to an appellate court. The former rules relating to the internal government of the courts and the creation of the advisory committee have been eliminated as irrelevant to appellate procedure. At its conference of June 27, however, the court unanimously voted to establish a committee to, among other things, prepare a set of administrative rules to incorporate matters of internal governance formerly contained in the appellate rules. The advisory committee has recommended that its existence be continued by the supreme court.

1980 Amendment. Subdivision (g) was amended to direct the clerk of the district court to transmit copies of the district court decision, the certificate, the order of the trial court, and the suggestion, replies, and appendices in all cases

certified to the supreme court under rule 9.030(a)(2)(B) or otherwise certified under rule 9.030(a)(2)(A)(v) or (a)(2)(A)(vi).

1992 Amendment. Subdivision (h) was amended to provide that the failure to attach conformed copies of the order or orders designated in a notice of appeal as is now required by rules 9.110(d), 9.130(c), and 9.160(c) would not be a jurisdictional defect, but could be the basis of appropriate sanction by the court if the conformed copies were not included with the notice of appeal.

2000 Amendment. In the event non-final or interlocutory review of a reviewable, non-final order is sought, new subdivision 9.040(b)(2) specifies which court should review such order, after rendition of an order transferring venue to another lower tribunal outside the appellate district of the transferor lower tribunal. It is intended to change and clarify the rules announced in *Vasilinda v. Lozano*, 631 So. 2d 1082 (Fla. 1994), and *Cottingham v. State*, 672 So. 2d 28 (Fla. 1996). The subdivision makes the time a venue order is rendered the critical factor in determining which court should review such non-final orders, rather than the time fees are paid, or the time the file is received by the transferee lower tribunal, and it applies equally to civil as well as criminal cases. If review is sought of the order transferring venue, as well as other reviewable non-final orders rendered before the change of venue order is rendered, or ones rendered simultaneously with it, review should be by the court that reviews such orders from the transferring lower tribunal. If review is sought of reviewable, non-final orders rendered after the time the venue order is rendered, review should be by the court that reviews such orders from the transferee lower tribunal. The only exceptions are for review of orders staying or vacating the transfer of venue order, or an order dismissing the cause for failure to pay fees, which should be reviewed by the court that reviews orders from the transferring lower tribunal. This paragraph is not intended to apply to review of reviewable non-final orders, for which non-final or interlocutory review is not timely sought or perfected.

RULE 9.100. ORIGINAL PROCEEDINGS

(a) Applicability. This rule applies to those proceedings that invoke the jurisdiction of the courts described in rules 9.030(a)(3), (b)(2), (b)(3), (c)(2), and (c)(3) for the issuance of writs of mandamus, prohibition, quo warranto, certiorari, and habeas corpus, and all writs necessary to the complete exercise of the courts' jurisdiction; and for review of ~~non-final~~nonfinal administrative action.

(b) Commencement; Parties. The original jurisdiction of the court shall be invoked by filing a petition, accompanied by any filing fees prescribed by law, with the clerk of the court having jurisdiction. The parties to the proceeding shall be as follows:

(1) If the petition seeks review of an order entered by a lower tribunal, all parties to the proceeding in the lower tribunal who are not named as petitioners shall be named as respondents.

(2) If the original jurisdiction of the court is invoked to enforce a private right, the proceedings shall not be brought on the relation of the state.

(3) The following officials shall not be named as respondents to a petition, but a copy of the petition shall be served on the official who issued the order that is the subject of the petition:

(A) ~~J~~judges of lower tribunals shall not be named as respondents to petitions for certiorari;

(B) ~~I~~individual members of agencies, boards, and commissions of local governments shall not be named as respondents to petitions for review of quasi-judicial action; and

(C) ~~O~~officers presiding over administrative proceedings, such as hearing officers and administrative law judges, shall not be named as respondents to petitions for review of ~~non-final~~nonfinal agency action.

(c) Petitions for Certiorari; Review of ~~Non-Final~~Nonfinal Agency Action; Review of Prisoner Disciplinary Action. The following shall be filed within 30 days of rendition of the order to be reviewed:

(1) ~~A~~a petition for certiorari~~.~~;

(2) ~~A~~a petition to review quasi-judicial action of agencies, boards, and commissions of local government, which action is not directly appealable under any other provision of general law but may be subject to review by certiorari~~.~~;

(3) ~~A~~a petition to review ~~non-final~~nonfinal agency action under the Administrative Procedure Act~~.~~; or

(4) ~~A~~a petition challenging an order of the Department of Corrections entered in prisoner disciplinary proceedings.

(d) Orders Excluding or Granting Access to Press or Public.

(1) A petition to review an order excluding the press or public from, or granting the press or public access to, any proceeding, any part of a proceeding, or any records of the judicial branch, shall be filed in the court as soon as practicable following rendition of the order to be reviewed, if written, or announcement of the order to be reviewed, if oral, but no later than 30 days after rendition of the order. A copy of the petition shall be furnished to the person (or chairperson of the collegial administrative agency) issuing the order, the parties to the proceeding, and any affected non-parties, as defined in Florida Rule of Judicial Administration 2.420.

(2) The court shall immediately consider the petition to determine whether a stay of proceedings in the lower tribunal or the order under review is appropriate and, on its own motion or that of any party, the court may order a stay on such conditions as may be appropriate. Any motion to stay an order granting access to a proceeding, any part of a proceeding, or any records of the judicial branch made under this subdivision must include a signed certification by the movant that the motion is made in good faith and is supported by a sound factual and legal basis. Pending the court's ruling on the motion to stay, the clerk of the court and the lower tribunal shall treat as confidential those proceedings or those records of the judicial branch that are the subject of the motion to stay.

(3) Review of orders under this subdivision shall be expedited.

(e) Petitions for Writs of Mandamus and Prohibition Directed to a Judge or Lower Tribunal. When a petition for a writ of mandamus or prohibition seeks a writ directed to a judge or lower tribunal, the following procedures apply:

(1) Caption. The name of the judge or lower tribunal shall be omitted from the caption. The caption shall bear the name of the petitioner and other parties to the proceeding in the lower tribunal who are not petitioners shall be named in the caption as respondents.

(2) Parties. The judge or the lower tribunal is a formal party to the petition for mandamus or prohibition and must be named as such in the body of the petition (but not in the caption). The petition must be served on all parties, including any judge or lower tribunal who is a formal party to the petition.

(3) Response. Following the issuance of an order pursuant to subdivision (h), the responsibility for responding to a petition is that of the litigant opposing the relief requested in the petition. Unless otherwise specifically ordered, the judge or lower tribunal has no obligation to file a response. The judge or lower tribunal retains the discretion to file a separate response should the judge or lower tribunal choose to do so. The absence of a separate response by the judge or lower tribunal shall not be deemed to admit the allegations of the petition.

(f) Review Proceedings in Circuit Court.

(1) Applicability. The following additional requirements apply to those proceedings that invoke the jurisdiction of the circuit court described in rules 9.030(c)(2) and (c)(3) to the extent that the petition involves review of judicial or quasi-judicial action.

(2) Caption. The caption shall contain a statement that the petition is filed pursuant to this subdivision.

(3) Duties of the Circuit Court Clerk. When a petition prescribed by this subdivision is filed, the circuit court clerk shall forthwith transmit the petition to the administrative judge of the appellate division, or other appellate judge or judges as prescribed by administrative order, for a determination as to whether an order to show cause should be issued.

(4) Default. The clerk of the circuit court shall not enter a default in a proceeding where a petition has been filed pursuant to this subdivision.

(g) Petition. The caption shall contain the name of the court and the name and designation of all parties on each side. The petition shall not exceed 50 pages in length and shall contain:

(1) the basis for invoking the jurisdiction of the court;

(2) the facts on which the petitioner relies;

(3) the nature of the relief sought; and

(4) argument in support of the petition and appropriate citations of authority.

If the petition seeks an order directed to a lower tribunal, the petition shall be accompanied by an appendix as prescribed by rule 9.220, and the petition shall contain references to the appropriate pages of the supporting appendix.

(h) Order to Show Cause. If the petition demonstrates a preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal, or that review of final administrative action would not provide an adequate remedy, 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, a response to the petition. In prohibition proceedings, the issuance of an order directing the respondent to show cause shall stay further proceedings in the lower tribunal.

(i) Record. A record shall not be transmitted to the court unless ordered.

(j) Response. Within the time set by the court, the respondent may serve a response, which shall not exceed 50 pages in length and which shall include argument in support of the response, appropriate citations of authority, and references to the appropriate pages of the supporting appendices.

(k) Reply. Within 20 days thereafter or such other time set by the court, the petitioner may serve a reply, which shall not exceed 15 pages in length, and supplemental appendix.

(*l*) General Requirements; Fonts. The lettering in all petitions, responses, and replies filed under this rule shall be black and in distinct type, double-spaced, with margins no less than 1 inch. Lettering in script or type made in imitation of handwriting shall not be permitted. Footnotes and quotations may be single spaced and shall be in the same size type, with the same spacing between characters, as the text. Computer-generated petitions, responses, and replies shall be submitted in either Times New Roman 14-point font or Courier New 12-point

font. All computer-generated petitions, responses, and replies shall contain a certificate of compliance signed by counsel, or the party if unrepresented, certifying that the petition, response, or reply complies with the font requirements of this rule. The certificate of compliance shall be contained in the petition, response, or reply immediately following the certificate of service.

Committee Notes

1977 Amendment. This rule replaces former rule 4.5, except that the procedures applicable to supreme court review of decisions of the district courts of appeal on writs of constitutional certiorari are set forth in rule 9.120; and supreme court direct review of administrative action on writs of certiorari is governed by rule 9.100. This rule governs proceedings invoking the supreme court's jurisdiction to review an interlocutory order passing on a matter where, on final judgment, a direct appeal would lie in the supreme court. The procedures set forth in this rule implement the supreme court's decision in *Burnsed v. Seaboard Coastline R.R.*, 290 So. 2d 13 (Fla. 1974), that such interlocutory review rests solely within its discretionary certiorari jurisdiction under article V, section 3(b)(3), Florida Constitution, and that its jurisdiction would be exercised only when, on the peculiar circumstances of a particular case, the public interest required it. This rule abolishes the wasteful current practice in such cases of following the procedures governing appeals, with the supreme court treating such appeals as petitions for the writ of certiorari. This rule requires that these cases be prosecuted as petitions for the writ of certiorari.

This rule also provides the procedures necessary to implement the Administrative Procedure Act, section 120.68(1), Florida Statutes (Supp. 1976), which provides for judicial review of non-final agency action "if review of the final agency decision would not provide an adequate remedy." It was the opinion of the advisory committee that such a right of review is guaranteed by the statute and is not dependent on a court rule, because article V, section 4(b)(2), Florida Constitution provides for legislative grants of jurisdiction to the district courts to review administrative action without regard to the finality of that action. The advisory committee was also of the view that the right of review guaranteed by the statute is no broader than the generally available common law writ of certiorari, although the statutory remedy would prevent resort to an extraordinary writ.

Subdivisions (b) and (c) set forth the procedure for commencing an extraordinary writ proceeding. The time for filing a petition for common law certiorari is jurisdictional. If common law certiorari is sought to review an order

issued by a lower tribunal consisting of more than 1 person, a copy of the petition should be furnished to the chairperson of that tribunal.

Subdivision (d) sets forth the procedure for appellate review of orders excluding the press or public from access to proceedings or records in the lower tribunal. It establishes an entirely new and independent means of review in the district courts, in recognition of the decision in *English v. McCrary*, 348 So. 2d 293 (Fla. 1977), to the effect that a writ of prohibition is not available as a means to obtain review of such orders. Copies of the notice must be served on all parties to the proceeding in the lower tribunal, as well as the person who, or the chairperson of the agency that, issued the order.

No provision has been made for an automatic stay of proceedings, but the district court is directed to consider the appropriateness of a stay immediately on the notice being filed. Ordinarily an order excluding the press and public will be entered well in advance of the closed proceedings in the lower tribunal, so that there will be no interruption of the proceeding by reason of the appellate review. In the event a challenged order is entered immediately before or during the course of a proceeding and it appears that a disruption of the proceeding will be prejudicial to 1 or more parties, the reviewing court on its own motion or at the request of any party shall determine whether to enter a stay or to allow the lower tribunal to proceed pending review of the challenged order. *See State ex rel. Miami Herald Publishing Co. v. McIntosh*, 340 So. 2d 904, 911 (Fla. 1977).

This new provision implements the "strict procedural safeguards" requirement laid down by the United States Supreme Court in *National Socialist Party of America v. Village of Skokie*, 432 U.S. 43, 97 S.Ct. 2205, 53 L.Ed.2d 96 (1977). In that case the Court held that state restraints imposed on activities protected by the First Amendment must be either immediately reviewable or subject to a stay pending review.

Subdivision (e) sets forth the contents of the initial pleading. The party seeking relief must file a petition stating the authority by which the court has jurisdiction of the case, the relevant facts, the relief sought, and argument supported by citations of authority. This rule does not allow the petitioner to file a brief. Any argument or citations of authority that the petitioner desires to present to the court must be contained in the petition. This change in procedure is intended to eliminate the wasteful current practice of filing repetitive petitions and briefs. Under subdivision (g) no record is required to be filed unless the court so orders, but under subdivision (e) the petitioner must file an appendix to the petition

containing conformed copies of the order to be reviewed and other relevant material, including portions of the record, if a record exists. The appendix should also contain any documents that support the allegations of fact contained in the petition. A lack of supporting documents may, of course, be considered by the court in exercising its discretion not to issue an order to show cause.

Under subdivisions (f), (h), and (i), if the allegations of the petition, if true, would constitute grounds for relief, the court may exercise its discretion to issue an order requiring the respondent to show cause why the requested relief should not be granted. A single responsive pleading (without a brief) may then be served, accompanied by a supplemental appendix, within the time period set by the court in its order to show cause. The petitioner is then allowed 20 days to serve a reply and supplemental appendix, unless the court sets another time. It should be noted that the times for response and reply are computed by reference to service rather than filing. This practice is consistent throughout these rules except for initial, jurisdictional filings. The emphasis on service, of course, does not relieve counsel of the responsibility for filing original documents with the court as required by rule 9.420(b); it merely affects the time measurements.

Except as provided automatically under subdivision (f), a stay pending resolution of the original proceeding may be obtained under rule 9.310.

Transmittal of the record under order of the court under subdivision (g) shall be in accordance with the instructions and times set forth in the order.

1980 Amendment. The rule was amended by deleting its reference to former rule 9.030(a)(2)(B) to reflect the 1980 revisions to article V, section 3(b), Florida Constitution that eliminated supreme court review by certiorari of non-final orders that would have been appealable if they had been final orders. The procedures applicable to discretionary supreme court review of district court decisions under rule 9.030(a)(2)(A) are governed by rule 9.120. The procedures applicable to supreme court discretionary review of trial court orders and judgments certified by the district courts under rule 9.030(a)(2)(B) are set forth in rule 9.125.

Subdivision (d) was amended to delete references to the district courts of appeal as the proper court for review of orders excluding the press and public, because the appropriate court could also be a circuit court or the supreme court.

1992 Amendment. Subdivision (b) was amended to add 2 provisions clarifying designation of parties to original proceedings. The first change

eliminates the practice of bringing original proceedings on the relation of the state and instead requires that if a private right is being enforced, an action must be brought in the names of the parties. Second, this subdivision now requires that all parties not named as petitioners be included in the style as respondents, consistent with rules 9.020(f)(3) and (f)(4).

Subdivision (c) was amended to eliminate the practice of naming lower court judges, members of administrative bodies, and hearing officers as respondents in petitions for certiorari and for review of non-final agency action. Such individuals still are to be served a copy of the petition, but the amendment is to eliminate any suggestion that they are parties or adverse to the petitioner.

Subdivision (c) also was amended to reflect that review of final administrative action, taken by local government agencies, boards, and commissions acting in a quasi-judicial capacity, is subject to the requirement that the petition for writ of certiorari be filed within 30 days of rendition of the order to be reviewed.

Subdivision (e) was amended to require that the petition, the jurisdictional document, identify all parties on each side to assist the court in identifying any potential conflicts and to identify all parties to the proceeding as required by subdivision (b) of this rule. Additionally, this subdivision was amended to require, consistent with rule 9.210(b)(3), that the petition make references to the appropriate pages of the appendix that is required to accompany the petition.

Subdivision (f) was amended to add the existing requirement in the law that a petition must demonstrate not only that there has been a departure from the essential requirements of law, but also that that departure will cause material injury for which there is no adequate remedy by appeal. This subdivision, without amendment, suggested that it established a standard other than that recognized by Florida decisional law.

Subdivision (h) was amended to require that any response, like the petition, contain references to the appropriate pages of appendices, consistent with subdivision (f) of this rule and rules 9.210(b)(3) and 9.210(c).

1996 Amendment. The reference to “common law” certiorari in subdivision (c)(1) was removed so as to make clear that the 30-day filing limit applies to all petitions for writ of certiorari.

Subdivision (c)(4) is new and pertains to review formerly available under rule 1.630. It provides that a prisoner's petition for extraordinary relief, within the original jurisdiction of the circuit court under rule 9.030(c)(3) must be filed within 30 days after final disposition of the prisoner disciplinary proceedings conducted through the administrative grievance process under chapter 33, Florida Administrative Code. *See Jones v. Florida Department of Corrections*, 615 So. 2d 798 (Fla. 1st DCA 1993).

Subdivision (e) was added, and subsequent subdivisions re-lettered, in order to alter the procedural requirements placed or apparently placed on lower court judges in prohibition and mandamus proceedings. The duty to respond to an Order to Show Cause is expressly placed on the party opposing the relief requested in the petition, and any suggestion of a duty to respond on the part of the lower court judge is removed. The lower court judge retains the option to file a response. In those circumstances in which a response from the lower tribunal is desirable, the court may so order.

Subdivision (f) was added to clarify that in extraordinary proceedings to review lower tribunal action this rule, and not Florida Rule of Civil Procedure 1.630, applies and to specify the duties of the clerk in such proceedings, and to provide a mechanism for alerting the clerk to the necessity of following these procedures. If the proceeding before the circuit court is or may be evidentiary in nature, then the procedures of the Florida Rules of Civil Procedure should be followed.

1999 Amendment. Page limits were added to impose text limitations on petitions, responses and replies consistent with the text limitations applicable to briefs under Rule 9.210.

2010 Amendment. Subdivision (d) is revised to allow review not only of orders that deny access to records of the judicial branch or judicial proceedings, but also those orders that deny motions to seal or otherwise grant access to such records or proceedings claimed to be confidential. This revision is intended to recognize and balance the equal importance of the constitutional right of privacy, which includes confidentiality, and the constitutional right of access to judicial records and proceedings. The previous rule allowed review of orders denying access only "if the proceedings or records are not required by law to be confidential." This provision is eliminated because it is unworkable in that such a determination of what is required by law to be confidential usually concerns the merits of whether the proceedings or records should be confidential in the first

instance. Outer time limits for seeking review are added. Subdivision (d)(2) is revised to provide continued confidentiality of judicial proceedings and records to which the order under review has granted access upon the filing of a motion to stay that order until the court rules on the motion to stay. The former subdivision (d)(3) concerning oral argument is deleted as unnecessary in light of Rule 9.320. New subdivision (d)(3) is a recognition of the public policy that favors expedited review of orders denying access and the provision for expedited review in Florida Rule of Judicial Administration 2.420.

2010 Note. As provided in Rule 9.040, request to determine the confidentiality of appellate court records are governed by Florida Rule of Judicial Administration 2.420.

Court Commentary

2000. As to computer-generated petitions, responses, and replies, strict font requirements were imposed in subdivision (*l*) for at least three reasons:

First and foremost, appellate petitions, responses, and replies are public records that the people have a right to inspect. The clear policy of the Florida Supreme Court is that advances in technology should benefit the people whenever possible by lowering financial and physical barriers to public record inspection. The Court's eventual goal is to make all public records widely and readily available, especially via the Internet. Unlike paper documents, electronic documents on the Internet will not display properly on all computers if they are set in fonts that are unusual. In some instances, such electronic documents may even be unreadable. Thus, the Court adopted the policy that all computer-generated appellate petitions, responses, and replies be filed in one of two fonts—either Times New Roman 14-point or Courier New 12-point—that are commonplace on computers with Internet connections. This step will help ensure that the right to inspect public records on the Internet will be genuinely available to the largest number of people.

Second, Florida's court system as a whole is working toward the day when electronic filing of all court documents will be an everyday reality. Though the technology involved in electronic filing is changing rapidly, it is clear that the Internet is the single most significant factor influencing the development of this technology. Electronic filing must be compatible with Internet standards as they evolve over time. It is imperative for the legal profession to become accustomed to using electronic document formats that are most consistent with the Internet.

Third, the proliferation of vast new varieties of fonts in recent years poses a real threat that page-limitation rules can be circumvented through computerized typesetting. The only way to prevent this is to establish an enforceable rule on standards for font use. The subject font requirements are most consistent with this purpose and the other two purposes noted above.

Subdivision (*l*) was also amended to require that immediately after the certificate of service in computer-generated petitions, responses, and replies, counsel (or the party if unrepresented) shall sign a certificate of compliance with the font standards set forth in this rule for computer-generated petitions, responses, and replies.

RULE 9.110. APPEAL PROCEEDINGS TO REVIEW FINAL ORDERS OF LOWER TRIBUNALS AND ORDERS GRANTING NEW TRIAL IN JURY AND ~~NON-JURY~~NONJURY CASES

(a) Applicability. This rule applies to those proceedings that:

(1) invoke the appeal jurisdiction of the courts described in rules 9.030(a)(1), (b)(1)(A), and (c)(1)(A);

(2) seek review of administrative action described in rules 9.030(b)(1)(C) and (c)(1)(C); and

(3) seek review of orders granting a new trial in jury and ~~non-jury~~nonjury civil and criminal cases described in rules 9.130(a)(4) and 9.140(c)(1)(C).

(b) Commencement. Jurisdiction of the court under this rule shall be invoked by filing a notice, accompanied by any filing fees prescribed by law, with the clerk of the lower tribunal within 30 days of rendition of the order to be reviewed, except as provided in rule 9.140(c)(3).

(c) Exception; Administrative Action. In an appeal to review final orders of lower administrative tribunals, the appellant shall file the notice with the clerk of the lower administrative tribunal within 30 days of rendition of the order to be reviewed, and shall also file a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the court.

(d) Notice of Appeal. The notice of appeal shall be substantially in the form prescribed by rule 9.900(a). The caption shall contain the name of the lower tribunal, the name and designation of at least 1 party on each side, and the case number in the lower tribunal. The notice shall contain the name of the court to which the appeal is taken, the date of rendition, and the nature of the order to be reviewed. Except in criminal cases, a conformed copy of the order or orders designated in the notice of appeal shall be attached to the notice together with any order entered on a timely motion postponing rendition of the order or orders appealed.

(e) Record. Within 50 days of filing the notice, the clerk shall prepare the record prescribed by rule 9.200 and serve copies of the index on all parties. Within 110 days of filing the notice, the clerk shall electronically transmit the record to the court.

(f) Briefs. The ~~A~~appellant's initial brief shall be served within 70 days of filing the notice. Additional briefs shall be served as prescribed by rule 9.210.

(g) Cross-Appeal. An appellee may cross-appeal by serving a notice within 10 days of service of the appellant's timely filed notice of appeal or within the time prescribed for filing a notice of appeal, whichever is later. The notice of cross-appeal, accompanied by any filing fees prescribed by law, shall be filed either before service or immediately thereafter in the same manner as the notice of appeal.

(h) Scope of Review. Except as provided in subdivision (k), ~~T~~the court may review any ruling or matter occurring before filing of the notice. Multiple final orders may be reviewed by a single notice, if the notice is timely filed as to each such order.

(i) Exception; Bond Validation Proceedings. If the appeal is from an order in a proceeding to validate bonds or certificates of indebtedness, the record shall not be transmitted unless ordered by the supreme court. The ~~A~~appellant's initial brief, accompanied by an appendix as prescribed by rule 9.220, shall be served within 20 days of filing the notice. Additional briefs shall be served as prescribed by rule 9.210.

(j) Exception; Appeal Proceedings from District Courts of Appeal. If the appeal is from an order of a district court of appeal, the clerk shall electronically transmit the record to the court within 60 days of filing the notice. The ~~A~~appellant's initial brief shall be served within 20 days of filing the notice. Additional briefs shall be served as prescribed by rule 9.210.

(k) Review of Partial Final Judgments. Except as otherwise provided herein, partial final judgments are reviewable either on appeal from the partial final judgment or on appeal from the final judgment in the entire case. A partial final judgment, other than one that disposes of an entire case as to any party, is one that disposes of a separate and distinct cause of action that is not interdependent with other pleaded claims. If a partial final judgment totally disposes of an entire case as to any party, it must be appealed within 30 days of rendition. The scope of review of a partial final judgment may include any ruling or matter occurring before filing

of the notice of appeal so long as such ruling or matter is directly related to an aspect of the partial final judgment under review.

(*l*) Premature Appeals. Except as provided in rule 9.020(~~i~~h), if a notice of appeal is filed before rendition of a final order, the appeal shall be subject to dismissal as premature. However, the lower tribunal retains jurisdiction to render a final order, and if a final order is rendered before dismissal of the premature appeal, the premature notice of appeal shall be considered effective to vest jurisdiction in the court to review the final order. Before dismissal, the court in its discretion may grant the parties additional time to obtain a final order from the lower tribunal.

(m) Exception; Insurance Coverage Appeals. Judgments that determine the existence or nonexistence of insurance coverage in cases in which a claim has been made against an insured and coverage thereof is disputed by the insurer may be reviewed either by the method prescribed in this rule or that in rule 9.130.

Committee Notes

1977 Amendment. This rule replaces former rules 3.1, 3.5, 4.1, 4.3, 4.4, and 4.7. It applies when (1) a final order has been entered by a court or administrative agency; (2) a motion for a new trial in a jury case is granted; or (3) a motion for rehearing in a non-jury case is granted and the lower tribunal orders new testimony. It should be noted that certain other non-final orders entered after the final order are reviewable under the procedure set forth in rule 9.130. This rule does not apply to review proceedings in such cases.

Except to the extent of conflict with rule 9.140 governing appeals in criminal cases, this rule governs: (1) appeals as of right to the supreme court; (2) certiorari proceedings before the supreme court seeking direct review of administrative action (for example, Industrial Relations Commission and Public Service Commission); (3) appeals as of right to a district court of appeal, including petitions for review of administrative action under the Administrative Procedure Act, section 120.68, Florida Statutes (Supp. 1976); (4) appeals as of right to a circuit court, including review of administrative action if provided by law.

This rule is intended to clarify the procedure for review of orders granting a new trial. Rules 9.130(a)(4) and 9.140(c)(1)(C) authorize the appeal of orders granting a motion for new trial. Those rules supersede *Clement v. Aztec Sales, Inc.*, 297 So. 2d 1 (Fla. 1974), and are consistent with the decision there. Under subdivision (h) of this rule the scope of review of the court is not necessarily

limited to the order granting a new trial. The supreme court has held that "appeals taken from new trial orders shall be treated as appeals from final judgments to the extent possible." *Bowen v. Willard*, 340 So. 2d 110, 112 (Fla. 1976). This rule implements that decision.

Subdivisions (b) and (c) establish the procedure for commencing an appeal proceeding. Within 30 days of the rendition of the final order the appellant must file 2 copies of the notice of appeal, accompanied by the appropriate fees, with the clerk of the lower tribunal; except that if review of administrative action is sought, 1 copy of the notice and the applicable fees must be filed in the court. Failure to file any notice within the 30-day period constitutes an irremediable jurisdictional defect, but the second copy and fees may be filed after the 30-day period, subject to sanctions imposed by the court. See *Williams v. State*, 324 So. 2d 74 (Fla. 1975); Fla. R. App. P. 9.040(h).

Subdivision (d) sets forth the contents of the notice and eliminates the requirement of the former rule that the notice show the place of recordation of the order to be reviewed. The rule requires substantial compliance with the form approved by the supreme court. The date of rendition of the order for which review is sought must appear on the face of the notice. See the definition of "rendition" in Florida Rule of Appellate Procedure 9.020, and see the judicial construction of "rendition" for an administrative rule in *Florida Admin. Comm'n v. Judges of the District Court*, 351 So. 2d 712 (Fla. 1977), on review of *Riley-Field Co. v. Askew*, 336 So. 2d 383 (Fla. 1st DCA 1976). This requirement is intended to allow the clerk of the court to determine the timeliness of the notice from its face. The advisory committee intended that defects in the notice would not be jurisdictional or grounds for disposition unless the complaining party was substantially prejudiced.

This rule works significant changes in the review of final administrative action. The former rules required that a traditional petition for the writ of certiorari be filed if supreme court review was appropriate, and the practice under the Administrative Procedure Act, section 120.68, Florida Statutes (Supp. 1976), has been for the "petition for review" to be substantially similar to a petition for the writ of certiorari. See *Yamaha Int'l Corp. v. Ehrman*, 318 So. 2d 196 (Fla. 1st DCA 1975). This rule eliminates the need for true petitions in such cases. Instead, a simple notice is filed, to be followed later by briefs. It is intended that the notice constitute the petition required in section 120.68(2), Florida Statutes (Supp. 1976). There is no conflict with the statute because the substance of the review proceeding remains controlled by the statute, and the legislature directed that review be under

the procedures set forth in these rules. Because it is a requirement of rendition that an order be written and filed, this rule supersedes *Shevin ex rel. State v. Public Service Comm'n*, 333 So. 2d 9 (Fla. 1976), and *School Bd. v. Malbon*, 341 So. 2d 523 (Fla. 2d DCA 1977), to the extent that those decisions assume that reduction of an order to writing is unnecessary for judicial review.

This rule is not intended to affect the discretionary nature of direct supreme court review of administrative action taken under the certiorari jurisdiction of that court set forth in article V, section 3(b)(3), Florida Constitution. Such proceedings remain in certiorari with the only change being to replace wasteful, repetitive petitions for the writ of certiorari with concise notices followed at a later date by briefs. The parties to such actions should be designated as "petitioner" and "respondent" despite the use of the terms "appellant" and "appellee" in this rule. See commentary, Fla. R. App. P. 9.020.

Subdivisions (e), (f), and (g) set the times for preparation of the record, serving copies of the index on the parties, serving briefs, and serving notices of cross-appeal. Provision for cross-appeal notices has been made to replace the cross-assignments of error eliminated by these rules. In certiorari proceedings governed by this rule the term "cross- appeal" should be read as equivalent to "cross-petition." It should be noted that if time is measured by service, rule 9.420(b) requires filing to be made before service or immediately thereafter.

Subdivision (h) permits a party to file a single notice of appeal if a single proceeding in the lower tribunal, whether criminal or civil, results in more than 1 final judgment and an appeal of more than 1 is sought. This rule is intended to further the policies underlying the decisions of the supreme court in *Scheel v. Advance Marketing Consultants, Inc.*, 277 So. 2d 773 (Fla. 1973), and *Hollimon v. State*, 232 So. 2d 394 (Fla. 1970). This rule does not authorize the appeal of multiple final judgments unless otherwise proper as to each. If a prematurely filed notice is held in abeyance in accordance with *Williams v. State*, 324 So. 2d 74 (Fla. 1975), the date of filing is intended to be the date the notice becomes effective.

Subdivision (i) provides an expedited procedure in appeals as of right to the supreme court in bond validation proceedings. An appendix is mandatory.

Subdivision (j) provides for an expedited procedure in appeals as of right to the supreme court from an order of a district court of appeal.

1980 Amendment. The rule has been amended to incorporate changes in rule 9.030 and to reflect the abolition of supreme court jurisdiction to review, if

provided by general law, final orders of trial courts imposing sentences of life imprisonment.

The reference indicated (2) in the second paragraph of this committee note for 1977 amendment should be disregarded. See amended rule 9.030(a)(1)(B)(ii) and accompanying committee note.

1984 Amendment. Subdivision (k) was added to remedy a pitfall in the application of case law under *Mendez v. West Flagler Family Association*, 303 So. 2d 1 (Fla. 1974). Appeals may now be taken immediately or delayed until the end of the entire case, under the rationale of *Mendez*.

1992 Amendment. Subdivision (d) was amended to require that the appellant, except in criminal cases, attach to its notice of appeal a conformed copy of any orders designated in the notice of appeal, along with any orders on motions that postponed the rendition of orders appealed. This amendment is designed to assist the clerk in determining the nature and type of order being appealed and the timeliness of any such appeal.

Subdivision (m) was added to clarify the effect of a notice of appeal filed by a party before the lower court renders a final appealable order. Under this subdivision, such a notice of appeal is subject to dismissal as premature, but a final order rendered before the dismissal of the appeal will vest the appellate court with jurisdiction to review that final order. It further provides that the appellate court may relinquish jurisdiction or otherwise allow the lower court to render such a final order before dismissal of the appeal. If the only motion that is delaying rendition has been filed by the party filing the notice of appeal, under rule 9.020(g)(3), such motion is deemed abandoned and the final order is deemed rendered by the filing of a notice of appeal.

1996 Amendment. The addition of new subdivision (a)(2) is a restatement of former Florida Rule of Probate Procedure 5.100, and is not intended to change the definition of final order for appellate purposes. It recognizes that in probate and guardianship proceedings it is not unusual to have several final orders entered during the course of the proceeding that address many different issues and involve many different persons. An order of the circuit court that determines a right, an obligation, or the standing of an interested person as defined in the Florida Probate Code may be appealed before the administration of the probate or guardianship is complete and the fiduciary is discharged.

Subdivision (c) was amended to reflect that in appeals of administrative orders, the appellate court filing fees should be filed in the appellate court, not the administrative tribunal.

Subdivision (n) was added by the committee in response to the opinion in *Canal Insurance Co. v. Reed*, 666 So. 2d 888 (Fla. 1996), suggesting that the Appellate Court Rules Committee consider an appropriate method for providing expedited review of these cases to avoid unnecessary delays in the final resolution of the underlying actions. Expedited review in the manner provided in rule 9.130 is available for such judgments in cases where a claim against the insured is pending and early resolution of the coverage issue is in the best interest of the parties. The notice of appeal should identify whether a party is seeking review pursuant to the procedure provided in this rule or in rule 9.130.

2006 Amendment. Rule 9.110(n) has been amended to clarify that the word "clerk" in the first sentence of the rule refers to the clerk of the lower tribunal. The amendment also permits the minor to ask for leave to file a brief or to request oral argument. The amendment clarifies that the district court does not grant the minor's petition, but rather may reverse the circuit court's dismissal of the petition.

2010 Note. As provided in Rule 9.040, requests to determine the confidentiality of appellate court records are governed by Florida Rule of Judicial Administration 2.420.

2014 Amendments. The amendment to subdivision (*l*) is intended to clarify that it is neither necessary nor appropriate to request a relinquishment of jurisdiction from the court to enable the lower tribunal to render a final order. Subdivision (n) has been moved to rule 9.147.

20__ Amendment. Subdivision (k) was amended to clarify that subdivision (h) does not expand the scope of review of partial final judgments to include rulings that are not directly related to and an aspect of the final order under review. *E.g.*, *Cygler v. Presjack*, 667 So. 2d 458, 461 (Fla. 4th DCA 1996).

Court Commentary

2003 Amendment. Subdivision (*l*) was deleted to reflect the holding in *North Florida Women's Health & Counseling Services, Inc. v. State*, 28 Fla. L. Weekly 549 (Fla. July 10, 2003).

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

(a) Applicability. This rule applies to those proceedings that invoke the discretionary jurisdiction of the supreme court described in rule 9.030(a)(2)(A).

(b) Commencement. The jurisdiction of the supreme court described in rule 9.030(a)(2)(A) shall be invoked by filing a notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal within 30 days of rendition of the order to be reviewed.

(c) Notice. The notice shall be substantially in the form prescribed by rule 9.900. The caption shall contain the name of the lower tribunal, the name and designation of at least 1 party on each side, and the case number in the lower tribunal. The notice shall contain the date of rendition of the order to be reviewed and the basis for invoking the jurisdiction of the court.

(d) Briefs on Jurisdiction. The ~~P~~petitioner's brief, limited solely to the issue of the supreme court's jurisdiction and accompanied by an appendix containing only a conformed copy of the decision of the district court of appeal, shall be served within 10 days of filing the notice. The ~~R~~respondent's brief on jurisdiction shall be served within 20 days after service of petitioner's brief. Formal requirements for both briefs are specified in rule 9.210. No reply brief shall be permitted. If jurisdiction is invoked under rule 9.030(a)(2)(A)(v) (certifications of questions of great public importance by the district courts of appeal to the supreme court), no briefs on jurisdiction shall be filed.

(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) Briefs on Merits. Within 20 days of rendition of the order accepting or postponing decision on jurisdiction, the petitioner shall serve the initial brief on the merits~~, accompanied by an appendix that must include a conformed copy of the decision of the district court of appeal~~. Additional briefs shall be served as prescribed by rule 9.210.

Committee Notes

1977 Amendment. This rule replaces former rule 4.5(c) and governs all certiorari proceedings to review final decisions of the district courts. Certiorari proceedings to review interlocutory orders of the district courts if supreme court jurisdiction exists under article V, section 3(b)(3), Florida Constitution are governed by rule 9.100.

Subdivision (b) sets forth the manner in which certiorari proceedings in the supreme court are to be commenced. Petitions for the writ are abolished and replaced by a simple notice to be followed by briefs. Two copies of the notice, which must substantially comply with the form approved by the supreme court, are to be filed with the clerk of the district court within 30 days of rendition along with the requisite fees. Failure to timely file the fees is not jurisdictional.

Subdivision (c) sets forth the contents of the notice. The requirement that the notice state the date of rendition, as defined in rule 9.020, is intended to permit the clerk of the court to determine timeliness from the face of the notice. The statement of the basis for jurisdiction should be a concise reference to whether the order sought to be reviewed (1) conflicts with other Florida appellate decisions; (2) affects a class of constitutional or state officers; or (3) involves a question of great public interest certified by the district court.

Subdivision (d) establishes the time for filing jurisdictional briefs and prescribes their content. If supreme court jurisdiction is based on certification of a question of great public interest, no jurisdictional briefs are permitted. Briefs on the merits in such cases are to be prepared in the same manner as in other cases. Briefs on the merits are to be served within the time provided after the court has ruled that it will accept jurisdiction or has ruled that it will postpone decision on jurisdiction.

The jurisdictional brief should be a short, concise statement of the grounds for invoking jurisdiction and the necessary facts. It is not appropriate to argue the merits of the substantive issues involved in the case or discuss any matters not relevant to the threshold jurisdictional issue. The petitioner may wish to include a very short statement of why the supreme court should exercise its discretion and entertain the case on the merits if it finds it does have certiorari jurisdiction. An appendix must be filed containing a conformed copy of the decision of the district court. If the decision of the district court was without opinion, or otherwise does not set forth the basis of decision with sufficient clarity to enable the supreme court to determine whether grounds for jurisdiction exist, a conformed copy of the order of the trial court should also be included in the appendix.

Subdivisions (e) and (f) provide that within 60 days of the date of the order accepting jurisdiction, or postponing decision on jurisdiction, the clerk of the district court must transmit the record to the court. The petitioner has 20 days from the date of the order to serve the initial brief on the merits. Other briefs may then be served in accordance with rule 9.210. Briefs that are served must be filed in accordance with rule 9.420.

It should be noted that the automatic stay provided by former rule 4.5 (c)(6) has been abolished because it encouraged the filing of frivolous petitions and was regularly abused. A stay pending review may be obtained under rule 9.310. If a stay has been ordered pending appeal to a district court, it remains effective under rule 9.310(e) unless the mandate issues or the district court vacates it. The advisory committee was of the view that the district courts should permit such stays only when essential. Factors to be considered are the likelihood that jurisdiction will be accepted by the supreme court, the likelihood of ultimate success on the merits, the likelihood of harm if no stay is granted, and the remediable quality of any such harm.

1980 Amendment. The rule has been amended to reflect the 1980 revisions to article V, section 3, Florida Constitution creating the additional categories of certifications by the district courts to the supreme court enumerated in rule 9.030(a)(2)(A).

District court decisions that (a) expressly declare valid a state statute, (b) expressly construe a provision of the state or federal constitution, (c) expressly affect a class of constitutional or state officers, (d) expressly and directly conflict with a decision of another district court or the supreme court on the same point of law, (e) pass upon a question certified to be of great public importance, or (f) are

certified to be in direct conflict with decisions of other district courts, are reviewed according to the procedures set forth in this rule. No jurisdictional briefs are permitted if jurisdiction is based on certification of a question of great public importance or certification that the decision is in direct conflict with a decision of another district court.

The mandatory appendix must contain a copy of the district court decision sought to be reviewed and should be prepared in accordance with rule 9.220.

Supreme court review of trial court orders and judgments certified by the district court under rule 9.030(a)(2)(B) is governed by the procedures set forth in rule 9.125.

Reply briefs from petitioners are prohibited, and the court will decide whether to accept the case for review solely on the basis of petitioner's initial and respondent's responsive jurisdictional briefs.

1992 Amendment. Subdivision (d) was amended to provide that jurisdictional briefs must conform to the same requirements set forth in rule 9.210.

NOTE: Amendments shown in double underline and double strikethrough are pending with the Court in *In re: Amendments Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.125. REVIEW OF TRIAL COURT ORDERS AND JUDGMENTS CERTIFIED BY THE DISTRICT COURTS OF APPEAL AS REQUIRING IMMEDIATE RESOLUTION BY THE SUPREME COURT OF FLORIDA

(a) Applicability. This rule applies to any order or judgment of a trial court that has been certified by the district court of appeal to require immediate resolution by the supreme court because the issues pending in the district court of appeal are of great public importance or have a great effect on the proper administration of justice throughout the state. The district court of appeal may make such certification on its own motion or on suggestion by a party.

(b) Commencement. The jurisdiction of the supreme court is invoked on rendition of the certificate by the district court of appeal.

(c) Suggestion. Any party may file with the district court of appeal and serve on the parties a suggestion that the order to be reviewed should be certified by the district court of appeal to the supreme court. The suggestion shall be substantially in the form prescribed by this rule and shall be filed within 10 days from the filing of the notice of appeal.

(d) Response. Any party may file a response within 5 days of the service of the suggestion.

(e) Form. The suggestion shall be limited to 5 pages and shall contain all of the following elements:

(1) ~~A~~a statement of why the appeal requires immediate resolution by the supreme court~~.~~;

(2) ~~A~~a statement of why the appeal:

(A) is of great public importance~~,~~; or

(B) will have a great effect on the proper administration of justice throughout the state.

(3) ~~A~~a certificate signed by the attorney stating:

I express a belief, based on a reasoned and studied professional judgment, that this appeal requires immediate resolution by the supreme court and (a) is of great public importance, or (b) will have a great effect on the administration of justice throughout the state~~.~~; and

~~/s/ _____~~
~~Attorney for …..(name of party)…..~~
~~…..(address and phone number)…..~~
~~Florida Bar No. .....~~
~~E-mail Address: ……~~

(4) ~~A~~an appendix containing a conformed copy of the order to be reviewed.

(f) Effect of Suggestion. The district court of appeal shall not be required to rule on the suggestion and neither the filing of a suggestion nor the rendition by the district court of appeal of its certificate shall alter the applicable time limitations or place of filing. If an order is rendered granting or denying certification, no rehearing shall be permitted.

(g) Procedure When the Supreme Court of Florida Accepts Jurisdiction. The jurisdiction of the supreme court attaches on rendition of the order accepting jurisdiction. If the supreme court accepts jurisdiction, it shall so order and advise the parties, the clerk of the district court of appeal, and the clerk of the lower tribunal. The clerk of the court in possession of the record shall electronically transmit the record in the case to the supreme court within 10 days thereafter. The supreme court shall issue a briefing schedule and all ~~papers~~documents formerly required to be filed in the district court shall be filed in the supreme court. If the supreme court denies jurisdiction, it shall so order and advise the parties and the clerk of the district court of appeal.

Committee Notes

1980 Amendment. This rule is entirely new and governs all discretionary proceedings to review trial court orders or judgments that have been certified by the district court under rule 9.030(a)(2)(B) to require immediate resolution by the supreme court and to be of great public importance or to have a great effect on the proper administration of justice throughout the state. Final and non-final orders are covered by this rule. Discretionary review of other district court decisions if supreme court jurisdiction exists under rule 9.030(a)(2)(A) is governed by rule 9.120.

Subdivision (b) makes clear that certification by the district court is self-executing.

Subdivision (c) sets forth the manner in which a party may file a suggestion that the order to be reviewed should be certified by the district court to the supreme court and requires the suggestion be filed within 10 days from the filing of the notice of appeal. It is contemplated that suggestions under this rule will be rare. A suggestion should be filed only if, under the peculiar circumstances of a case, all the elements contained in subdivision (e) of the rule are present.

Subdivision (d) provides that any other party may file a response to a suggestion within 5 days of the service of the suggestion.

Subdivision (e) provides for the form of the suggestion. All suggestions must be substantially in this form. The suggestion is limited to 5 pages and must contain (1) a statement of why the appeal requires immediate resolution by the supreme court, and (2) a statement of why the appeal either is of great public importance or will have a great effect on the proper administration of justice throughout the state. The suggestion must be accompanied by an appendix containing a copy of the order to be reviewed. The suggestion also must include a certificate signed by the attorney in the form appearing in the rule.

To ensure that no proceeding is delayed because of this rule, subdivisions (f) and (g) provide that the filing of a suggestion will not alter the applicable time limitations or the place of filing. The district court shall not be required to rule on a suggestion. The parties should follow the time limitations contained in the rule through which jurisdiction of the district court was invoked. See rules 9.100, 9.110, 9.130, and 9.140.

RULE 9.130. PROCEEDINGS TO REVIEW ~~NON-FINAL~~NONFINAL ORDERS AND SPECIFIED FINAL ORDERS

(a) Applicability.

(1) This rule applies to appeals to the district courts of appeal of the ~~non-final~~nonfinal orders authorized herein and to appeals to the circuit court of ~~non-final~~nonfinal orders when provided by general law. Review of other ~~non-final~~nonfinal orders in such courts and ~~non-final~~nonfinal administrative action shall be by the method prescribed by rule 9.100.

(2) Appeals of ~~non-final~~nonfinal orders in criminal cases shall be as prescribed by rule 9.140.

(3) Appeals to the district courts of appeal of ~~non-final~~nonfinal orders are limited to those that:

(A) concern venue;

(B) grant, continue, modify, deny, or dissolve injunctions, or refuse to modify or dissolve injunctions;

(C) determine:

(i) the jurisdiction of the person;

(ii) the right to immediate possession of property, including but not limited to orders that grant, modify, dissolve, or refuse to grant, modify, or dissolve writs of replevin, garnishment, or attachment;

(iii) in family law matters:

a. the right to immediate monetary relief;

b. the rights or obligations of a party regarding child custody or time-sharing under a parenting plan; or

c. that a marital agreement is invalid in its entirety;

(iv) the entitlement of a party to arbitration, or to an appraisal under an insurance policy;

(v) that, as a matter of law, a party is not entitled to workers' compensation immunity;

(vi) whether to certify a class;

(vii) that, as a matter of law, a party is not entitled to absolute or qualified immunity in a civil rights claim arising under federal law;

(viii) that a governmental entity has taken action that has inordinately burdened real property within the meaning of section 70.001(6)(a), Florida Statutes;

(ix) the issue of forum non conveniens;

(x) that, as a matter of law, a party is not entitled to immunity under section 768.28(9), Florida Statutes; ~~or~~

(xi) that, as a matter of law, a party is not entitled to sovereign immunity~~.~~; or

(xii) that, as a matter of law, a settlement agreement is unenforceable, is set aside, or never existed.

(D) grant or deny the appointment of a receiver, ~~and~~or terminate or refuse to terminate a receivership~~.~~; or

(E) grant or deny a motion to disqualify counsel.

(4) Orders disposing of motions that suspend rendition are not reviewable separately from a review of the final order; provided that orders granting motions for new trial in jury and ~~non-jury~~nonjury cases are reviewable by the method prescribed in rule 9.110.

(5) Orders entered on an authorized and timely motion for relief from judgment are reviewable by the method prescribed by this rule. Motions for rehearing directed to these orders will not toll the time for filing a notice of appeal.

(b) Commencement. Jurisdiction of the court under subdivisions (a)(3)–(a)(5) of this rule shall be invoked by filing a notice, accompanied by any filing fees prescribed by law, with the clerk of the lower tribunal within 30 days of rendition of the order to be reviewed.

(c) Notice. The notice, designated as a notice of appeal of ~~non-final~~nonfinal order, shall be substantially in the form prescribed by rule 9.900(c). Except in criminal cases, a conformed copy of the order or orders designated in the notice of appeal shall be attached to the notice.

(d) Record. A record shall not be transmitted to the court unless ordered.

(e) Briefs. The ~~A~~appellant's initial brief, accompanied by an appendix as prescribed by rule 9.220, shall be served within 15 days of filing the notice. Additional briefs shall be served as prescribed by rule 9.210.

(f) Stay of Proceedings. In the absence of a stay, during the pendency of a review of a ~~non-final~~nonfinal order, the lower tribunal may proceed with all matters, including trial or final hearing, except that the lower tribunal may not render a final order disposing of the cause pending such review absent leave of the court.

(g) Cross-Appeal. An appellee may cross-appeal the order or orders designated by the appellant, to review any ruling described in subdivisions (a)(3)–(a)(5), by serving a notice within 10 days of service of the appellant's timely filed notice of appeal or within the time prescribed for filing a notice of appeal, whichever is later. A notice of cross-appeal, accompanied by any filing fees prescribed by law, shall be filed either before service or immediately thereafter in the same manner as the notice of appeal.

(h) Review on Full Appeal. This rule shall not preclude initial review of a ~~non-final~~nonfinal order on appeal from the final order in the cause.

(i) Scope of Review. Multiple ~~non-final~~nonfinal orders that are listed in rule 9.130(a)(3) may be reviewed by a single notice if the notice is timely filed as to each such order.

Committee Notes

1977 Amendment. This rule replaces former rule 4.2 and substantially alters current practice. This rule applies to review of all non-final orders, except those

entered in criminal cases, and those specifically governed by rules 9.100 and 9.110.

The advisory committee was aware that the common law writ of certiorari is available at any time and did not intend to abolish that writ. However, because that writ provides a remedy only if the petitioner meets the heavy burden of showing that a clear departure from the essential requirements of law has resulted in otherwise irreparable harm, it is extremely rare that erroneous interlocutory rulings can be corrected by resort to common law certiorari. It is anticipated that because the most urgent interlocutory orders are appealable under this rule, there will be very few cases in which common law certiorari will provide relief. See *Taylor v. Board of Pub. Instruction*, 131 So. 2d 504 (Fla. 1st DCA 1961).

Subdivision (a)(3) designates certain instances in which interlocutory appeals may be prosecuted under the procedures set forth in this rule. Under these rules there are no mandatory interlocutory appeals. This rule eliminates interlocutory appeals as a matter of right from all orders "formerly cognizable in equity," and provides for review of certain interlocutory orders based on the necessity or desirability of expeditious review. Allowable interlocutory appeals from orders in actions formerly cognizable as civil actions are specified, and are essentially the same as under former rule 4.2. Item (A) permits review of orders concerning venue. Item (C)(i) has been limited to jurisdiction over the person because the writ of prohibition provides an adequate remedy in cases involving jurisdiction of the subject matter. Because the purpose of these items is to eliminate useless labor, the advisory committee is of the view that stays of proceedings in lower tribunals should be liberally granted if the interlocutory appeal involves venue or jurisdiction over the person. Because this rule only applies to civil cases, item (C)(ii) does not include within its ambit rulings on motions to suppress seized evidence in criminal cases. Item (C)(ii) is intended to apply whether the property involved is real or personal. It applies to such cases as condemnation suits in which a condemnor is permitted to take possession and title to real property in advance of final judgment. See ch. 74, Fla. Stat. (1975). Item (C)(iii) is intended to apply to such matters as temporary child custody or support, alimony, suit money, and attorneys' fees. Item (C)(iv) allows appeals from interlocutory orders that determine liability in favor of a claimant.

Subdivision (a)(4) grants a right of review if the lower tribunal grants a motion for new trial whether in a jury or non-jury case. The procedures set forth in rule 9.110, and not those set forth in this rule, apply in such cases. This rule has been phrased so that the granting of rehearing in a non-jury case under Florida

Rule of Civil Procedure 1.530 may not be the subject of an interlocutory appeal unless the trial judge orders the taking of evidence. Other non-final orders that postpone rendition are not reviewable in an independent proceeding. Other non-final orders entered by a lower tribunal after final order are reviewable and are to be governed by this rule. Such orders include, for example, an order granting a motion to vacate default.

Subdivision (a)(5) grants a right of review of orders on motions seeking relief from a previous court order on the grounds of mistake, fraud, satisfaction of judgment, or other grounds listed in Florida Rule of Civil Procedure 1.540.

Subdivision (a)(6) provides that interlocutory review is to be in the court that would have jurisdiction to review the final order in the cause as of the time of the interlocutory appeal.

Subdivisions (b) and (c) state the manner for commencing an interlocutory appeal governed by this rule. Two copies of the notice must be filed with the clerk of the lower tribunal within 30 days of rendition of the order. Under rule 9.040(g) the notice and fee must be transmitted immediately to the court by the clerk of the lower tribunal.

Subdivision (d) provides for transmittal of the record only on order of the court. Transmittal should be in accordance with instructions contained in the order.

Subdivision (e) replaces former rule 4.2(e) and governs the service of briefs on interlocutory appeals. The time to serve the appellant's brief has been reduced to 15 days so as to minimize interruption of lower tribunal proceedings. The brief must be accompanied by an appendix containing a conformed copy of the order to be reviewed and should also contain all relevant portions of the record.

Subdivision (f) makes clear that unless a stay is granted under rule 9.310, the lower tribunal is only divested of jurisdiction to enter a final order disposing of the case. This follows the historical rule that trial courts are divested of jurisdiction only to the extent that their actions are under review by an appellate court. Thus, the lower tribunal has jurisdiction to proceed with matters not before the court. This rule is intended to resolve the confusion spawned by *De la Portilla v. De la Portilla*, 304 So. 2d 116 (Fla. 1974), and its progeny.

Subdivision (g) was embodied in former rule 4.2(a) and is intended to make clear that the failure to take an interlocutory appeal does not constitute a waiver of

any sort on appeal of a final judgment, although an improper ruling might not then constitute prejudicial error warranting reversal.

1992 Amendment. Subdivisions (a)(3)(C)(vii) and (a)(6) were added to permit appeals from non-final orders that either granted or denied a party's request that a class be certified. The committee was of the opinion that orders determining the nature of an action and the extent of the parties before the court were analogous to other orders reviewable under rule 9.130. Therefore, these 2 subdivisions were added to the other limited enumeration of orders appealable by the procedures established in this rule.

Subdivision (a)(3)(D) was added by the committee in response to the decision in *Twin Jay Chambers Partnership v. Suarez*, 556 So. 2d 781 (Fla. 2d DCA 1990). It was the opinion of the committee that orders that deny the appointment of receivers or terminate or refuse to terminate receiverships are of the same quality as those that grant the appointment of a receiver. Rather than base the appealability of such orders on subdivision (a)(3)(C)(ii), the committee felt it preferable to specifically identify those orders with respect to a receivership that were non-final orders subject to appeal by this rule.

Subdivision (c) was amended to require the attachment of a conformed copy of the order or orders designated in the notice of appeal consistent with the amendment to rule 9.110(d).

1996 Amendment. The amendment to subdivision (a)(3)(C)(vi) moves the phrase "as a matter of law" from the end of the subdivision to its beginning. This is to resolve the confusion evidenced in *Breakers Palm Beach v. Gloger*, 646 So. 2d 237 (Fla. 4th DCA 1994), *City of Lake Mary v. Franklin*, 668 So. 2d 712 (Fla. 5th DCA 1996), and their progeny by clarifying that this subdivision was not intended to grant a right of nonfinal review if the lower tribunal denies a motion for summary judgment based on the existence of a material fact dispute.

Subdivision (a)(3)(C)(viii) was added in response to the supreme court's request in *Tucker v. Resha*, 648 So. 2d 1187 (Fla. 1994). The court directed the committee to propose a new rule regarding procedures for appeal of orders denying immunity in federal civil rights cases consistent with federal procedure. Compare *Johnson v. Jones*, 115 S. Ct. 2151, 132 L. Ed.2d 238 (1995), with *Mitchell v. Forsyth*, 472 U.S. 511, 105 S. Ct. 2806, 86 L. Ed.2d 411 (1985). The Florida Supreme Court held that such orders are "subject to interlocutory review to the extent that the order turns on an issue of law."

2000 Amendment. The title to this rule was amended to reflect that some of the review proceedings specified in this rule may involve review of final orders.

Subdivision (a)(1) was amended to reflect that the appellate jurisdiction of circuit courts is prescribed by general law and not by this rule, as clarified in *Blore v. Fierro*, 636 So. 2d 1329 (Fla. 1994).

Subdivision (a)(3)(C)(iv) allowing review of orders determining "the issue of liability in favor of a party seeking affirmative relief" was deleted so that such orders are not appealable until the conclusion of the case.

Subdivision (a)(7) was deleted because it is superseded by proposed rule 9.040(b)(2), which determines the appropriate court to review non-final orders after a change of venue.

2008 Amendment. Subdivision 9.130(a)(3)(C)(ii) was amended to address a conflict in the case law concerning whether orders granting, modifying, dissolving, or refusing to grant, modify, or dissolve garnishments are appealable under this subdivision. Compare *Ramseyer v. Williamson*, 639 So. 2d 205 (Fla. 5th DCA 1994) (garnishment order not appealable), with *5361 N. Dixie Highway v. Capital Bank*, 658 So. 2d 1037 (Fla. 4th DCA 1995) (permitting appeal from garnishment order and acknowledging conflict). The amendment is not intended to limit or expand the scope of matters covered under this rule. In that vein, replevin and attachment were included as examples of similar writs covered by this rule.

Subdivision (a)(3)(C)(iv) has been amended to clarify that nonfinal orders determining a party's entitlement to an appraisal under an insurance policy are added to the category of nonfinal orders appealable to the district courts of appeal.

Subdivision 9.130(a)(5) is intended to authorize appeals from orders entered on motions for relief from judgment that are specifically contemplated by a specific rule of procedure (e.g., the current version of Florida Rule of Civil Procedure 1.540, Small Claims Rule 7.190, Florida Family Law Rule of Procedure 12.540, and Florida Rule of Juvenile Procedure 8.150 and 8.270).

Subdivision (a)(5) has been amended to recognize the unique nature of the orders listed in this subdivision and to codify the holdings of all of Florida's district courts of appeal on this subject. The amendment also clarifies that motions for rehearing directed to these particular types of orders are unauthorized and will not toll the time for filing a notice of appeal.

2014 Amendment. Subdivision (a)(4) has been amended to clarify that an order disposing of a motion that suspends rendition is reviewable, but only in conjunction with, and as a part of, the review of the final order. Additionally, the following sentence has been deleted from subdivision (a)(4): "Other non-final orders entered after final order on authorized motions are reviewable by the method prescribed by this rule." Its deletion clarifies that non-final orders entered after a final order are no more or less reviewable than the same type of order would be if issued before a final order. Non-final orders entered after a final order remain reviewable as part of a subsequent final order or as otherwise provided by statute or court rule. This amendment resolves conflict over the language being stricken and the different approaches to review during post-decretal proceedings that have resulted. *See, e.g.*, *Tubero v. Ellis*, 469 So. 2d 206 (Fla. 4th DCA 1985) (Hurley, J., dissenting). This amendment also cures the mistaken reference in the original 1977 committee note to "orders granting motions to vacate default" as examples of non-final orders intended for review under the stricken sentence. An order vacating a default is generally not reviewable absent a final default judgment. *See, e.g.*, *Howard v. McAuley*, 436 So. 2d 392 (Fla. 2d DCA 1983). Orders vacating final default judgments remain reviewable under rule 9.130(a)(5). Essentially, this amendment will delay some courts' review of some non-final orders entered after a final order until rendition of another, subsequent final order. But the amendment is not intended to alter the Court's ultimate authority to review any order.

RULE 9.140. APPEAL PROCEEDINGS IN CRIMINAL CASES

(a) Applicability. Appeal proceedings in criminal cases shall be as in civil cases except as modified by this rule.

(b) Appeals by Defendant.

(1) Appeals Permitted. A defendant may appeal:

(A) a final judgment adjudicating guilt;

(B) a final order withholding adjudication after a finding of guilt;

(C) an order granting probation or community control, or both, whether or not guilt has been adjudicated;

(D) orders entered after final judgment or finding of guilt, including orders revoking or modifying probation or community control, or both, or orders denying relief under Florida Rules of Criminal Procedure 3.800(a), 3.801, 3.802, 3.850, 3.851, or 3.853;

(E) an unlawful or illegal sentence;

(F) a sentence, if the appeal is required or permitted by general law; or

(G) as otherwise provided by general law.

(2) Guilty or Nolo Contendere Pleas.

(A) Pleas. A defendant may not appeal from a guilty or nolo contendere plea except as follows:

(i) Reservation of Right to Appeal. A defendant who pleads guilty or nolo contendere may expressly reserve the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved.

(ii) Appeals Otherwise Allowed. A defendant who pleads guilty or nolo contendere may otherwise directly appeal only:

a. the lower tribunal's lack of subject matter jurisdiction;

b. a violation of the plea agreement, if preserved by a motion to withdraw plea;

c. an involuntary plea, if preserved by a motion to withdraw plea;

d. a sentencing error, if preserved; or

e. as otherwise provided by law.

(B) Record.

(i) Except for appeals under subdivision (b)(2)(A)(i) of this rule, the record for appeals involving a plea of guilty or nolo contendere shall be limited to:

a. all indictments, informations, affidavits of violation of probation or community control, and other charging documents;

b. the plea and sentencing hearing transcripts;

c. any written plea agreements;

d. any judgments, sentences, scoresheets, motions, and orders to correct or modify sentences, orders imposing, modifying, or revoking probation or community control, orders assessing costs, fees, fines, or restitution against the defendant, and any other documents relating to sentencing;

e. any motion to withdraw plea and order thereon; and

f. notice of appeal, statement of judicial acts to be reviewed, directions to the clerk, and designation to the approved court reporter or approved transcriptionist.

(ii) Upon good cause shown, the court, or the lower tribunal before the record is electronically transmitted, may expand the record.

(3) Commencement. The defendant shall file the notice prescribed by rule 9.110(d) with the clerk of the lower tribunal at any time between rendition of a final judgment and 30 days following rendition of a written order imposing sentence. Copies shall be served on the state attorney and attorney general.

(4) Cross-Appeal. A defendant may cross-appeal by serving a notice within 10 days of service of the state's notice or service of an order on a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). Review of cross-appeals before trial is limited to related issues resolved in the same order being appealed.

(c) Appeals by the State.

(1) Appeals Permitted. The state may appeal an order:

(A) dismissing an indictment or information or any count thereof or dismissing an affidavit charging the commission of a criminal offense, the violation of probation, the violation of community control, or the violation of any supervised correctional release;

(B) suppressing before trial confessions, admissions, or evidence obtained by search and seizure;

(C) granting a new trial;

(D) arresting judgment;

(E) granting a motion for judgment of acquittal after a jury verdict;

(F) discharging a defendant under Florida Rule of Criminal Procedure 3.191;

(G) discharging a prisoner on habeas corpus;

(H) finding a defendant incompetent or insane;

(I) finding a defendant intellectually disabled under Florida Rule of Criminal Procedure 3.203;

(J) granting relief under Florida Rules of Criminal Procedure 3.801, 3.850, 3.851, or 3.853;

(K) ruling on a question of law if a convicted defendant appeals the judgment of conviction;

(L) withholding adjudication of guilt in violation of general law;

(M) imposing an unlawful or illegal sentence or imposing a sentence outside the range permitted by the sentencing guidelines;

(N) imposing a sentence outside the range recommended by the sentencing guidelines;

(O) denying restitution; or

(P) as otherwise provided by general law for final orders.

(2) ~~Non-Final~~Nonfinal Orders. The state as provided by general law may appeal to the circuit court ~~non-final~~nonfinal orders rendered in the county court.

(3) Commencement. The state shall file the notice prescribed by rule 9.110(d) with the clerk of the lower tribunal within 15 days of rendition of the order to be reviewed; provided that in an appeal by the state under rule 9.140(c)(1)(K), the state's notice of cross-appeal shall be filed within 10 days of service of defendant's notice or service of an order on a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). Copies shall be served on the defendant and the defendant's attorney ~~of record~~. An appeal by the state shall stay further proceedings in the lower tribunal only by order of the lower tribunal.

(d) Withdrawal of Defense Counsel after Judgment and Sentence or after Appeal by State.

(1) The ~~attorney of record for a~~ defendant's attorney ~~in a criminal proceeding~~ shall not be relieved of any professional duties, or be permitted to withdraw as defense counsel of record, except with approval of the lower tribunal

on good cause shown on written motion, until either the time has expired for filing an authorized notice of appeal and no such notice has been filed by the defendant or the state, or after the following have been completed:

(A) a notice of appeal or cross-appeal has been filed on behalf of the defendant or the state;

(B) a statement of judicial acts to be reviewed has been filed if a transcript will require the expenditure of public funds;

(C) the defendant's directions to the clerk have been filed, if necessary;

(D) designations to the approved court reporter or approved transcriptionist have been filed and served by counsel for appellant for transcripts of those portions of the proceedings necessary to support the issues on appeal or, if transcripts will require the expenditure of public funds for the defendant, of those portions of the proceedings necessary to support the statement of judicial acts to be reviewed; and

(E) in publicly funded defense and state appeals, when the lower tribunal has entered an order appointing the office of the public defender for the local circuit, the district office of criminal conflict and civil regional counsel, or private counsel as provided by chapter 27, Florida Statutes, that office, or attorney shall remain counsel for the appeal until the record is electronically transmitted to the court. In publicly funded state appeals, defense counsel shall additionally file with the court a copy of the lower tribunal's order appointing the local public defender, the office of criminal conflict and civil regional counsel, or private counsel. In non-publicly funded defense and state appeals, retained appellate counsel shall file a notice of appearance in the court, or defense counsel of record shall file a motion to withdraw in the court, with service on the defendant, that states what the defendant's legal representation on appeal, if any, is expected to be. Documents filed in the court shall be served on the attorney general (or state attorney in appeals to the circuit court).

(2) Orders allowing withdrawal of counsel are conditional and counsel shall remain of record for the limited purpose of representing the defendant in the lower tribunal regarding any sentencing error the lower tribunal is authorized to address during the pendency of the direct appeal pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).

(e) Sentencing Errors. A sentencing error may not be raised on appeal unless the alleged error has first been brought to the attention of the lower tribunal:

(1) at the time of sentencing; or

(2) by motion pursuant to Florida Rule of Criminal Procedure 3.800(b).

(f) Record.

(1) Service. The clerk of the lower tribunal shall prepare and serve the record prescribed by rule 9.200 within 50 days of the filing of the notice of appeal. However, the clerk shall not serve the record until all proceedings designated for transcription have been transcribed by the court reporter(s) and filed with the clerk. If the designated transcripts have not been filed by the date required for service of the record, the clerk shall file with the court, and serve on all parties and any court reporter whose transcript has not been filed, a notice of inability to complete the record, listing the transcripts not yet received. In cases where the transcripts are filed after a notice from the clerk, the clerk shall prepare and file the record within 20 days of receipt of the transcripts. An order granting an extension to the court reporter to transcribe designated proceedings shall toll the time for the clerk to serve this notice or the record on appeal.

(2) Transcripts.

(A) If a defendant's designation of a transcript of proceedings requires expenditure of public funds, trial counsel for the defendant (in conjunction with appellate counsel, if possible) shall serve, within 10 days of filing the notice, a statement of judicial acts to be reviewed, and a designation to the approved court reporter or approved transcriptionist requiring preparation of only so much of the proceedings as fairly supports the issue raised.

(B) Either party may file motions in the lower tribunal to reduce or expand the transcripts.

(C) Except as permitted in subdivision (f)(2)(D) of this rule, the parties shall ~~designate~~serve the designation on the approved court reporter or approved transcriptionist to file with the clerk of the lower tribunal the transcripts for the court and sufficient paper copies for all parties exempt from service by e-mail as set forth in the Florida Rules of Judicial Administration.

(D) ~~Non-indigent~~Nonindigent defendants represented by counsel may ~~designate~~serve the designation on the approved court reporter or approved transcriptionist to prepare the transcripts. Counsel adopting this procedure shall, within 5 days of receipt of the transcripts from the approved court reporter or approved transcriptionist, file the transcripts. Counsel shall serve notice of the use of this procedure on the attorney general (or the state attorney in appeals to circuit court) and the clerk of the lower tribunal. Counsel shall attach a certificate to each transcript certifying that it is accurate and complete. When this procedure is used, the clerk of the lower tribunal upon conclusion of the appeal shall retain the transcript(s) for use as needed by the state in any collateral proceedings and shall not dispose of the transcripts without the consent of the ~~Office of the A~~attorney ~~G~~general.

(E) In state appeals, the state shall ~~designate~~serve a designation on the approved court reporter or approved transcriptionist to prepare and file with the clerk of the lower tribunal the transcripts and sufficient copies for all parties exempt from service by e-mail as set forth in the Florida Rules of Judicial Administration. Alternatively, the state may elect to use the procedure specified in subdivision (f)(2)(D) of this rule.

(F) The lower tribunal may by administrative order in publicly-funded cases direct the clerk of the lower tribunal rather than the approved court reporter or approved transcriptionist to prepare the necessary transcripts.

(3) Retention of Documents. Unless otherwise ordered by the court, the clerk of the lower tribunal shall retain any original documents.

(4) Service of Copies. The clerk of the lower tribunal shall serve copies of the record to the court, attorney general (or state attorney in appeals to circuit court), and all counsel appointed to represent indigent defendants on appeal. The clerk of the lower tribunal shall simultaneously serve copies of the index to all ~~non-indigent~~nonindigent defendants and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

(5) Return of Record. Except in death penalty cases, the court shall return ~~the record~~ to the lower tribunal, after final disposition of the appeal, any portions of the appellate record that were not electronically filed~~after final disposition of the appeal~~.

(6) Supplemental Record for Motion to Correct Sentencing Error Pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).

(A) Transmission.

(i) The clerk of circuit court shall automatically supplement the appellate record with any motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), any response, any resulting order, and any amended sentence. If a motion for rehearing is filed, the supplement shall also include the motion for rehearing, any response, and any resulting order.

(ii) The clerk shall electronically transmit the supplement to the appellate court within ~~5~~20 days ~~of~~after the filing of the order ~~ruling on~~disposing of the rule 3.800(b)(2) motion, unless a motion for rehearing is filed. If an order is not filed within 60 days ~~from~~after the filing of the rule 3.800(b)(2) motion, and no motion for rehearing is filed, this ~~time~~20-day period shall run from the expiration of the 60-day period, and the clerk shall include a statement in the supplement ~~the record with the motion and a statement~~ that no order on the rule 3.800(b)(2) motion was timely filed.

(iii) If a motion for rehearing is filed, the clerk shall electronically transmit the supplement to the court within 5 days after the filing of the order disposing of the motion for rehearing. If an order disposing of the motion for rehearing is not filed within 40 days after the date of the order for which rehearing is sought, this 5-day period shall run from the expiration of the 40-day period, and the clerk shall include a statement in the supplement that no order on the motion for rehearing was timely filed.

(B) Transcripts. If any appellate counsel determines that a transcript of a proceeding relating to such a motion is required to review the sentencing issue, appellate counsel shall, within 5 days from the ~~transmittal~~transmission of the supplement described in subdivision (f)(6)(A)(ii), designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record. ~~A copy of the designation shall be filed with the a~~Appellate counsel shall file the designation with the court and serve it on the approved court reporter or approved transcriptionist. The procedure for this supplementation shall be in accordance with this subdivision, except that counsel is not required to file a revised statement of judicial acts to be reviewed, the approved court reporter or approved transcriptionist shall deliver the transcript within 15

days, and the clerk shall supplement the record with the transcript within 5 days of its receipt.

(g) Briefs.

(1) Briefs on the ~~m~~Merits. Initial briefs, including those filed pursuant to subdivision (g)(2)(A), shall be served within 30 days of transmission of the record or designation of appointed counsel, whichever is later. Additional briefs shall be served as prescribed by rule 9.210.

(2) Anders Briefs.

(A) If appointed counsel files a brief stating that an appeal would be frivolous, the court shall independently review the record to discover any arguable issues apparent on the face of the record. Upon the discovery of an arguable issue, other than an unpreserved sentencing, disposition, or commitment order error, the court shall order briefing on the issues identified by the court.

(B) Upon discovery of an unpreserved sentencing, disposition, or commitment order error, the court may strike the brief and allow for a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) or Florida Rule of Juvenile Procedure 8.135(b)(2) to be filed. The court's order may contain deadlines for the cause to be resolved within a reasonable time.

(h) Post-Trial Release.

(1) Appeal by Defendant. The lower tribunal may hear a motion for post-trial release pending appeal before or after a notice of appeal is filed; provided that the defendant may not be released from custody until the notice of appeal is filed.

(2) Appeal by State. An incarcerated defendant charged with a bailable offense shall on motion be released on the defendant's own recognizance pending an appeal by the state, unless the lower tribunal for good cause stated in an order determines otherwise.

(3) Denial of Post-Trial Release. All orders denying post-trial release shall set forth the factual basis on which the decision was made and the reasons therefor.

(4) Review. Review of an order relating to post-trial release shall be by the court on motion.

(i) Scope of Review. The court shall review all rulings and orders appearing in the record necessary to pass upon the grounds of an appeal. In the interest of justice, the court may grant any relief to which any party is entitled.

Committee Notes

1977 Amendment. This rule represents a substantial revision of the procedure in criminal appeals.

Subdivision (a) makes clear the policy of these rules that procedures be standardized to the maximum extent possible. Criminal appeals are to be governed by the same rules as other cases, except for those matters unique to criminal law that are identified and controlled by this rule.

Subdivision (b)(1) lists the only matters that may be appealed by a criminal defendant, and it is intended to supersede all other rules of practice and procedure. This rule has no effect on either the availability of extraordinary writs otherwise within the jurisdiction of the court to grant, or the supreme court's jurisdiction to entertain petitions for the constitutional writ of certiorari to review interlocutory orders. This rule also incorporates the holding in *State v. Ashby*, 245 So. 2d 225 (Fla. 1971), and is intended to make clear that the reservation of the right to appeal a judgment based on the plea of no contest must be express and must identify the particular point of law being reserved; any issues not expressly reserved are waived. No direct appeal of a judgment based on a guilty plea is allowed. It was not intended that this rule affect the substantive law governing collateral review.

Subdivision (b)(2) replaces former rule 6.2. Specific reference is made to rule 9.110(d) to emphasize that criminal appeals are to be prosecuted in substantially the same manner as other cases. Copies of the notice, however, must be served on both the state attorney and the attorney general. The time for taking an appeal has been made to run from the date judgment is rendered to 30 days after an order imposing sentence is rendered or otherwise reduced to writing. The former rule provided for appeal within 30 days of rendition of judgment or within 30 days of entry of sentence. The advisory committee debated the intent of the literal language of the former rule. Arguably, under the former rule an appeal could not be taken by a defendant during the "gap period" that occurs when sentencing is postponed more than 30 days after entry of judgment. The advisory committee concluded that no purpose was served by such an interpretation because the full

case would be reviewable when the "gap" closed. This modification of the former rule promotes the policies underlying *Williams v. State*, 324 So. 2d 74 (Fla. 1975), in which it was held that a notice of appeal prematurely filed should not be dismissed, but held in abeyance until it becomes effective. This rule does not specifically address the issue of whether full review is available if re-sentencing occurs on order of a court in a collateral proceeding. Such cases should be resolved in accordance with the underlying policies of these rules. Compare *Wade v. State*, 222 So. 2d 434 (Fla. 2d DCA 1969), with *Neary v. State*, 285 So. 2d 47 (Fla. 4th DCA 1973). If a defendant appeals a judgment of conviction of a capital offense before sentencing and sentencing is anticipated, the district court of appeal (as the court then with jurisdiction) should hold the case in abeyance until the sentence has been imposed. If the death penalty is imposed, the district court of appeal should transfer the case to the supreme court for review. See § 921.141(4), Fla. Stat. (1975); Fla. R. App. P. 9.040(b).

Subdivision (b)(3) governs the service of briefs. Filing should be made in accordance with rule 9.420.

Subdivision (c)(1) lists the only matters that may be appealed by the state, but it is not intended to affect the jurisdiction of the supreme court to entertain by certiorari interlocutory appeals governed by rule 9.100, or the jurisdiction of circuit courts to entertain interlocutory appeals of pretrial orders from the county courts. See *State v. Smith*, 260 So. 2d 489 (Fla. 1972). No provision of this rule is intended to conflict with a defendant's constitutional right not to be placed twice in jeopardy, and it should be interpreted accordingly. If there is an appeal under item (A), a motion for a stay of the lower tribunal proceeding should be liberally granted in cases in which there appears to be a substantial possibility that trial of any non-dismissed charges would bar prosecution of the dismissed charges if the dismissal were reversed, such as in cases involving the so-called "single transaction rule." Item (E) refers to the popularly known "speedy trial rule," and items (F), (G), and (H) track the balance of state appellate rights in section 924.07, Florida Statutes (1975).

Subdivision (c)(2) parallels subdivision (b)(2) regarding appeals by defendants except that a maximum of 15 days is allowed for filing the notice. An appeal by the state stays further proceedings in the lower tribunal only if an order has been entered by the trial court.

Subdivision (c)(3) governs the service of briefs.

Subdivision (d) applies rule 9.200 to criminal appeals and sets forth the time for preparation and service of the record, and additional matters peculiar to criminal cases. It has been made mandatory that the original record be held by the lower tribunal to avoid loss and destruction of original papers while in transit. To meet the needs of appellate counsel for indigents, provision has been made for automatic transmittal of a copy of the record to the public defender appointed to represent an indigent defendant on appeal, which in any particular case may be the public defender either in the judicial circuit where the trial took place or in the judicial circuit wherein the appellate court is located. See § 27.51(4), Fla. Stat. (1975). Counsel for a non-indigent defendant may obtain a copy of the record at the cost prescribed by law. At the present time, section 28.24(13), Florida Statutes (1975), as amended by chapter 77-284, § 1, Laws of Florida, prescribes a cost of $1 per page.

To conserve the public treasury, appeals by indigent defendants, and other criminal defendants in cases in which a free transcript is provided, have been specially treated. Only the essential portions of the transcript are to be prepared. The appellant must file a statement of the judicial acts to be reviewed on appeal and the parties are to file and serve designations of the relevant portions of the record. (This procedure emphasizes the obligation of trial counsel to cooperate with appellate counsel, if the two are different, in identifying alleged trial errors.) The statement is necessary to afford the appellee an opportunity to make a reasonable determination of the portions of the record required. The statement should be sufficiently definite to enable the opposing party to make that determination, but greater specificity is unnecessary. The statement of judicial acts contemplated by this rule is not intended to be the equivalent of assignments of error under former rule 3.5. Therefore, an error or inadequacy in the statement should not be relevant to the disposition of any case. In such circumstances, the appropriate procedure would be to supplement the record under rule 9.200(f) to cure any potential or actual prejudice. Either party may move in the lower tribunal to strike unnecessary portions before they are prepared or to expand the transcript. The ruling of the lower tribunal on such motions is reviewable by motion to the court under rule 9.200(f) if a party asserts additional portions are required.

Subdivision (e) replaces former rule 6.15. Subdivision (e)(1) governs if an appeal is taken by a defendant and permits a motion to grant post-trial release pending appeal to be heard although a notice of appeal has not yet been filed. The lower tribunal may then grant the motion effective on the notice being filed. This rule is intended to eliminate practical difficulties that on occasion have frustrated the cause of justice, as in cases in which a defendant’s attorney has not prepared a

notice of appeal in advance of judgment. Consideration of such motions shall be in accordance with section 903.132, Florida Statutes (Supp. 1976), and Florida Rule of Criminal Procedure 3.691. This rule does not apply if the judgment is based on a guilty plea because no right to appeal such a conviction is recognized by these rules.

Subdivision (e)(2) governs if the state takes an appeal and authorizes release of the defendant without bond, if charged with a bailable offense, unless the lower tribunal for good cause orders otherwise. The "good cause" standard was adopted to ensure that bond be required only in rare circumstances. The advisory committee was of the view that because the state generally will not be able to gain a conviction unless it prevails, the presumed innocent defendant should not be required to undergo incarceration without strong reasons, especially if a pre-trial appeal is involved. "Good cause" therefore includes such factors as the likelihood of success on appeal and the likelihood the defendant will leave the jurisdiction in light of the current status of the charges against the defendant.

Subdivision (e)(3) retains the substance of former rules 6.15(b) and (c). The lower tribunal's order must contain a statement of facts as well as the reasons for the action taken, in accordance with *Younghans v. State*, 90 So. 2d 308 (Fla. 1956).

Subdivision (e)(4) allows review only by motion so that no order regarding post-trial relief is reviewable unless jurisdiction has been vested in the court by the filing of a notice of appeal. It is intended that the amount of bail be reviewable for excessiveness.

Subdivision (f) interacts with rule 9.110(h) to allow review of multiple judgments and sentences in 1 proceeding.

Subdivision (g) sets forth the procedure to be followed if there is a summary denial without hearing of a motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850. This rule does not limit the right to appeal a denial of such a motion after hearing under rule 9.140(b)(1)(C).

1980 Amendment. Although the substance of this rule has not been changed, the practitioner should note that references in the 1977 committee notes to supreme court jurisdiction to review non-final orders that would have been appealable if they had been final orders are obsolete because jurisdiction to review those orders no longer reposes in the supreme court.

1984 Amendment. Subdivision (b)(4) was added to give effect to the administrative order entered by the supreme court on May 6, 1981 (6 Fla. L. Weekly 336), which recognized that the procedures set forth in the rules for criminal appeals were inappropriate for capital cases.

1992 Amendment. Subdivision (b)(3) was amended to provide that, in cases in which public funds would be used to prepare the record on appeal, the attorney of record would not be allowed to withdraw until substitute counsel has been obtained or appointed.

Subdivision (g) was amended to provide a specific procedure to be followed by the courts in considering appeals from summary denial of Florida Rule of Criminal Procedure 3.800(a) motions. Because such motions are in many respects comparable to Florida Rule of Criminal Procedure 3.850 motions, it was decided to use the available format already created by existing subdivision (g) of this rule. Because a Florida Rule of Criminal Procedure 3.800(a) motion does not have the same detailed requirements as does a Florida Rule of Criminal Procedure 3.850 motion, this subdivision also was amended to require the transmittal of any attachments to the motions in the lower court.

1996 Amendment. The 1996 amendments are intended to consolidate and clarify the rules to reflect current law unless otherwise specified.

Rule 9.140(b)(2)(B) was added to accurately reflect the limited right of direct appeal after a plea of guilty or nolo contendere. See *Robinson v. State*, 373 So. 2d 898 (Fla. 1979), and *Counts v. State*, 376 So. 2d 59 (Fla. 2d DCA 1979).

New subdivision (b)(4) reflects *Lopez v. State*, 638 So. 2d 931 (Fla. 1994). A defendant may cross-appeal as provided, but if the defendant chooses not to do so, the defendant retains the right to raise any properly preserved issue on plenary appeal. It is the committee's intention that the 10-day period for filing notice of the cross-appeal should be interpreted in the same manner as in civil cases under rule 9.110(g).

Rule 9.140(b)(6)(E) adopts Florida Rule of Criminal Procedure 3.851(b)(2) and is intended to supersede that rule. See Fla. R. Jud. Admin. 2.135. The rule also makes clear that the time periods in rule 9.140(j) do not apply to death penalty cases.

The revised rules 9.140(e)(2)(D) and 9.140(e)(2)(E) are intended to supersede *Brown v. State*, 639 So. 2d 634 (Fla. 5th DCA 1994), and allow non-

indigent defendants represented by counsel, and the state, to order just the original transcript from the court reporter and to make copies. However, the original and copies for all other parties must then be served on the clerk of the lower tribunal for inclusion in the record. The revised rule 9.140(e)(2)(F) also allows chief judges for each circuit to promulgate an administrative order requiring the lower tribunal clerk's office to make copies of the transcript when the defendant is indigent. In the absence of such an administrative order, the court reporter will furnish an original and copies for all parties in indigent appeals.

Rule 9.140(j)(3) imposes a two-year time limit on proceedings to obtain delayed appellate review based on either the ineffectiveness of counsel on a prior appeal or the failure to timely initiate an appeal by appointed counsel. The former was previously applied for by a petition for writ of habeas corpus in the appellate court and the latter by motion pursuant to Florida Rule of Criminal Procedure 3.850 in the trial court. Because both of these remedies did not require a filing fee, it is contemplated that no fee will be required for the filing of petitions under this rule. Subdivision (j)(3)(B) allows two years "after the conviction becomes final." For purposes of the subdivision a conviction becomes final after issuance of the mandate or other final process of the highest court to which direct review is taken, including review in the Florida Supreme Court and United States Supreme Court. Any collateral review shall not stay the time period under this subdivision. Subdivision (j)(3)(C) under this rule makes clear that defendants who were convicted before the effective date of the rule will not have their rights retroactively extinguished but will be subject to the time limits as calculated from the effective date of the rule unless the time has already commenced to run under rule 3.850.

Rule 9.140(j)(5) was added to provide a uniform procedure for requesting belated appeal and to supersede *State v. District Court of Appeal of Florida, First District*, 569 So. 2d 439 (Fla. 1990). This decision resulted in there being two procedures for requesting belated appeal: Florida Rule of Criminal Procedure 3.850 when the criminal appeal was frustrated by ineffective assistance of trial counsel, *id.*; and habeas corpus for everything else. See *Scalf v. Singletary*, 589 So. 2d 986 (Fla. 2d DCA 1991). Experience showed that filing in the appellate court was more efficient. This rule is intended to reinstate the procedure as it existed prior to *State v. District Court of Appeal, First District*. See *Baggett v. Wainwright*, 229 So. 2d 239 (Fla. 1969); *State v. Meyer*, 430 So. 2d 440 (Fla. 1983).

In the rare case where entitlement to belated appeal depends on a determination of disputed facts, the appellate court may appoint a commissioner to make a report and recommendation.

2000 Amendment. Subdivision (b)(1)(B) was added to reflect the holding of *State v. Schultz*, 720 So. 2d 247 (Fla. 1998). The amendment to renumber subdivision (b)(1)(D), regarding appeals from orders denying relief under Florida Rules of Criminal Procedure 3.800(a) or 3.850, reflects current practice.

The committee added language to subdivision (b)(6)(B) to require court reporters to file transcripts on computer disks in death penalty cases. Death penalty transcripts typically are lengthy, and many persons review and use them over the years. In these cases, filing lengthy transcripts on computer disks makes them easier to use for all parties and increases their longevity.

The committee deleted the last sentence of subdivision (b)(6)(E) because its substance is now included in rule 9.141(a). The committee also amended and transferred subdivisions (i) and (j) to rule 9.141 for the reasons specified in the committee note for that rule.

2005 Amendment. New subdivision (L) was added to (c)(1) in response to the Florida legislature's enactment of section 775.08435(3), Florida Statutes (2004), which provides that "[t]he withholding of adjudication in violation of this section is subject to appellate review under chapter 924."

Court Commentary

1996. Rule 9.140 was substantially rewritten so as to harmonize with the Criminal Appeal Reform Act of 1996 (CS/HB 211). The reference to unlawful sentences in rule 9.140(b)(1)(D) and (c)(1)(J) means those sentences not meeting the definition of illegal under *Davis v. State*, 661 So. 2d 1193 (Fla. 1995), but, nevertheless, subject to correction on direct appeal.

RULE 9.141. REVIEW PROCEEDINGS IN COLLATERAL OR POSTCONVICTION CRIMINAL CASES

(a) Death Penalty Cases. This rule does not apply to death penalty cases.

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

(1) Applicability of Civil Appellate Procedures. Appeal proceedings under this subdivision shall be as in civil cases, except as modified by this rule.

(2) Summary Grant or Denial of All Claims Raised in a Motion Without Evidentiary Hearing.

(A) Record. When a motion for postconviction relief under rules 3.800(a), 3.801, 3.802, 3.850, or 3.853 is granted or denied without an evidentiary hearing, the clerk of the lower tribunal shall electronically transmit to the court, as the record, the motion, response, reply, order on the motion, motion for rehearing, response, reply, order on the motion for rehearing, and attachments to any of the foregoing, together with the certified copy of the notice of appeal.

(B) Index. ~~Unless directed otherwise by the court, t~~The clerk of the lower tribunal shall ~~not~~ index ~~or~~and paginate the record ~~or~~and send copies of the index ~~or~~and record to the parties.

(C) Briefs or Responses.

(i) Briefs are not required, but the appellant may serve an initial brief within 30 days of filing the notice of appeal. The appellee need not file an answer brief unless directed by the court. The appellant may serve a reply brief as prescribed by rule 9.210.

(ii) The court may request a response from the appellee before ruling, regardless of whether the appellant filed an initial brief. The appellant may serve a reply within 20 days after service of the response. The response and reply shall not exceed the page limits set forth in rule 9.210 for answer briefs and reply briefs.

(D) Disposition. On appeal from the denial of relief, unless the record shows conclusively that the appellant is entitled to no relief, the order shall be reversed and the cause remanded for an evidentiary hearing or other appropriate relief.

(3) Grant or Denial of Motion after an Evidentiary Hearing was Held on ~~One~~1 or More Claims.

(A) Transcription. In the absence of designations to the court reporter, the notice of appeal filed by an indigent pro se litigant in a rule 3.801, 3.802, 3.850, or 3.853 appeal after an evidentiary hearing shall serve as the designation to the court reporter for the transcript of the evidentiary hearing. Within 5 days of receipt of the notice of appeal, the clerk of the lower tribunal shall request the appropriate court reporter to transcribe the evidentiary hearing and shall send the court reporter a copy of the notice, the date of the hearing to be transcribed, the name of the judge, and a copy of this rule.

(B) Record.

(i) When a motion for postconviction relief under rules 3.801, 3.802, 3.850, or 3.853 is granted or denied after an evidentiary hearing, the clerk of the lower tribunal shall index, paginate, and electronically transmit to the court as the record, within 50 days of the filing of the notice of appeal, the notice of appeal, motion, response, reply, order on the motion, motion for rehearing, response, reply, order on the motion for rehearing, and attachments to any of the foregoing, as well as the transcript of the evidentiary hearing.

(ii) Within 10 days of filing the notice of appeal, the ~~A~~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) The clerk of the lower tribunal shall serve copies of the record on the attorney general (or state attorney in appeals to the circuit court), all counsel appointed to represent indigent defendants on appeal, and any pro se indigent defendant. The clerk of the lower tribunal shall simultaneously serve copies of the index on all nonindigent defendants and, at their request, copies of the record or portions of it at the cost prescribed by law.

(C) Briefs. Initial briefs shall be served within 30 days of service of the record or its index. Additional briefs shall be served as prescribed by rule 9.210.

(c) Petitions Seeking Belated Appeal or Belated Discretionary Review.

(1) Applicability. This subdivision governs petitions seeking belated appeals or belated discretionary review.

(2) Treatment as Original Proceedings. Review proceedings under this subdivision shall be treated as original proceedings under rule 9.100, except as modified by this rule.

(3) Forum. Petitions seeking belated review shall be filed in the court to which the appeal or discretionary review should have been taken.

(4) Contents. The petition shall be in the form prescribed by rule 9.100, may include supporting documents, and shall recite in the statement of facts:

(A) the date and nature of the lower tribunal's order sought to be reviewed;

(B) the name of the lower tribunal rendering the order;

(C) the nature, disposition, and dates of all previous court proceedings;

(D) if a previous petition was filed, the reason the claim in the present petition was not raised previously;

(E) the nature of the relief sought; and

(F) the specific acts sworn to by the petitioner or petitioner's counsel that constitute the basis for entitlement to belated appeal or belated discretionary review, as outlined below:

(i) ~~A~~a petition seeking belated appeal must state whether the petitioner requested counsel to proceed with the appeal and the date of any such request, or if the petitioner was misadvised as to the availability of appellate review or the status of filing a notice of appeal. A petition seeking

belated discretionary review must state whether counsel advised the petitioner of the results of the appeal and the date of any such notification, or if counsel misadvised the petitioner as to the opportunity for seeking discretionary review~~,~~; or

(ii) ~~A~~a petition seeking belated appeal or belated discretionary review must identify the circumstances unrelated to counsel's action or inaction, including names of individuals involved and date(s) of the occurrence(s), that were beyond the petitioner's control and otherwise interfered with the petitioner's ability to file a timely appeal or notice to invoke, as applicable.

(5) Time Limits.

(A) A petition for belated appeal shall not be filed more than 2 years after the expiration of time for filing the notice of appeal from a final order, unless it alleges under oath with a specific factual basis that the petitioner was unaware a notice of appeal had not been timely filed or was not advised of the right to an appeal or was otherwise prevented from timely filing the notice of appeal due to circumstances beyond the petitioner's control, and could not have ascertained such facts by the exercise of reasonable diligence. In no case shall a petition for belated appeal be filed more than 4 years after the expiration of time for filing the notice of appeal.

(B) A petition for belated discretionary review shall not be filed more than 2 years after the expiration of time for filing the notice to invoke discretionary review from a final order, unless it alleges under oath with a specific factual basis that the petitioner was unaware such notice had not been timely filed or was not advised of the results of the appeal, or was otherwise prevented from timely filing the notice due to circumstances beyond the petitioner's control, and that the petitioner could not have ascertained such facts by the exercise of reasonable diligence. In no case shall a petition for belated discretionary review be filed more than 4 years after the expiration of time for filing the notice to invoke discretionary review from a final order.

(6) Procedure.

(A) The petitioner shall serve a copy of a petition for belated appeal on the attorney general and state attorney. The petitioner shall serve a copy of a petition for belated discretionary review on the attorney general.

(B) The court may by order identify any provision of this rule that the petition fails to satisfy and, pursuant to rule 9.040(d), allow the petitioner a specified time to serve an amended petition.

(C) The court may dismiss a second or successive petition if it does not allege new grounds and the prior determination was on the merits, or if a failure to assert the grounds was an abuse of procedure.

(D) An order granting a petition for belated appeal shall be filed with the lower tribunal and treated as the notice of appeal, if no previous notice has been filed. An order granting a petition for belated discretionary review or belated appeal of a decision of a district court of appeal shall be filed with the district court of appeal and treated as a notice to invoke discretionary jurisdiction or notice of appeal, if no previous notice has been filed.

(d) Petitions Alleging Ineffective Assistance of Appellate Counsel.

(1) Applicability. This subdivision governs petitions alleging ineffective assistance of appellate counsel.

(2) Treatment as Original Proceedings. Review proceedings under this subdivision shall be treated as original proceedings under rule 9.100, except as modified by this rule.

(3) Forum. Petitions alleging ineffective assistance of appellate counsel shall be filed in the court to which the appeal was taken.

(4) Contents. The petition shall be in the form prescribed by rule 9.100, may include supporting documents, and shall recite in the statement of facts:

(A) the date and nature of the lower tribunal's order subject to the disputed appeal;

(B) name of the lower tribunal rendering the order;

(C) the nature, disposition, and dates of all previous court proceedings;

(D) if a previous petition was filed, the reason the claim in the present petition was not raised previously;

(E) the nature of the relief sought; and

(F) the specific acts sworn to by the petitioner or petitioner's counsel that constitute the alleged ineffective assistance of counsel.

(5) Time Limits. A petition alleging ineffective assistance of appellate counsel on direct review shall not be filed more than 2 years after the judgment and sentence become final on direct review unless it alleges under oath with a specific factual basis that the petitioner was affirmatively misled about the results of the appeal by counsel. In no case shall a petition alleging ineffective assistance of appellate counsel on direct review be filed more than 4 years after the judgment and sentence become final on direct review.

(6) Procedure.

(A) The petitioner shall serve a copy of the petition on the attorney general.

(B) The court may by order identify any provision of this rule that the petition fails to satisfy and, pursuant to rule 9.040(d), allow the petitioner a specified time to serve an amended petition.

(C) The court may dismiss a second or successive petition if it does not allege new grounds and the prior determination was on the merits, or if a failure to assert the grounds was an abuse of procedure.

Committee Notes

2000 Amendment. Rule 9.141 is a new rule governing review of collateral or post-conviction criminal cases. It covers topics formerly included in rules 9.140(i) and (j). The committee opted to transfer these subjects to a new rule, in part because rule 9.140 was becoming lengthy. In addition, review proceedings for collateral criminal cases are in some respects treated as civil appeals or as extraordinary writs, rather than criminal appeals under rule 9.140.

Subdivision (a) clarifies that this rule does not apply to death penalty cases. The Supreme Court has its own procedures for these cases, and the committee did not attempt to codify them.

Subdivision (b)(2) amends former rule 9.140(i) and addresses review of summary grants or denials of post-conviction motions under Florida Rules of

Criminal Procedure 3.800(a) or 3.850. Amended language in subdivision (b)(2)(A) makes minor changes to the contents of the record in such cases. Subdivision (b)(2)(B) addresses a conflict between *Summers v. State*, 570 So. 2d 990 (Fla. 1st DCA 1990), and *Fleming v. State*, 709 So. 2d 135 (Fla. 2d DCA 1998), regarding indexing and pagination of records. The First District requires clerks to index and paginate the records, while the other district courts do not. The committee determined not to require indexing and pagination unless the court directs otherwise, thereby allowing individual courts to require indexing and pagination if they so desire. Subdivision (b)(2)(B) also provides that neither the state nor the defendant should get a copy of the record in these cases, because they should already have all of the relevant documents. Subdivision (b)(2)(D) reflects current case law that the court can reverse not only for an evidentiary hearing but also for other appropriate relief.

Subdivision (b)(3) addresses review of grants or denials of post-conviction motions under rule 3.850 after an evidentiary hearing. Subdivision (b)(3)(A) provides for the preparation of a transcript if an indigent pro se litigant fails to request the court reporter to prepare it. The court cannot effectively carry out its duties without a transcript to review, and an indigent litigant will usually be entitled to preparation of the transcript and a copy of the record at no charge. *See Colonel v. State*, 723 So. 2d 853 (Fla. 3d DCA 1998). The procedures in subdivisions (b)(3)(B) and (C) for preparation of the record and service of briefs are intended to be similar to those provided in rule 9.140 for direct appeals from judgments and sentences.

Subdivision (c) is a slightly reorganized and clarified version of former rule 9.140(j). No substantive changes are intended.

NOTE: Amendments shown in double underline and double strikethrough are pending with the Court in *In re: Amendments Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.142. PROCEDURE FOR REVIEW IN DEATH PENALTY CASES

(a) Procedure in Death Penalty Appeals.

(1) Record.

(A) When the notice of appeal is filed in the supreme court, the chief justice will direct the appropriate chief judge of the circuit court to monitor the preparation of the complete record for timely filing in the supreme court. Transcripts of all proceedings conducted in the lower tribunal shall be included in the record under these rules.

(B) The complete record in a death penalty appeal shall include all items required by rule 9.200 and by any order issued by the supreme court. In any appeal following the initial direct appeal, the record that is electronically transmitted shall begin with the most recent mandate issued by the supreme court, or the most recent filing not already electronically transmitted in a prior record in the event the preceding appeal was disposed of without a mandate, and shall exclude any materials already transmitted to the supreme court as the record in any prior appeal. The clerk of the lower tribunal shall retain a copy of the complete record when it transmits the record to the ~~S~~supreme ~~C~~court.

(C) The supreme court shall take judicial notice of the appellate records in all prior appeals and writ proceedings involving a challenge to the same judgment of conviction and sentence of death. Appellate records subject to judicial notice under this subdivision shall not be duplicated in the record transmitted for the appeal under review.

(2) Briefs; Transcripts. After the record is filed, the clerk will promptly establish a briefing schedule allowing the defendant 60 days from the date the record is filed, the state 45 days from the date the defendant's brief is served, and the defendant 30 days from the date the state's brief is served to serve their respective briefs. On appeals from orders ruling on applications for relief under Florida Rules of Criminal Procedure 3.851 or 3.853, and on resentencing matters, the schedules set forth in rule 9.140(g) will control.

(3) Sanctions. If any brief is delinquent, an order to show cause may be issued under Florida Rule of Criminal Procedure 3.840, and sanctions may be imposed.

(4) Oral Argument. Oral argument will be scheduled after the filing of the defendant's reply brief.

(5) Scope of Review. On direct appeal in death penalty cases, whether or not insufficiency of the evidence or proportionality is an issue presented for review, the court shall review these issues and, if necessary, remand for the appropriate relief.

(b) Petitions for Extraordinary Relief.

(1) Treatment as Original Proceedings. Review proceedings under this subdivision shall be treated as original proceedings under rule 9.100, except as modified by this rule.

(2) Contents. Any petition filed pursuant to this subdivision shall be in the form prescribed by rule 9.100, may include supporting documents, and shall recite in the statement of facts:

(A) the date and nature of the lower tribunal's order sought to be reviewed;

(B) the name of the lower tribunal rendering the order;

(C) the nature, disposition, and dates of all previous court proceedings;

(D) if a previous petition was filed, the reason the claim in the present petition was not raised previously; and

(E) the nature of the relief sought.

(3) Petitions Seeking Belated Appeal.

(A) Contents. A petition for belated appeal shall include a detailed allegation of the specific acts sworn to by the petitioner or petitioner's counsel that constitute the basis for entitlement to belated appeal, including whether the petitioner requested counsel to proceed with the appeal and the date of

any such request, whether counsel misadvised the petitioner as to the availability of appellate review or the filing of the notice of appeal, or whether there were circumstances unrelated to counsel's action or inaction, including names of individuals involved and date(s) of the occurrence(s), that were beyond the petitioner's control and otherwise interfered with the petitioner's ability to file a timely appeal.

(B) Time limits. A petition for belated appeal shall not be filed more than 1 year after the expiration of time for filing the notice of appeal from a final order denying rule 3.851 relief, unless it alleges under oath with a specific factual basis that the petitioner:

(i) was unaware an appeal had not been timely filed, was not advised of the right to an appeal, was misadvised as to the right to an appeal, or was prevented from timely filing a notice of appeal due to circumstances beyond the petitioner's control; and

(ii) could not have ascertained such facts by the exercise of due diligence.

In no case shall a petition for belated appeal be filed more than 2 years after the expiration of time for filing the notice of appeal.

(4) Petitions Alleging Ineffective Assistance of Appellate Counsel.

(A) Contents. A petition alleging ineffective assistance of appellate counsel shall include detailed allegations of the specific acts that constitute the alleged ineffective assistance of counsel on direct appeal.

(B) Time limits. A petition alleging ineffective assistance of appellate counsel shall be filed simultaneously with the initial brief in the appeal from the lower tribunal's order on the defendant's application for relief under Florida Rule of Criminal Procedure 3.851.

(c) Petitions Seeking Review of Nonfinal Orders in Death Penalty Postconviction Proceedings.

(1) Applicability. This rule applies to proceedings that invoke the jurisdiction of the supreme court for review of nonfinal orders issued in postconviction proceedings following the imposition of the death penalty.

(2) Treatment as Original Proceedings. Review proceedings under this subdivision shall be treated as original proceedings under rule 9.100 unless modified by this subdivision.

(3) Commencement; Parties.

(A) Jurisdiction of the supreme court shall be invoked by filing a petition with the clerk of the supreme court within 30 days of rendition of the nonfinal order to be reviewed. A copy of the petition shall be served on the opposing party and furnished to the judge who issued the order to be reviewed.

(B) Either party to the death penalty postconviction proceedings may seek review under this rule.

(4) Contents. The petition shall be in the form prescribed by rule 9.100, and shall contain:

(A) the basis for invoking the jurisdiction of the court;

(B) the date and nature of the order sought to be reviewed;

(C) the name of the lower tribunal rendering the order;

(D) the name, disposition, and dates of all previous trial, appellate, and postconviction proceedings relating to the conviction and death sentence that are the subject of the proceedings in which the order sought to be reviewed was entered;

(E) the facts on which the petitioner relies, with references to the appropriate pages of the supporting appendix;

(F) argument in support of the petition, including an explanation of why the order departs from the essential requirements of law and how the order may cause material injury for which there is no adequate remedy on appeal, and appropriate citations of authority; and

(G) the nature of the relief sought.

(5) Appendix. The petition shall be accompanied by an appendix, as prescribed by rule 9.220, which shall contain the portions of the record necessary for a determination of the issues presented.

(6) Order to Show Cause. If the petition demonstrates a preliminary basis for relief or a departure from the essential requirements of law that may cause material injury for which there is no adequate remedy by appeal, the court may issue an order directing the respondent to show cause, within the time set by the court, why relief should not be granted.

(7) Response. No response shall be permitted unless ordered by the court.

(8) Reply. Within 20 days after service of the response or such other time set by the court, the petitioner may serve a reply, which shall not exceed 15 pages in length, and supplemental appendix.

(9) Stay.

(A) A stay of proceedings under this rule is not automatic; the party seeking a stay must petition the supreme court for a stay of proceedings.

(B) During the pendency of a review of a nonfinal order, unless a stay is granted by the supreme court, the lower tribunal may proceed with all matters, except that the lower tribunal may not render a final order disposing of the cause pending review of the nonfinal order.

(10) Other Pleadings. The parties shall not file any other pleadings, motions, replies, or miscellaneous documents without leave of court.

(11) Time Limitations. Seeking review under this rule shall not extend the time limitations in rules 3.851 or 3.852.

(d) Review of Dismissal of ~~Post-Conviction~~Postconviction Proceedings and Discharge of Counsel in Florida Rule of Criminal Procedure 3.851(i) Cases.

(1) Applicability. This rule applies when the circuit court enters an order dismissing postconviction proceedings and discharging counsel under Florida Rule of Criminal Procedure 3.851(i).

(2) Procedure Following Rendition of Order of Dismissal and Discharge.

(A) Notice to Lower Tribunal. Within 10 days of the rendition of an order granting a prisoner's motion to discharge counsel and dismiss the motion for ~~post-conviction~~postconviction relief, discharged counsel shall file with the clerk of the circuit court a notice of appeal seeking review in the supreme court.

(B) Transcription. The circuit judge presiding over any hearing on a motion to dismiss and discharge counsel shall order a transcript of the hearing to be prepared and filed with the clerk of the circuit court no later than 25 days from rendition of the final order.

(C) Record. Within 30 days of the granting of a motion to dismiss and discharge counsel, the clerk of the circuit court shall electronically transmit a copy of the motion, order, and transcripts of all hearings held on the motion to the clerk of the supreme court.

(D) Proceedings in the Supreme Court of Florida. Within 20 days of the filing of the record in the supreme court, discharged counsel shall serve an initial brief. Both the state and the prisoner may serve responsive briefs. All briefs must be served and filed as prescribed by rule 9.210.

Committee Notes

2009 Amendment. Subdivision (a)(1) has been amended to clarify what is meant by the phrase "complete record" in any death penalty appeal. A complete record in a death penalty appeal includes all items required by rule 9.200 and by any order issued by the supreme court, including any administrative orders such as *In Re: Record in Capital Cases* (Fla. July 6, 1995). It is necessary for transcripts of all hearings to be prepared and designated for inclusion in the record in all death penalty cases under rules 9.200(b), 9.140(f)(2), and 9.142(a)(2), to ensure completeness for both present and future review. The supreme court permanently retains the records in all death penalty appeals and writ proceedings arising from a death penalty case. See rule 9.140(f)(5); Florida Rule of Judicial Administration 2.430(e)(2). These records are available to the supreme court when reviewing any subsequent proceeding involving the same defendant without the need for inclusion of copies of these records in the record for the appeal under review. Subdivision (a)(1) does not limit the ability of the parties to rely on prior appellate records involving the same defendant and the same judgment of conviction and sentence of death. Subdivision (a)(1)(B) is intended to ensure, among other things, that all documents filed in the lower tribunal under Florida Rule of Criminal Procedure 3.852 are included in the records for all appeals from final orders

disposing of motions for postconviction relief filed under rule 3.851. This rule does not limit the authority to file directions under rule 9.200(a)(3), or to correct or supplement the record under rule 9.200(f).

Criminal Court Steering Committee Note

2014 Amendment. Rule 9.142(a)(1)(B) was amended for the clerk of the lower court to retain a copy of the complete record for use in a subsequent postconviction proceeding.

RULE 9.145. APPEAL PROCEEDINGS IN JUVENILE DELINQUENCY CASES

(a) Applicability. Appeal proceedings in juvenile delinquency cases shall be as in rule 9.140 except as modified by this rule.

(b) Appeals by Child. To the extent adversely affected, a child or any parent, legal guardian, or custodian of a child may appeal:

(1) an order of adjudication of delinquency or withholding adjudication of delinquency, or any disposition order entered thereon;

(2) orders entered after adjudication or withholding of adjudication of delinquency, including orders revoking or modifying the community control;

(3) an illegal disposition; or

(4) any other final order as provided by law.

(c) Appeals by the State.

(1) Appeals Permitted. The state may appeal an order:

(A) dismissing a petition for delinquency or any part of it, if the order is entered before the commencement of an adjudicatory hearing;

(B) suppressing confessions, admissions, or evidence obtained by search or seizure before the adjudicatory hearing;

(C) granting a new adjudicatory hearing;

(D) arresting judgment;

(E) discharging a child under Florida Rule of Juvenile Procedure 8.090;

(F) ruling on a question of law if a child appeals an order of disposition;

(G) constituting an illegal disposition;

(H) discharging a child on habeas corpus; or

(I) finding a child incompetent pursuant to the Florida Rules of Juvenile Procedure.

(2) ~~Non-Final~~Nonfinal State Appeals. If the state appeals a pre-adjudicatory hearing order of the trial court, the notice of appeal must be filed within 15 days of rendition of the order to be reviewed and before commencement of the adjudicatory hearing.

(A) A child in detention whose case is stayed pending state appeal shall be released from detention pending the appeal if the child is charged with an offense that would be bailable if the child were charged as an adult, unless the lower tribunal for good cause stated in an order determines otherwise. The lower tribunal retains discretion to release from detention any child who is not otherwise entitled to release under the provisions of this rule.

(B) If a child has been found incompetent to proceed, any order staying the proceedings on a state appeal shall have no effect on any order entered for the purpose of treatment.

(d) References to Child. The appeal shall be entitled and docketed with the initials, but not the name, of the child and the court case number. All references to the child in briefs, other ~~papers~~documents, and the decision of the court shall be by initials.

(e) Confidentiality. All documents that are filed in paper format under seal shall remain sealed in the office of the clerk of court when not in use by the court, and shall not be open to inspection except by the parties and their counsel, or as otherwise ordered.

Committee Notes

1996 Adoption. Subdivision (c)(2) is intended to make clear that in non-final state appeals, the notice of appeal must be filed before commencement of the adjudicatory hearing. However, the notice of appeal must still be filed within 15 days of rendition of the order to be reviewed as provided by rule 9.140(c)(3). These two rules together provide that when an adjudicatory hearing occurs within 15 days or less of rendition of an order to be reviewed, the notice of appeal must be filed before commencement of the adjudicatory hearing. This rule is not intended to extend the 15 days allowed for filing the notice of appeal as provided by rule 9.140(c)(3).

Subdivision (d) requires the parties to use initials in all references to the child in all briefs and other papers filed in the court in furtherance of the appeal. It does not require the deletion of the name of the child from pleadings or other papers transmitted to the court from the lower tribunal.

RULE 9.146. APPEAL PROCEEDINGS IN JUVENILE DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES AND CASES INVOLVING FAMILIES AND CHILDREN IN NEED OF SERVICES

(a) Applicability. Appeal proceedings in juvenile dependency and termination of parental rights cases and cases involving families and children in need of services shall be as in civil cases except to the extent those rules are modified by this rule.

(b) Who May Appeal. Any child, any parent, guardian ad litem, or any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law may appeal to the appropriate court within the time and in the manner prescribed by these rules.

(c) Stay of Proceedings.

(1) Application. Except as provided by general law and in subdivision (c)(2) of this rule, a party seeking to stay a final or ~~non-final~~nonfinal order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief, after considering the welfare and best interest of the child.

(2) Termination of Parental Rights. The taking of an appeal shall not operate as a stay in any case unless pursuant to an order of the court or the lower tribunal, except that a termination of parental rights order with placement of the child with a licensed child-placing agency or the Department of Children and Families for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody under the order until the appeal is decided.

(3) Review. Review of orders entered by lower tribunals under this rule shall be by the court on motion.

(d) Retention of Jurisdiction. Transmittal of the record to the court does not remove the jurisdiction of the lower tribunal to conduct judicial reviews or other proceedings related to the health and welfare of the child pending appeal.

(e) References to Child or Parents. When the parent or child is a party to the appeal, the appeal shall be docketed and any documents filed in the court shall be titled with the initials, but not the name, of the child or parent and the court

case number. All references to the child or parent in briefs, other documents, and the decision of the court shall be by initials.

(f) Confidentiality. All documents that are filed in paper format under seal shall remain sealed in the office of the clerk of the court when not in use by the court, and shall not be open to inspection except by the parties and their counsel, or as otherwise ordered.

(g) Special Procedures and Time Limitations Applicable to Appeals of Final Orders in Dependency or Termination of Parental Rights Proceedings.

(1) Applicability. This subdivision applies only to appeals of final orders to the district courts of appeal.

(2) The Record.

(A) Contents. The record shall be prepared in accordance with rule 9.200, except as modified by this subdivision.

(B) Transcripts of Proceedings. The appellant shall file a designation to the court reporter, including the name(s) of the individual court reporter(s), if applicable, with the notice of appeal. The designation shall be served on the court reporter on the date of filing and shall state that the appeal is from a final order of termination of parental rights or of dependency, and that the court reporter shall provide the transcript(s) designated within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the transcripts and sufficient copies for all parties exempt from service by e-mail as set forth in the Florida Rules of Judicial Administration. If extraordinary reasons prevent the reporter from preparing the transcript(s) within the 20 days, the reporter shall request an extension of time, shall state the number of additional days requested, and shall state the extraordinary reasons that would justify the extension.

(C) Directions to the Clerk, Duties of the Clerk, Preparation and ~~Transmittal~~Transmission of the Record. The appellant shall file directions to the clerk with the notice of appeal. The clerk shall electronically transmit the record to the court within 5 days of the date the court reporter files the transcript(s) or, if a designation to the court reporter has not been filed, within 5 days of the filing of the notice of appeal. When the record is electronically transmitted to the court, the clerk shall simultaneously electronically transmit the

record to the Department of Children and Families, the guardian ad litem, counsel appointed to represent any indigent parties, and shall simultaneously serve copies of the index to all ~~non-indigent~~nonindigent parties, and, upon their request, copies of the record or portions thereof. The clerk shall provide the record in paper format to all parties exempt from electronic service ~~by e-mail~~ as set forth in the Florida Rules of Judicial Administration.

(3) Briefs.

(A) In General. Briefs shall be prepared and filed in accordance with rule 9.210(a)–(e), (g), and (h).

(B) Times for Service. The initial brief shall be served within 20 days of service of the record on appeal or the index to the record on appeal. The answer brief shall be served within 20 days of service of the initial brief. The reply brief, if any, shall be served within 10 days of the service of the answer brief. If more than 1 initial or answer brief is served, the responsive brief shall be served within 20 days after the last initial brief or within 10 days after the last answer brief was served or could have been timely served, whichever is later.

(4) Motions.

(A) Motions for Appointment of Appellate Counsel; Authorization of Payment of Transcription Costs. A motion for the appointment of appellate counsel, when authorized by general law, and a motion for authorization of payment of transcription costs, when appropriate, shall be filed with the notice of appeal. The motion and a copy of the notice of appeal shall be served on the presiding judge in the lower tribunal. The presiding judge shall promptly enter an order on the motion.

(B) Motions to Withdrawal as Counsel. If appellate counsel seeks leave to withdraw from representation of an indigent parent, the motion to withdraw shall be served on the parent and shall contain a certification that, after a conscientious review of the record, the attorney has determined in good faith that there are no meritorious grounds on which to base an appeal. The parent shall be permitted to file a brief pro se, or through subsequently retained counsel, within 20 days of the issuance of an order granting the motion to withdraw. Within 5 days of the issuance of an order granting the motion to withdraw, appellate counsel shall file a notice with the court certifying that counsel has forwarded a copy of the record and the transcript(s) of the proceedings to the parent or that

counsel is unable to forward a copy of the record and the transcript(s) of the proceedings because counsel cannot locate the parent after making diligent efforts.

(C) Motions for Extensions of Time. An extension of time will be granted only for extraordinary circumstances in which the extension is necessary to preserve the constitutional rights of a party, or in which substantial evidence exists to demonstrate that without the extension the child's best interests will be harmed. The extension will be limited to the number of days necessary to preserve the rights of the party or the best interests of the child. The motion shall state that the appeal is from a final order of termination of parental rights or of dependency, and shall set out the extraordinary circumstances that necessitate an extension, the amount of time requested, and the effect an extension will have on the progress of the case.

(5) Oral Argument. A request for oral argument shall be in a separate document served by a party not later than the time when the first brief of that party is due.

(6) Rehearing; Rehearing En Banc; Clarification; Certification; Issuance of Written Opinion. Motions for rehearing, rehearing en banc, clarification, certification, and issuance of a written opinion shall be in accordance with rules 9.330 and 9.331, except that no response to these motions is permitted unless ordered by the court.

(7) The Mandate. The clerk shall issue such mandate or process as may be directed by the court as soon as practicable.

(h) Expedited Review. The court shall give priority to appeals under this rule.

(i) Ineffective Assistance of Counsel for Parents' Claims—Special Procedures and Time Limitations Applicable to Appeals of Orders in Termination of Parental Rights Proceedings Involving Ineffective Assistance of [Court-Appointed] Counsel Claims.

(1) Applicability. Subdivision (i) applies only to appeals to the district courts of appeal of orders in termination of parental rights proceedings involving a parent's claims of ineffective assistance of [court-appointed] counsel.

(2) Rendition. A motion claiming ineffective assistance of [court-appointed] counsel filed in accordance with Florida Rule of Juvenile Procedure

8.530 shall toll rendition of the order terminating parental rights under Florida Rule of Appellate Procedure 9.020 until the lower tribunal files a signed, written order on the motion.

(3) Scope of Review. Any appeal from an order denying a motion alleging the ineffective assistance of [court-appointed] counsel must be raised and addressed within an appeal from the order terminating parental rights.

(4) Ineffective Assistance of Counsel Motion Filed After Commencement of Appeal. If an appeal is pending, a parent may file a motion claiming ineffective assistance of [court-appointed] counsel pursuant to Florida Rule of Juvenile Procedure 8.530 if the filing occurs within 20 days of rendition of the order terminating parental rights.

(A) Stay of Appellate Proceeding. A parent or counsel appointed pursuant to Florida Rule of Juvenile Procedure 8.530 shall file a notice of a timely-filed, pending motion claiming ineffective assistance of [court-appointed] counsel. The notice automatically stays the appeal until the lower tribunal renders an order disposing of the motion.

(B) Supplemental Record; Transcripts of Proceedings. The appellant shall file a second designation to the court reporter, including the name(s) of the individual court reporter(s). The appellant shall serve the designation on the court reporter on the date of filing and shall state that the appeal is from an order of termination of parental rights, and that the court reporter shall provide the transcript of the hearing on the motion claiming ineffective assistance of [court-appointed] counsel within 20 days of the date of service. Within 20 days of the date of service of the designation, the court reporter shall transcribe and file with the clerk of the lower tribunal the transcript and sufficient copies for all parties exempt from service by e-mail as set forth in the Florida Rules of Judicial Administration. If extraordinary reasons prevent the reporter from preparing the transcript within the 20 days, the reporter shall request an extension of time, state the number of additional days requested, and state the extraordinary reasons that would justify the extension.

(C) Duties of the Clerk, Preparation and Transmittal of Supplemental Record. If the clerk of circuit court has already transmitted the record on appeal of the order terminating parental rights, the clerk shall automatically supplement the record on appeal with any motion pursuant to Florida Rule of Juvenile Procedure 8.530, the resulting order, and the transcript from the

hearing on the motion. The clerk shall electronically transmit the supplement to the court and serve the parties within 5 days of the filing of the order ruling on the motion, or within 5 days of filing of the transcript from the hearing on the motion by the designated court reporter, whichever is later.

Committee Notes

1996 Adoption. The reference in subdivision (a) to cases involving families and children in need of services encompasses only those cases in which an order has been entered adjudicating a child or family in need of services under chapter 39, Florida Statutes.

Subdivision (c) requires the parties to use initials in all references to the child and parents in all briefs and other papers filed in the court in furtherance of the appeal. It does not require the deletion of the names of the child and parents from pleadings and other papers transmitted to the court from the lower tribunal.

2006 Amendment. The title to subdivision (b) was changed from "Appeals Permitted" to clarify that this rule addresses who may take an appeal in matters covered by this rule. The amendment is intended to approve the holding in *D.K.B. v. Department of Children & Families*, 890 So. 2d 1288 (Fla. 2d DCA 2005), that non-final orders in these matters may be appealed only if listed in rule 9.130.

2009 Amendment. The rule was substantially amended following the release of the Study of Delay in Dependency/Parental Termination Appeals Supplemental Report and Recommendations (June 2007) by the Commission on District Court of Appeal Performance and Accountability. The amendments are generally intended to facilitate expedited filing and resolution of appellate cases arising from dependency and termination of parental rights proceedings in the lower tribunal. Subdivision (g)(4)(A) authorizes motions requesting appointment of appellate counsel only when a substantive provision of general law provides for appointment of appellate counsel. Section 27.5304(6), Florida Statutes (2008), limits appointment of appellate counsel for indigent parents to appeals from final orders adjudicating or denying dependency or termination of parental rights. In all other instances, section 27.5304(6), Florida Statutes, requires appointed trial counsel to prosecute or defend appellate cases arising from a dependency or parental termination proceeding in the lower tribunal.

NOTE: Amendments shown in double underline and double strikethrough are pending with the Court in *In re: Amendments Florida Rule of Appellate Procedure 9.146 and Florida Rules of Juvenile Procedure*, SC16-553.

RULE 9.150. DISCRETIONARY PROCEEDINGS TO REVIEW CERTIFIED QUESTIONS FROM FEDERAL COURTS

(a) Applicability. On either its own motion or that of a party, the Supreme Court of the United States or a United States court of appeals may certify ~~one~~1 or more questions of law to the Supreme Court of Florida if the answer is determinative of the cause and there is no controlling precedent of the Supreme Court of Florida.

(b) Certificate. The question(s) may be certified in an opinion by the federal court or by a separate certificate, but the federal court should provide the style of the case, a statement of the facts showing the nature of the cause and the circumstances out of which the questions of law arise, and the questions of law to be answered. The certificate shall be certified to the Supreme Court of Florida by the clerk of the federal court.

(c) Record. The Supreme Court of Florida, in its discretion, may require copies of all or any portion of the record before the federal court to be filed if the record may be necessary to the determination of the cause.

(d) Briefs. If the Supreme Court of Florida, in its discretion, requires briefing, it will issue an order establishing the order and schedule of briefs.

(e) Costs. The taxation of costs for these proceedings is a matter for the federal court and is not governed by these rules.

Committee Notes

1977 Amendment. This rule retains the substance of former rule 4.61. Except for simplification of language, the only change from the former rule is that answer and reply briefs are governed by the same time schedule as other cases. It is contemplated that the federal courts will continue the current practice of directing the parties to present a stipulated statement of the facts.

1980 Amendment. This rule is identical to former rule 9.510. It has been renumbered to reflect the addition to the Florida Constitution of article V, section 3(b)(6), which permits discretionary supreme court review of certified questions from the federal courts. Answer briefs and reply briefs will continue to be governed by the same time schedule as in other cases.

RULE 9.160. DISCRETIONARY PROCEEDINGS TO REVIEW DECISIONS OF COUNTY COURTS

(a) Applicability. This rule applies to those proceedings that invoke the discretionary jurisdiction of the district courts of appeal to review county court orders described in rule 9.030(b)(4).

(b) Commencement. Any appeal of an order certified by the county court to be of great public importance must be taken to the district court of appeal. Jurisdiction of the district court of appeal under this rule shall be invoked by filing a notice and the order containing certification, accompanied by any filing fees prescribed by law, with the clerk of the lower tribunal. The time for filing the appeal shall be the same as if the appeal were being taken to the circuit court.

(c) Notice. The notice shall be in substantially the form prescribed by rule 9.900(a) or rule 9.900(c), depending on whether the order sought to be appealed is a final or a ~~non-final~~nonfinal order, except that such notice should refer to the fact of certification. Except in criminal cases, a conformed copy of the order or orders designated in the notice of appeal shall be attached to the notice together with any order entered on a timely motion postponing rendition of the order or orders appealed.

(d) Method of Certification. The certification may be made in the order subject to appeal or in any order disposing of a motion that has postponed rendition as defined in rule 9.020(h). The certification shall include:

(1) findings of fact and conclusions of law; and

(2) a concise statement of the issue or issues of great public importance.

(e) Discretion.

(1) Any party may suggest that an order be certified to be of great public importance. However, the decision to certify shall be within the absolute discretion of the county court and may be made by the county court on its own motion.

(2) The district court of appeal, in its absolute discretion, shall by order accept or reject jurisdiction. Until the entry of such order, temporary jurisdiction shall be in the district court of appeal.

(f) Scope of Review.

(1) If the district court of appeal accepts the appeal, it will decide all issues that would have been subject to appeal if the appeal had been taken to the circuit court.

(2) If the district court of appeal declines to accept the appeal, it shall transfer the case together with the filing fee to the circuit court that has appellate jurisdiction.

(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) Briefs. The form of the briefs and the briefing schedule shall be in accord with rules 9.110(f), 9.140, 9.210, and 9.220, depending on the nature of the appeal.

(i) Cross-Appeal. Cross-appeals shall be permitted according to the applicable rules only in those cases in which a cross-appeal would have been authorized if the appeal had been taken to circuit court.

(j) Applicability of Other Rules. All other matters pertaining to the appeal shall be governed by the rules that would be applicable if the appeal had been taken to circuit court.

Committee Notes

1984 Amendment. This rule was added to implement the amendments to sections 26.012 and 924.08 and the adoption of section 34.195 by the 1984 Legislature. Section 34.195 authorizes only the certification of final judgments, but section 924.08 authorizes the certification of non-final orders in criminal cases. Therefore, this rule does not provide for appeals from non-final orders in civil cases. Under the rationale of *State v. Smith*, 260 So. 2d 489 (Fla. 1972), the authority to provide for appeals from non-final orders may rest in the supreme court rather than in the legislature. However, in keeping with the spirit of the legislation, the rule was drafted to permit certification of those non-final orders in criminal cases that would otherwise be appealable to the circuit court.

Sections 26.012 and 924.08 authorize only the certification of orders deemed to be of great public importance. However, section 34.195 refers to the certification of questions in final judgments if the question may have statewide application and is of great public importance or affects the uniform administration of justice. The committee concluded that any order certified to be of great public importance might have statewide application and that any order that would affect the uniform administration of justice would also be of great public importance. Therefore, the additional statutory language was deemed to be surplusage, and the rule refers only to the requirement of certifying the order to be of great public importance.

The district court of appeal may, in its discretion, decline to accept the appeal, in which event it shall be transferred to the appropriate circuit court for disposition in the ordinary manner. Except as stated in the rule, the procedure shall be the same as would be followed if the appeal were being taken to circuit court. The rule does not authorize review of certified orders by common law certiorari.

It is recommended that in those cases involving issues of great public importance, parties should file suggestions for certification before the entry of the order from which the appeal may be taken. However, parties are not precluded from suggesting certification following the entry of the order except that such suggestion, by itself, will not postpone rendition as defined in rule 9.020(h).

1992 Amendment. Subdivision (c) was amended to require that the appellant, except in criminal cases, attach to its notice of appeal a conformed copy of any orders designated in the notice of appeal, along with any orders on motions that postponed the rendition of orders appealed.

NOTE: Amendments shown in double underline and double strikethrough are pending with the Court in *In re: Amendments Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.170. APPEAL PROCEEDINGS IN PROBATE AND GUARDIANSHIP CASES

(a) Applicability. Appeal proceedings in probate and guardianship cases shall be as in civil cases, except as modified by this rule.

(b) Appealable Orders. Except for proceedings under rule 9.100 and rule 9.130(a), appeals of orders rendered in probate and guardianship cases shall be limited to orders that finally determine a right or obligation of an interested person as defined in the Florida Probate Code. Orders that finally determine a right or obligation include, but are not limited to, orders that:

(1) determine a petition or motion to revoke letters of administration or letters of guardianship;

(2) determine a petition or motion to revoke probate of a will;

(3) determine a petition for probate of a lost or destroyed will;

(4) grant or deny a petition for administration pursuant to section 733.2123, Florida Statutes;

(5) grant heirship, succession, entitlement, or determine the persons to whom distribution should be made;

(6) remove or refuse to remove a fiduciary;

(7) refuse to appoint a personal representative or guardian;

(8) determine a petition or motion to determine incapacity or to remove rights of an alleged incapacitated person or ward;

(9) determine a motion or petition to restore capacity or rights of a ward;

(10) determine a petition to approve the settlement of minors' claims;

(11) determine apportionment or contribution of estate taxes;

(12) determine an estate's interest in any property;

(13) determine exempt property, family allowance, or the homestead status of real property;

(14) authorize or confirm a sale of real or personal property by a personal representative;

(15) make distributions to any beneficiary;

(16) determine amount and order contribution in satisfaction of elective share;

(17) determine a motion or petition for enlargement of time to file a claim against an estate;

(18) determine a motion or petition to strike an objection to a claim against an estate;

(19) determine a motion or petition to extend the time to file an objection to a claim against an estate;

(20) determine a motion or petition to enlarge the time to file an independent action on a claim filed against an estate;

(21) settle an account of a personal representative, guardian, or other fiduciary;

(22) discharge a fiduciary or the fiduciary's surety;

(23) award attorneys' fees or costs; or

(24) approve a settlement agreement on any of the matters listed above in (b)(1)–(b)(23) or authorizing a compromise pursuant to section 733.708, Florida Statutes.

(c) Record; Alternative Appendix. An appeal under this rule may proceed on a record prepared by the clerk of the lower tribunal or on appendices to the briefs, as elected by the parties within the time frames set forth in rule 9.200(a)(~~3~~2) for designating the record. The clerk of the lower tribunal shall prepare a record on appeal in accordance with rule 9.200 unless the appellant

directs that no record shall be prepared; a copy of such direction shall be served on the court when it is served on the clerk of the lower tribunal. However, any other party may direct the clerk to prepare a record in accordance with rule 9.200; a copy of such direction shall be served on the court when it is served on the clerk of the lower tribunal. If no record is prepared under this rule, the appeal shall proceed using appendices pursuant to rule 9.220.

(d) Briefs. The appellant's initial brief, accompanied by an appendix as prescribed by rule 9.220 (if applicable), shall be served within 70 days of filing the notice of appeal. Additional briefs shall be served as prescribed by rule 9.210.

(e) Scope of Review. The court may review any ruling or matter related to the order on appeal occurring before the filing of the notice of appeal, except any order that was appealable under this rule. Multiple orders that are separately appealable under rule 9.170(b) may be reviewed by a single notice if the notice is timely filed as to each such order.

RULE 9.180. APPEAL PROCEEDINGS TO REVIEW WORKERS' COMPENSATION CASES

(a) Applicability. Appellate review of proceedings in workers' compensation cases shall be as in civil cases except as specifically modified in this rule.

(b) Jurisdiction.

(1) Appeal. The First District Court of Appeal (the court) shall review by appeal any final order, as well as any nonfinal order of a lower tribunal that adjudicates:

(A) jurisdiction;

(B) venue; or

(C) compensability, provided that the order expressly finds an injury occurred within the scope and course of employment and that claimant is entitled to receive causally related benefits in some amount, and provided further that the lower tribunal certifies in the order that determination of the exact nature and amount of benefits due to claimant will require substantial expense and time.

(2) Waiver of Review~~:~~; Abbreviated Final Orders. Unless a request for findings of fact and conclusions of law is timely filed, review by appeal of an abbreviated final order shall be deemed waived. The filing of a timely request tolls the time within which an abbreviated final order becomes final or an appeal may be filed.

(3) Commencement. Jurisdiction of the court shall be invoked by filing a notice of appeal with the lower tribunal within 30 days of the date the lower tribunal sends to the parties the order to be reviewed either by mail or by electronic means approved by the deputy chief judge, which date shall be the date of rendition. The filing fee prescribed by law must be provided to the clerk or a verified petition for relief of payment of the fee must be filed with the notice of appeal.

(4) Notice of Appeal. The notice shall be substantially in the form prescribed by rule 9.900(a) or (c), and shall contain a brief summary of the type of

benefits affected, including a statement setting forth the time periods involved which shall be substantially in the following form:

I hereby certify that this appeal affects only the following periods and classifications of benefits and medical treatment:

1. Compensation for .....(TTD, TPD, wage loss, impairment benefits, PTD, funeral benefits, or death benefits)..... from .....(date)..... to .....(date).....

2. Medical benefits.

3. Rehabilitation.

4. Reimbursement from the SDTF for benefits paid from .....(date)..... to .....(date).....

5. Contribution for benefits paid from .....(date)..... to .....(date).....

(c) Jurisdiction of Lower Tribunal.

(1) Substantive Issues. The lower tribunal retains jurisdiction to decide the issues that have not been adjudicated and are not the subject of pending appellate review.

(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) Notice. On or before the date specified in the order relinquishing jurisdiction, the parties shall file a joint notice of disposition of the settlement with a conformed copy of any order entered on the settlement.

(B) Costs. Any order approving a settlement shall provide where appropriate for the assessment and recovery of appellate costs, including any costs incurred by the division for insolvent appellants.

(d) Benefits Affected. Benefits specifically referenced in the notice of appeal may be withheld as provided by law pending the outcome of the appeal. Otherwise, benefits awarded shall be paid as required by law.

(1) Abandonment. If the appellant or cross-appellant fails to argue entitlement to benefits set forth in the notice of appeal in the appellant's or cross-appellant's initial brief, the challenge to such benefits shall be deemed abandoned. If there is a dispute as to whether a challenge to certain benefits has been abandoned, the court upon motion shall make that determination.

(2) Payments of Benefits When Challenged Benefits Are Abandoned. When benefits challenged on appeal have been abandoned under subdivision (d)(1) above, benefits no longer affected by the appeal are payable within 30 days of the service of the brief together with interest as required under section 440.20, Florida Statutes, from the date of the order of the lower tribunal making the award.

(3) Payment of Benefits After Appeal. If benefits are ordered paid by the court on completion of the appeal, they shall be paid, together with interest as required under section 440.20, Florida Statutes, within 30 days after the court's mandate. If the order of the court is appealed to the supreme court, benefits determined due by the court may be stayed in accordance with rule 9.310. Benefits ordered paid by the supreme court shall be paid within 30 days of the court's mandate.

(e) Intervention by Division of Workers' Compensation.

(1) District Court <u>of Appeal</u>. Within 30 days of the date of filing a notice or petition invoking the jurisdiction of the court the Division of Workers' Compensation may intervene by filing a notice of intervention as a party appellant/petitioner or appellee/respondent with the court and take positions on any relevant matters.

(2) Supreme Court <u>of Florida</u>. If review of an order of the court is sought in the supreme court, the division may intervene in accordance with these rules. The clerk of the supreme court shall provide a copy of the pertinent documents to the division.

(3) Division Not a Party Until Notice to Intervene Is Filed. Until the notice of intervention is filed, the division shall not be considered a party.

(f) Record Contents~~:~~; Final Orders.

(1) Transcript~~,~~; Order~~,~~; ~~and~~ Other Documents. The record shall contain the claim(s) or petition(s) for benefits, notice(s) of denial, pretrial stipulation, pretrial order, trial memoranda, depositions or exhibits admitted into evidence, any motion for rehearing and response, order on motion for rehearing, transcripts of any hearings before the lower tribunal, and the order appealed. The parties may designate other items for inclusion in or omission from the record in accordance with rule 9.200.

(2) Proffered Evidence. Evidence proffered but not introduced into evidence at the hearing shall not be considered unless its admissibility is an issue on appeal and the question is properly designated for inclusion in the record by a party.

(3) Certification; ~~and Transmittal~~Transmission. The lower tribunal shall certify and transmit the record to the court as prescribed by these rules.

(4) Stipulated Record. The parties may stipulate to the contents of the record. In such a case the record shall consist of the stipulated statement and the order appealed which the lower tribunal shall certify as the record on appeal.

(5) Costs.

(A) Notice of Estimated Costs. Within 5 days after the contents of the record have been determined under these rules, the lower tribunal shall notify the appellant of the estimated cost of preparing the record. The lower tribunal also shall notify the Division of Workers' Compensation of the estimated record costs if the appellant files a verified petition to be relieved of costs and a sworn financial affidavit.

(B) Deposit of Estimated Costs. Within 15 days after the notice of estimated costs is served, the appellant shall deposit a sum of money equal to the estimated costs with the lower tribunal.

(C) Failure to Deposit Costs. If the appellant fails to deposit the estimated costs within the time prescribed, the lower tribunal shall notify the court, which may dismiss the appeal.

(D) State Agencies~~:~~; Waiver of Costs. Any self-insured state agency or branch of state government, including the Division of Workers' Compensation and the Special Disability Trust Fund, need not deposit the estimated costs.

(E) Costs. If additional costs are incurred in correcting, amending, or supplementing the record, the lower tribunal shall assess such costs against the appropriate party. If the Division of Workers' Compensation is obligated to pay the costs of the appeal due to the appellant's indigency, it must be given notice of any proceeding to assess additional costs. Within 15 days after the entry of the order assessing costs, the assessed party must deposit the sums so ordered with the lower tribunal. The lower tribunal shall promptly notify the court if costs are not deposited as required.

(6) Transcript(s) of Proceedings.

(A) Selection of Approved Court Reporter by Lower Tribunal. The deputy chief judge of compensation claims shall select ~~the~~an approved court reporter or ~~transcriber~~an approved transcriptionist to transcribe any hearing(s). The deputy chief judge who makes the selection shall give the parties notice of the selection.

(B) Objection to Court Reporter or ~~Transcriber~~Transcriptionist Selected. Any party may object to the court reporter or ~~transcriber~~transcriptionist selected by filing written objections with the judge who made the selection within 15 days after service of notice of the selection. Within 5 days after filing the objection, the judge shall hold a hearing on the issue. In such a case, the time limits mandated by these rules shall be appropriately extended.

(C) Certification of Transcript by Court Reporter or ~~Transcriber~~Transcriptionist. The court reporter or ~~transcriber designated~~transcriptionist selected by the deputy chief judge of compensation claims shall certify and deliver an electronic version of the transcript(s) to the clerk of the office of the judges of compensation claims. The transcript(s) shall be delivered in sufficient time for the clerk of the office of the judges of compensation claims to incorporate transcript(s) in the record. The court reporter or

~~transcriber~~transcriptionist shall promptly notify all parties in writing when the transcript(s) is delivered to the clerk of the office of the judges of compensation claims.

(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) Extensions. For good cause, the lower tribunal may extend by no more than 30 days the time for filing the record with the court. Any further extension of time may be granted by the court.

(9) Applicability of Rule 9.200. Rules 9.200(a)(3), (c), and (f) shall apply to preparation of the record in appeals under this rule.

(g) Relief From Filing Fee and Costs~~:~~; Indigency.

(1) Indigency Defined. Indigency for the purpose of this rule is synonymous with insolvency as defined by section 440.02, Florida Statutes.

(2) Filing Fee.

(A) Authority. An appellant may be relieved of paying filing fees by filing a verified petition or motion of indigency under section 57.081(1), Florida Statutes, with the lower tribunal.

(B) Time. The verified petition or motion of indigency must be filed with the lower tribunal together with the notice of appeal.

(C) Verified Petition~~:~~; Contents. The verified petition or motion shall contain a statement by the appellant to be relieved of paying filing fees due to indigency and the appellant's inability to pay the charges. The petition shall request that the lower tribunal enter an order or certificate of indigency. One of the following shall also be filed in support of the verified petition or motion:

(i) If the appellant is unrepresented by counsel, a financial affidavit; or

(ii) If the appellant is represented by counsel, counsel shall certify that counsel has investigated (a) the appellant's financial condition and finds the appellant indigent; and (b) the nature of appellant's position and believes it to be meritorious as a matter of law. Counsel shall also certify that counsel has not been paid or promised payment of a fee or other remuneration for such legal services except for the amount, if any, ultimately approved by the lower tribunal to be paid by the employer/carrier if such entitlement is determined by the court.

(D) Service. The ~~A~~appellant shall serve a copy of the verified petition or motion of indigency, including the appellant's financial affidavit or counsel's certificate, whichever is applicable, on all interested parties and the clerk of the court.

(E) Order or Certificate of Indigency. The lower tribunal shall review the verified petition or motion for indigency and supporting documents without a hearing, and if the lower tribunal finds compliance with section 57.081(1), Florida Statutes, may issue a certificate of indigency or enter an order granting said relief, at which time the appellant may proceed without further application to the court and without payment of any filing fees. If the lower tribunal enters an order denying relief, the appellant shall deposit the filing fee with the lower tribunal within 15 days from the date of the order unless timely review is sought by motion filed with the court.

(3) Costs of Preparation of Record.

(A) Authority. An appellant may be relieved in whole or in part from the costs of the preparation of the record on appeal by filing with the lower tribunal a verified petition to be relieved of costs and a copy of the designation of the record on appeal. The verified petition to be relieved of costs shall contain a sworn financial affidavit as described in subdivision (g)(3)(D).

(B) Time. The verified petition to be relieved of costs must be filed within 15 days after service of the notice of estimated costs. A verified petition filed prior to the date of service of the notice of estimated costs shall be deemed not timely.

(C) Verified Petition~~:~~; Contents. The verified petition shall contain a request by the appellant to be relieved of costs due to insolvency. The

petition also shall include a statement by the appellant's attorney or the appellant, if not represented by an attorney, that the appeal was filed in good faith and the court reasonably could find reversible error in the record and shall state with particularity the specific legal and factual grounds for that opinion.

(D) Sworn Financial Affidavit~~:~~; Contents. With the verified petition to be relieved of costs, the appellant shall file a sworn financial affidavit listing income and assets, including marital income and assets, and expenses and liabilities.

(E) Verified Petition and Sworn Financial Affidavit~~:~~; Service. The appellant shall serve a copy of the verified petition to be relieved of costs, including the sworn financial affidavit, on all interested parties, including the Division of Workers' Compensation, the office of general counsel of the Department of Financial Services, and the clerk of the court.

(F) Hearing on Petition to Be Relieved of Costs. After giving 15 days' notice to the Division of Workers' Compensation and all parties, the lower tribunal shall promptly hold a hearing and rule on the merits of the petition to be relieved of costs. However, if no objection to the petition is filed by the division or a party within 20 days after the petition is served, the lower tribunal may enter an order on the merits of the petition without a hearing.

(G) Extension of Appeal Deadlines. If the petition to be relieved of the entire cost of the preparation of the record on appeal is granted, the 60-day period allowed under these rules for the preparation of the record shall begin to run from the date of the order granting the petition. If the petition to be relieved of the cost of the record is denied or only granted in part, the petitioner shall deposit the estimated costs with the lower tribunal within 15 days from the date the order denying the petition is entered. The 60-day period allowed under these rules for the preparation of the record shall begin from the date the estimated cost is deposited with the lower tribunal. If the petition to be relieved of the cost of the record is withdrawn before ruling, then the petitioner shall deposit the estimated costs with the lower tribunal at the time the petition is withdrawn and the 60-day period for preparation of the record shall begin to run from the date the petition is withdrawn.

(H) Payment of Cost for Preparation of Record by Administration Trust Fund. If the petition to be relieved of costs is granted, the lower tribunal may order the Workers' Compensation Administration Trust Fund

to pay the cost of the preparation of the record on appeal pending the final disposition of the appeal. The lower tribunal shall provide a copy of such order to all interested parties, including the division, general counsel of the Department of Financial Services, and the clerk of the court.

(I) Reimbursement of Administration Trust Fund If Appeal Is Successful. If the Administration Trust Fund has paid the costs of the preparation of the record and the appellant prevails at the conclusion of the appeal, the appellee shall reimburse the fund the costs paid within 30 days of the mandate issued by the court or supreme court under these rules.

(h) Briefs and Motions Directed to Briefs.

(1) Briefs~~:~~; Final Order Appeals. Within 30 days after the lower tribunal certifies the record to the court, the appellant shall serve the initial brief. Additional briefs shall be served as prescribed by rule 9.210.

(2) Briefs~~:~~; ~~Non-Final~~Nonfinal Appeals. The ~~A~~appellant's initial brief, accompanied by an appendix as prescribed by rule 9.220, shall be served within 15 days of filing the notice. Additional briefs shall be served as prescribed by rule 9.210.

(3) Motions to Strike. Motions to strike a brief or portions of a brief will not be entertained by the court. However, a party, in its own brief, may call to the court's attention a breach of these rules. If no further responsive brief is authorized, noncompliance may be brought to the court's attention by filing a suggestion of noncompliance. Statements in briefs not supported by the record shall be disregarded and may constitute cause for imposition of sanctions.

(i) Attorneys' Fees and Appellate Costs.

(1) Costs. Appellate costs shall be taxed as provided by law. Taxable costs shall include those items listed in rule 9.400 and costs for a transcript included in an appendix as part of an appeal of a nonfinal order.

(2) Attorneys' Fees. A motion for attorneys' fees shall be served in accordance with rule 9.400(b).

(3) Entitlement and Amount of Fees and Costs. If the court determines that an appellate fee is due, the lower tribunal shall have jurisdiction to

conduct hearings and consider evidence regarding the amount of the attorneys' fee and costs due at any time after the mandate is issued.

(4) Review. Review shall be in accordance with rule 9.400(c).

Committee Notes

1996 Adoption. Rule 9.180 is intended to supersede rules 4.160, 4.161, 4.165, 4.166, 4.170, 4.180, 4.190, 4.220, 4.225, 4.230, 4.240, 4.250, 4.260, 4.265, 4.270, and 4.280 of the Rules of Workers' Compensation Procedure. In consolidating those rules into one rule and incorporating them into the Rules of Appellate Procedure, duplicative rules have been eliminated. The change was not intended to change the general nature of workers' compensation appeals. It is contemplated there still may be multiple "final orders." See 1980 Committee Note, Fla. R. Work. Comp. P. 4.160.

The orders listed in rules 9.180(b)(1)(A), (B), and (C) are the only nonfinal orders appealable before entry of a final order in workers' compensation cases.

Rule 9.180(b)(2) now limits the place for filing the notice of appeal to the lower tribunal that entered the order and not any judge of compensation claims as the former rule provided.

Rule 9.180(f)(6)(E) provides that the lower tribunal shall provide a copy of the record to all counsel of record and all unrepresented parties. It is contemplated that the lower tribunal can accomplish that in whatever manner the lower tribunal deems most convenient for itself, such as, having copies available that counsel or the parties may pick up.

2011 Amendments. Subdivision (b)(4) was amended to provide for the use of form 9.900(c) in appeal of non-final orders.

Subdivisions (f)(6) and (f)(7) were amended to conform to section 440.29(2), Florida Statutes, providing that the deputy chief judge, not the lower tribunal, is authorized to designate the manner in which hearings are recorded and arrange for the preparation of records on appeal. Moreover, it provides statewide uniformity and consistency in the preparation of records on appeal by incorporating electronic and other technological means to promote efficiency and cost reduction. Currently the electronic version of the transcript is the Portable Document Format (PDF).

NOTE: Amendments shown in double underline and double strikethrough are pending with the Court in *In re: Amendments Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.190. JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

(a) Applicability. Judicial review of administrative action shall be as in civil cases except as specifically modified by this rule.

(b) Commencement.

(1) An appeal from final agency action as defined in the Administrative Procedure Act, chapter 120, Florida Statutes, including immediate final orders entered pursuant to section 120.569(2)(n), Florida Statutes, or other administrative action for which judicial review is provided by general law shall be commenced in accordance with rule 9.110(c).

(2) Review of ~~non-final~~nonfinal agency action under the Administrative Procedure Act, including ~~non-final~~nonfinal action by an administrative law judge, and agency orders entered pursuant to section 120.60(6), Florida Statutes, shall be commenced by filing a petition for review in accordance with rules 9.100(b) and (c).

(3) Review of quasi-judicial decisions of any administrative body, agency, board, or commission not subject to the Administrative Procedure Act shall be commenced by filing a petition for certiorari in accordance with rules 9.100(b) and (c), unless judicial review by appeal is provided by general law.

(c) The Record.

(1) Generally. As further described in this rule, the record shall include only materials furnished to and reviewed by the lower tribunal in advance of the administrative action to be reviewed by the court.

(2) Review of Final Action Pursuant to the Administrative Procedure Act.

(A) Proceedings Involving Disputed Issues of Material Fact. In an appeal from any proceeding conducted pursuant to ~~section 120.56 (rule challenges) or~~ sections 120.569 ~~(decisions which affect substantial interests)~~ and 120.57(1), Florida Statutes ~~(decisions which affect substantial interests involving disputed material facts)~~, the record shall consist of all notices, pleadings, motions, and intermediate rulings; evidence admitted; those matters officially recognized;

proffers of proof and objections and rulings thereon; proposed findings and exceptions; any decision, opinion, order, or report by the presiding officer; all staff memoranda or data submitted to the presiding officer during the hearing or prior to its disposition, after notice of submission to all parties, except communications by advisory staff as permitted under section 120.66(1), Florida Statutes, if such communications are public records; all matters placed on the record after an ex parte communication; and the official transcript.

(B) Proceedings Not Involving Disputed Issues of Material Fact. In an appeal from any proceeding pursuant to sections 120.569 ~~(decisions which affect substantial interests)~~ and 120.57(2), Florida Statutes ~~(decisions which affect substantial interests involving no disputed issue of material fact)~~, the record shall consist of the notice and summary of grounds; evidence received; all written statements submitted; any decisions overruling objections; all matters placed on the record after an ex parte communication; the official transcript; and any decision, opinion, order, or report by the presiding officer.

(C) Declaratory Statements. In an appeal from any proceeding pursuant to section 120.565, Florida Statutes ~~(declaratory statements)~~, the record shall consist of the petition seeking a declaratory statement and any pleadings filed with the agency; all notices relating to the petition published in the Florida Administrative ~~Weekly~~Register; the declaratory statement issued by the agency or the agency's denial of the petition; and all matters listed in subdivision (c)(2)(A) or (c)(2)(B) of this rule, whichever is appropriate, if a hearing is held on the declaratory statement petition.

(D) Summary Hearings. In an appeal from any proceeding pursuant to section 120.574, Florida Statutes ~~(summary proceeding)~~, the record shall consist of all notices, pleadings, motions, and intermediate rulings; evidence received; a statement of matters officially recognized; proffers of proof and objections and rulings thereon; matters placed on the record after an ex parte communication; the written decision of the administrative law judge presiding at the final hearing; and the official transcript of the final hearing.

(E) Challenges to Rules.

(i) In an appeal from any proceeding conducted pursuant to section 120.56, Florida Statutes, the record shall consist of all notices, pleadings, motions, and intermediate rulings; evidence admitted; those matters officially recognized; proffers of proof and objections and rulings thereon;

proposed findings and exceptions; any decision, opinion, order, or report by the presiding officer; all staff memoranda or data submitted to the presiding officer during the hearing or prior to its disposition, after notice of submission to all parties, except communications by advisory staff as permitted under section 120.66(1), Florida Statutes, if such communications are public records; all matters placed on the record after an ex parte communication; and the official transcript.

(ii) In an appeal from a rule adoption pursuant to sections 120.54 ~~(rule adoption) and~~or 120.68(9), Florida Statutes, in which the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact, the record shall consist only of those documents from the rulemaking record compiled by the agency that materially address the constitutional issue. The agency's rulemaking record consists of all notices given for the proposed rule; any statement of estimated regulatory costs for the rule; a written summary of hearings on the proposed rule; the written comments and responses to written comments as required by sections 120.54 ~~(rule adoption)~~ and 120.541, Florida Statutes ~~(statement of estimated regulatory costs)~~; all notices and findings made pursuant to section 120.54(4), Florida Statutes ~~(adoption of emergency rules)~~; all materials filed by the agency with the Administrative Procedures Committee pursuant to section 120.54(3), Florida Statutes ~~(rule adoption procedure)~~; all materials filed with the Department of State pursuant to section 120.54(3), Florida Statutes ~~(rule adoption procedure)~~; and all written inquiries from standing committees of the legislature concerning the rule.

(F) Immediate Final Orders. In an appeal from an immediate final order entered pursuant to section 120.569(2)(n), Florida Statutes, the record shall be compiled in an appendix pursuant to rule 9.220 and served with the briefs.

(3) Review of ~~Non-Final~~Nonfinal Action Pursuant to the Administrative Procedure Act. The provisions of rules 9.100 and 9.220 govern the record in proceedings seeking review of ~~non-final~~nonfinal administrative action.

(4) Review of Administrative Action Not Subject to the Administrative Procedure Act. In proceedings seeking review of administrative action not governed by the Administrative Procedure Act, the clerk of the lower tribunal shall not be required to prepare a record or record index. The petitioner or the appellant shall submit an appendix in accordance with rule 9.220.

Supplemental appendices may be submitted by any party. Appendices may not contain any matter not made part of the record in the lower tribunal.

(5) Videotaped Testimony. In any circumstance in which hearing testimony is preserved through the use of videotape rather than through an official transcript, the testimony from the videotape shall be transcribed and the transcript shall be made a part of the record before the record is transmitted to the court.

(6) Modified Record. The contents of the record may be modified as provided in rule 9.200(a)(3).

(d) Attorneys' Fees.

(1) Attorneys' Fees. A motion for attorneys' fees may be served not later than the time for service of the reply brief and shall state the grounds on which the recovery is sought, citing all pertinent statutes.

(2) Disputes As To Amount. If the court decides to award attorneys' fees, the court may either remand the matter to the lower tribunal or to the administrative law judge for determination of the amount, or refer the matter to a special magistrate.

(3) Review. Review of orders entered by the lower tribunal or the administrative law judge under this rule shall be by motion filed in the court within 30 days of rendition of the order. Objections to reports of special magistrates shall be filed with the court within 30 days after the special magistrate's report is filed with the court.

(e) Stays Pending Review.

(1) Effect of Initiating Review. The filing of a notice of administrative appeal or a petition seeking review of administrative action shall not operate as a stay, except that such filing shall give rise to an automatic stay as provided in rule 9.310(b)(2) or chapter 120, Florida Statutes, or when timely review is sought of an award by an administrative law judge on a claim for birth-related neurological injuries.

(2) Application for Stay Under the Administrative Procedure Act.

(A) A party seeking to stay administrative action may file a motion either with the lower tribunal or, for good cause shown, with the court in which the notice or petition has been filed. The filing of the motion shall not operate as a stay. The lower tribunal or court may grant a stay upon appropriate terms. Review of orders entered by lower tribunals shall be by the court on motion.

(B) When an agency has ordered emergency suspension, restriction, or limitations of a license under section 120.60(6), Florida Statutes, or issued an immediate final order under section 120.569(2)(n), Florida Statutes, the affected party may file with the reviewing court a motion for stay on an expedited basis. The court may issue an order to show cause and, after considering the agency's response, if timely filed, grant a stay on appropriate terms.

(C) When an agency has suspended or revoked a license other than on an emergency basis, a licensee may file with the court a motion for stay on an expedited basis~~.~~. The agency may file a response within 10 days of the filing of the motion, or within a shorter time period set by the court. Unless the agency files a timely response demonstrating that a stay would constitute a probable danger to the health, safety, or welfare of the state, the court shall grant the motion and issue a stay.

(D) When an order suspending or revoking a license has been stayed pursuant to subdivision (e)(2)(C), an agency may apply to the court for dissolution or modification of the stay on grounds that subsequently acquired information demonstrates that failure to dissolve or modify the stay would constitute a probable danger to the public health, safety, or welfare of the state.

(3) Application for Stay or Supersedeas of Other Administrative Action. A party seeking to stay administrative action, not governed by the Administrative Procedure Act, shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief. A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both. Review of orders entered by lower tribunals shall be by the court on motion.

(4) Duration. A stay entered by a lower tribunal or a court shall remain in effect during the pendency of all review proceedings in Florida courts until a mandate issues, unless otherwise modified or vacated.

Committee Notes

1996 Amendment. Appeals which fall within the exception included in subdivision (b)(3) are commenced in accordance with subdivision (b)(1). Therefore, administrative action by appeal in a circuit court, if prescribed by general law, is commenced pursuant to subdivision (b)(1). Unless review of administrative action in circuit court is prescribed by general law to be by appeal, review in circuit court is by petition for an extraordinary writ commenced pursuant to subdivision (b)(3). See *Board of County Commissioners v. Snyder*, 627 So. 2d 469 (Fla. 1993); *Grace v. Town of Palm Beach*, 656 So. 2d 945 (Fla. 4th DCA 1995). Subdivision (b)(3) supersedes all local government charters, ordinances, rules and regulations which purport to provide a method of review in conflict herewith.

Subdivision (c) was adopted to identify more clearly what constitutes the record in appeals from administrative proceedings. Several sections of the Florida Administrative Procedure Act, as revised in 1996, specifically state what shall constitute the record in certain types of proceedings, and this rule incorporates that statutory language. The rule makes clear that the record shall include only materials that were furnished to and reviewed by the lower tribunal in advance of the administrative action to be reviewed. The intent of this statement is to avoid the inclusion of extraneous materials in the record that were never reviewed by the lower tribunal.

Subdivision (c)(2)(A) is based on provisions of section 120.57(1)(f), Florida Statutes. This subdivision of the rule governs the record from proceedings conducted pursuant to section 120.56 and sections 120.569 and 120.57(1), Florida Statutes. This is because section 120.56(1)(e), Florida Statutes, states that hearings under section 120.56, Florida Statutes, shall be conducted in the same manner as provided by sections 120.569 and 120.57, Florida Statutes.

Subdivision (c)(2)(B) lists the provisions of section 120.57(2)(b), Florida Statutes. Subdivision (c)(2)(B)(vii), which refers to "any decision, opinion, order, or report by the presiding officer," was added by the committee to the list of statutory requirements.

Subdivision (c)(2)(C) addresses the record on appeal from declaratory statement requests pursuant to section 120.565, while subdivision (c)(2)(D) lists the provisions of section 120.574(2)(d), Florida Statutes. Subdivision (c)(2)(E) of the rule addresses proceedings governed by sections 120.54 and 120.68(9), Florida Statutes. The definition of the rulemaking record tracks language in section 120.54(8), Florida Statutes.

Subdivision (c)(3) makes clear that rules 9.100 and 9.220 govern the record in proceedings seeking review of non-final administrative action, while subdivision (c)(4) governs the record in administrative proceedings not subject to the Administrative Procedure Act.

Subdivision (c)(5) states that if videotape is used to preserve hearing testimony, the videotape shall be transcribed before the record is transmitted to the court.

Subdivision (d) was adopted to conform to the 1996 revisions to the Administrative Procedure Act. Recoupment of costs is still governed by rule 9.400.

2000 Amendment. Subdivision (e) was added to address stays pending judicial review of administrative action. Ordinarily, application for a stay must first be made to the lower tribunal, but some agencies have collegial heads who meet only occasionally. If a party can show good cause for applying initially to the court for a stay, it may do so. When an appeal has been taken from a license suspension or revocation under the Administrative Procedure Act, good cause for not applying first to the lower tribunal is presumed.

Subdivision (e)(2)(B) deals with stays of orders which suspend licenses on an emergency basis. Before entering an emergency suspension order, the agency must make a finding that immediate suspension is necessary to protect the public health, safety, or welfare. § 120.60(6), Fla. Stat. (1999). In effect, the agency makes a finding that would be sufficient to defeat issuance of the "stay as a matter of right" contemplated by section 120.68(3), Florida Statutes. The agency's finding is subject to judicial review, however, on application for a stay under subdivision (e)(2)(B).

Absent an emergency suspension order, the court grants a stay as of right in Administrative Procedure Act license suspension and revocation cases unless the licensing agency makes a timely showing that a stay "would constitute a probable danger to the health, safety, or welfare of the state." § 120.68(3), Fla. Stat. (1999). The court can shorten the 10 day period specified in subdivision (e)(2)(c). If the court stays a nonemergency suspension or revocation, the licensing agency can move to modify or dissolve the stay on the basis of material information that comes to light after the stay is issued.

Nothing in subdivision (e) precludes licensing agencies from making suspension or revocation orders effective 30 days after entry, granting stays

pending judicial review, or taking other steps to implement section 120.68(3), Florida Statutes.

2004 Amendment. Subdivision (e)(2)(C) was amended to clarify that the ten days (or shorter period set by the court) within which the agency has to respond runs from the filing of the motion for stay. See *Ludwig v. Dept. of Health*, 778 So. 2d 531 (Fla. 1st DCA 2001).

2011 Amendment. Subdivisions (b)(1) and (b)(2) were amended to clarify the procedures for seeking judicial review of immediate final orders and emergency orders suspending, restricting, or limiting a license. Subdivision (c)(2)(F) was added and subdivision (c)(2) was amended to clarify the record for purposes of judicial review of immediate final orders.

RULE 9.200. THE RECORD

(a) Contents.

(1) Except as otherwise designated by the parties, the record shall consist of all documents filed in the lower tribunal, all exhibits that are not physical evidence, and any transcript(s) of proceedings filed in the lower tribunal, except summonses, praecipes, subpoenas, returns, notices of hearing or of taking deposition, depositions, and other discovery. In criminal cases, when any exhibit, including physical evidence, is to be included in the record, the clerk of the lower tribunal shall not, unless ordered by the court, transmit the original and, if capable of reproduction, shall transmit a copy, including but not limited to copies of any tapes, CDs, DVDs, or similar electronically recorded evidence. The record shall also include a progress docket.

(2) Within 10 days of filing the notice of appeal, an appellant may direct the clerk to include or exclude other documents or exhibits filed in the lower tribunal. The directions shall be substantially in the form prescribed by rule 9.900(g). If the clerk is directed to transmit less than the entire record or a transcript of trial with less than all of the testimony, the appellant shall serve with such direction a statement of the judicial acts to be reviewed. Within 20 days of filing the notice, an appellee may direct the clerk to include additional documents and exhibits.

(3) The parties may prepare a stipulated statement showing how the issues to be presented arose and were decided in the lower tribunal, attaching a copy of the order to be reviewed and as much of the record in the lower tribunal as is necessary to a determination of the issues to be presented. The parties shall advise the clerk of the lower tribunal of their intention to rely on a stipulated statement in lieu of the record as early in advance of filing as possible. The stipulated statement shall be filed by the parties and transmitted to the court by the clerk of the lower tribunal within the time prescribed for transmittal of the record.

(b) Transcript(s) of Proceedings.

(1) <u>Designation to Court Reporter.</u> Within 10 days of filing the notice <u>of appeal</u>, the appellant shall designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record <u>and shall serve the designation on the approved court reporter, civil court reporter, or</u>

approved transcriptionist. Within 20 days of filing the notice of appeal, an appellee may designate additional portions of the proceedings and shall serve the designation on the approved court reporter, civil court reporter, or approved transcriptionist. Copies of designations shall be served on the approved court reporter, civil court reporter, or approved transcriptionist. Costs of the transcript(s) so designated shall be borne initially by the designating party, subject to appropriate taxation of costs as prescribed by rule 9.400. At the time of the designation, unless other satisfactory arrangements have been made, the designating party must make a deposit of 1/2 of the estimated transcript costs, and must pay the full balance of the fee on delivery of the completed transcript(s).

(2) Court Reporter's Acknowledgment. On service of a designation, the approved court reporter, civil court reporter, or approved transcriptionist shall acknowledge at the foot of the designation the fact that it has been received and the date on which the approved court reporter, civil court reporter, or approved transcriptionist expects to have the transcript(s) completed and shall serve the so-endorsed designation on the parties and file it with the clerk of the court within 5 days of service. If the transcript(s) cannot be completed within 30 days of service of the designation, the approved court reporter, civil court reporter, or approved transcriptionist shall request such additional time as is reasonably necessary and shall state the reasons therefor. If the approved court reporter, civil court reporter, or approved transcriptionist requests an extension of time, the court shall allow the parties 5 days in which to object or agree. The court shall approve the request or take other appropriate action and shall notify the reporter and the parties of the due date of the transcript(s).

(~~2~~3) Time for Service of Transcript. Within 30 days of service of a designation, or within the additional time provided for under subdivision (b)(~~3~~2) of this rule, the approved court reporter, civil court reporter, or approved transcriptionist shall transcribe and file with the clerk of the lower tribunal the designated proceedings and shall serve copies as requested in the designation. If a designating party directs the approved court reporter, civil court reporter, or approved transcriptionist to furnish the transcript(s) to fewer than all parties, that designating party shall serve a copy of the designated transcript(s) on the parties within ~~5~~10 days of receipt from the approved court reporter, civil court reporter, or approved transcriptionist. ~~The transcript of the trial shall be filed with the clerk separately from the transcripts(s) of any other designated proceedings. The transcript of the trial shall be followed by a master trial index containing the names of the witnesses, a list of all exhibits offered and introduced in evidence, and the~~

~~pages where each may be found. The pages, including the index pages, shall be consecutively numbered, beginning with page 1. The pages shall not be condensed.~~

~~(3) On service of a designation, the approved court reporter, civil court reporter, or approved transcriptionist shall acknowledge at the foot of the designation the fact that it has been received and the date on which the approved court reporter, civil court reporter, or approved transcriptionist expects to have the transcript(s) completed and shall serve the so-endorsed designation on the parties and file it with the clerk of the court within 5 days of service. If the transcript(s) cannot be completed within 30 days of service of the designation, the approved court reporter, civil court reporter, or approved transcriptionist shall request such additional time as is reasonably necessary and shall state the reasons therefor. If the approved court reporter, civil court reporter, or approved transcriptionist requests an extension of time, the court shall allow the parties 5 days in which to object or agree. The court shall approve the request or take other appropriate action and shall notify the reporter and the parties of the due date of the transcript(s).~~

(4) Organization of Transcript. The transcript of the trial shall be filed with the clerk separately from the transcript(s) of any other designated proceedings. The transcript of the trial shall be followed by a master trial index containing the names of the witnesses, a list of all exhibits offered and introduced in evidence, and the pages where each may be found. The pages, including the index pages, shall be consecutively numbered, beginning with page 1. The pages shall not be condensed.

(45) Statement of Evidence or Proceedings. If no report of the proceedings was made, or if the transcript is unavailable, a party may prepare a statement of the evidence or proceedings from the best available means, including the party's recollection. The statement shall be served on all other parties who may serve objections or proposed amendments to it within 10 days of service. Thereafter, the proposed statement and any objections or proposed amendments shall be filed with the lower tribunal for settlement and approval. As settled and approved, the statement shall be included by the clerk of the lower tribunal in the record

(c) Cross-Appeals. Within 20 days of filing the notice of appeal, a cross-appellant may direct that additional documents, exhibits, or transcript(s) be included in the record. If less than the entire record is designated, the cross-appellant shall serve, with the directions, a statement of the judicial acts to be reviewed. The cross-appellee shall have 10 days after such service to direct further

additions. The time for preparation and transmittal of the record shall be extended by 10 days.

(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) text searchable;

(ii) paginated so that the page numbers displayed by the PDF reader exactly match the pagination of the index; and

(iii) bookmarked, consistently with the index, such that each bookmark states the date, name, and record page of the filing and the bookmarks are viewable in a separate window.

(2) The transcript of the trial shall be converted into a second PDF file. The PDF file shall be:

(A) text searchable; and

(B) paginated to exactly match the pagination of the master trial index of the transcript of the trial filed under subdivision (b)(2).

(3) The clerk of the lower tribunal shall certify the record and transmit the record and the transcript of the trial to the court by uploading the PDF files:

(A) via the Florida Courts E-Filing Portal; or

(B) in accordance with the procedures established by the appellate court's administrative order governing transmission of the record.

(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) Duties of Appellant or Petitioner. The burden to ensure that the record is prepared and transmitted in accordance with these rules shall be on the petitioner or the appellant. Any party may enforce the provisions of this rule by motion.

(f) Correcting and Supplementing Record.

(1) If there is an error or omission in the record, the parties by stipulation, the lower tribunal before the record is transmitted, or the court may correct the record.

(2) If the court finds the record is incomplete, it shall direct a party to supply the omitted parts of the record. No proceeding shall be determined, because of an incomplete record, until an opportunity to supplement the record has been given.

(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. This rule replaces former rule 3.6 and represents a complete revision of the matters pertaining to the record for an appellate proceeding. References in this rule to "appellant" and "appellee" should be treated as equivalent to "petitioner" and "respondent," respectively. See Commentary, Fla. R. App. P. 9.020. This rule is based in part on Federal Rule of Appellate Procedure 10(b).

Subdivision (a)(1) establishes the content of the record unless an appellant within 10 days of filing the notice directs the clerk to exclude portions of the record or to include additional portions, or the appellee within 20 days of the notice being filed directs inclusion of additional portions. In lieu of a record, the parties may prepare a stipulated statement, attaching a copy of the order that is sought to be reviewed and essential portions of the record. If a stipulated statement is prepared, the parties must advise the clerk not to prepare the record. The stipulated statement is to be filed and transmitted within the time prescribed for transmittal of the record. If less than a full record is to be used, the initiating party must serve a statement of the judicial acts to be reviewed so that the opposing party may determine whether additional portions of the record are required. Such a statement is not intended to be the equivalent of assignments of error under former rule 3.5. Any inadequacy in the statement may be cured by motion to supplement the record under subdivision (f) of this rule.

Subdivision (a) interacts with subdivision (b) so that as soon as the notice is filed the clerk of the lower tribunal will prepare and transmit the complete record of the case as described by the rule. To include in the record any of the items automatically omitted, a party must designate the items desired. A transcript of the proceedings in the lower tribunal will not be prepared or transmitted unless already filed, or the parties designate the portions of the transcript desired to be transmitted. Subdivision (b)(2) imposes on the reporter an affirmative duty to prepare the transcript of the proceedings as soon as designated. It is intended that to complete the preparation of all official papers to be filed with the court, the appellant need only file the notice, designate omitted portions of the record that are desired, and designate the desired portions of the transcript. It therefore will be unnecessary to file directions with the clerk of the lower tribunal in most cases.

Subdivision (b)(1) replaces former rule 3.6(d)(2), and specifically requires service of the designation on the court reporter. This is intended to avoid delays that sometimes occur when a party files the designation, but fails to notify the court reporter that a transcript is needed. The rule also establishes the responsibility of the designating party to initially bear the cost of the transcript.

Subdivision (b)(2) replaces former rule 3.6(e). This rule provides for the form of the transcript, and imposes on the reporter the affirmative duty of delivering copies of the transcript to the ordering parties on request. Such a request may be included in the designation. Under subdivision (e), however, the responsibility for ensuring performance remains with the parties. The requirement that pages be consecutively numbered is new and is deemed necessary to assure continuity and ease of reference for the convenience of the court. This requirement applies even if 2 or more parties designate portions of the proceedings for transcription. It is intended that the transcript portions transmitted to the court constitute a single consecutively numbered document in 1 or more volumes not exceeding 200 pages each. If there is more than 1 court reporter, the clerk will renumber the pages of the transcript copies so that they are sequential. The requirement of a complete index at the beginning of each volume is new, and is necessary to standardize the format and to guide those preparing transcripts.

Subdivision (b)(3) provides the procedures to be followed if no transcript is available.

Subdivision (c) provides the procedures to be followed if there is a cross-appeal or cross-petition.

Subdivision (d) sets forth the manner in which the clerk of the lower tribunal is to prepare the record. The original record is to be transmitted unless the parties stipulate or the lower court orders the original be retained, except that under rule 9.140(d) (governing criminal cases), the original is to be retained unless the court orders otherwise.

Subdivision (e) places the burden of enforcement of this rule on the appellant or petitioner, but any party may move for an order requiring adherence to the rule.

Subdivision (f) replaces former rule 3.6(*l*). The new rule is intended to ensure that appellate proceedings will be decided on their merits and that no showing of good cause, negligence, or accident is required before the lower tribunal or the court orders the completion of the record. This rule is intended to

ensure that any portion of the record in the lower tribunal that is material to a decision by the court will be available to the court. It is specifically intended to avoid those situations that have occurred in the past when an order has been affirmed because appellate counsel failed to bring up the portions of the record necessary to determine whether there was an error. See *Pan American Metal Prods. Co. v. Healy*, 138 So. 2d 96 (Fla. 3d DCA 1962). The rule is not intended to cure inadequacies in the record that result from the failure of a party to make a proper record during the proceedings in the lower tribunal. The purpose of the rule is to give the parties an opportunity to have the appellate proceedings decided on the record developed in the lower tribunal. This rule does not impose on the lower tribunal or the court a duty to review on their own the adequacy of the preparation of the record. A failure to supplement the record after notice by the court may be held against the party at fault.

Subdivision (g) requires that the record in civil cases be returned to the lower tribunal after final disposition by the court regardless of whether the original record or a copy was used. The court may retain or return the record in criminal cases according to its internal administration policies.

1980 Amendment. Subdivisions (b)(1) and (b)(2) were amended to specify that the party designating portions of the transcript for inclusion in the record on appeal shall pay for the cost of transcription and shall pay for and furnish a copy of the portions designated for all opposing parties. See rule 9.420(b) and 1980 committee note thereto relating to limitations of number of copies.

1987 Amendment. Subdivision (b)(3) above is patterned after Federal Rule of Appellate Procedure 11(b).

1992 Amendment. Subdivisions (b)(2), (d)(1)(A), and (d)(1)(B) were amended to standardize the lower court clerk's procedure with respect to the placement and pagination of the transcript in the record on appeal. This amendment places the duty of paginating the transcript on the court reporter and requires the clerk to include the transcript at the end of the record, without repagination.

1996 Amendment. Subdivision (a)(2) was added because family law cases frequently have continuing activity at the lower tribunal level during the pendency of appellate proceedings and that continued activity may be hampered by the absence of orders being enforced during the pendency of the appeal.

Subdivision (b)(2) was amended to change the wording in the third sentence from "transcript of proceedings" to "transcript of the trial" to be consistent with and to clarify the requirement in subdivision (d)(1)(B) that it is only the transcript of trial that is not to be renumbered by the clerk. Pursuant to subdivision (d)(1)(B), it remains the duty of the clerk to consecutively number transcripts other than the transcript of the trial. Subdivision (b)(2) retains the requirement that the court reporter is to number each page of the transcript of the trial consecutively, but it is the committee's view that if the consecutive pagination requirement is impracticable or becomes a hardship for the court reporting entity, relief may be sought from the court.

2006 Amendment. Subdivision (a)(2) is amended to apply to juvenile dependency and termination of parental rights cases and cases involving families and children in need of services. The justification for retaining the original orders, reports, and recommendations of magistrate or hearing officers, and judgments within the file of the lower tribunal in family law cases applies with equal force in juvenile dependency and termination of parental rights cases, and cases involving families and children in need of services.

2014 Amendment. The phrase "all exhibits that are not physical evidence" in subdivision (a)(1) is intended to encompass all exhibits that are capable of reproduction, including, but not limited to, documents, photographs, tapes, CDs, DVDs, and similar reproducible material. Exhibits that are physical evidence include items that are not capable of reproduction, such as weapons, clothes, biological material, or any physical item that cannot be reproduced as a copy by the clerk's office.

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 ~~R~~rule 9.100(e).

NOTE: Amendments shown in double underline and double strikethrough are pending with the Court in *In re: Amendments Florida Rules of Appellate Procedure*, SC16-1377.

RULE 9.210. BRIEFS

(a) Generally. In addition to briefs on jurisdiction under rule 9.120(d), the only briefs permitted to be filed by the parties in any ~~one~~1 proceeding are the initial brief, the answer brief, a reply brief, and a cross-reply brief. All briefs required by these rules shall be prepared as follows:

(1) When not filed in electronic format, briefs shall be printed, typewritten, or duplicated on opaque, white, unglossed paper. The dimensions of each page of a brief, regardless of format, shall be 8 1/2 by 11 inches. When filed in electronic format, parties shall file only the electronic version.

(2) The lettering in briefs shall be black and in distinct type, double-spaced, with margins no less than 1 inch. Lettering in script or type made in imitation of handwriting shall not be permitted. Footnotes and quotations may be single spaced and shall be in the same size type, with the same spacing between characters, as the text in the body of the brief. Headings and subheadings shall be at least as large as the brief's text and may be single-spaced. Computer-generated briefs shall be filed in either Times New Roman 14-point font or Courier New 12-point font. All computer-generated briefs shall contain a certificate of compliance signed by counsel, or the party if unrepresented, certifying that the brief complies with the font requirements of this rule. The certificate of compliance shall be contained in the brief immediately following the certificate of service.

(3) Briefs filed in paper format shall not be stapled or bound.

(4) The cover sheet of each brief shall state the name of the court, the style of the cause, including the case number if assigned, the lower tribunal, the party on whose behalf the brief is filed, the type of brief, and the name, ~~and~~ address, and e-mail address of the attorney filing the brief.

(5) The page limits for briefs shall be as follows:

(A) Briefs on jurisdiction shall not exceed 10 pages.

(B) Except as provided in subdivisions (a)(5)(C) and (a)(5)(D) of this rule, the initial and answer briefs shall not exceed 50 pages and the reply brief shall not exceed 15 pages. If a cross-appeal is filed, the appellee's answer/cross-initial brief shall not exceed 85 pages, and the appellant's reply/cross

answer brief shall not exceed 50 pages, not more than 15 of which shall be devoted to argument replying to the answer portion of the appellee's answer/cross-initial brief. Cross-reply briefs shall not exceed 15 pages.

(C) In an appeal from a judgment of conviction imposing a sentence of death or from an order ruling, after an evidentiary hearing on an initial postconviction motion filed under Florida Rule of Criminal Procedure 3.851, the initial and answer briefs shall not exceed 100 pages and the reply brief shall not exceed 35 pages. If a cross-appeal is filed, the appellee's answer/cross-initial brief shall not exceed 150 pages and the appellant's reply/cross-answer brief shall not exceed 100 pages, not more than 35 of which shall be devoted to argument replying to the answer portion of the appellee's answer/cross-initial brief. Cross-reply briefs shall not exceed 35 pages.

(D) In an appeal from an order summarily denying an initial postconviction motion filed under Florida Rule of Criminal Procedure 3.851, a ruling on a successive postconviction motion filed under Florida Rule of Criminal Procedure 3.851, a finding that a defendant is intellectually disabled as a bar to execution under Florida Rule of Criminal Procedure 3.203, or a ruling on a motion for postconviction DNA testing filed under Florida Rule of Criminal Procedure 3.853, the initial and answer briefs shall not exceed 75 pages. Reply briefs shall not exceed 25 pages.

(E) The cover sheet, the tables of contents and citations, the certificates of service and compliance, and the signature block for the brief's author shall be excluded from the page limits in subdivisions (a)(5)(A)–(a)(5)(D). All pages not excluded from the computation shall be consecutively numbered. The court may permit longer briefs.

(6) Unless otherwise ordered by the court, an attorney representing more than 1 party in an appeal may file only 1 initial or answer brief and 1 reply brief, if authorized, which will include argument as to all of the parties represented by the attorney in that appeal. A single party responding to more than 1 brief, or represented by more than 1 attorney, is similarly bound.

(b) Contents of Initial Brief. The initial brief shall contain the following, in order:

(1) ~~A~~a table of contents listing the sections of the brief, including headings and subheadings that identify the issues presented for review, with references to the pages on which each appears~~.~~;

(2) ~~A~~a table of citations with cases listed alphabetically, statutes and other authorities, and the pages of the brief on which each citation appears~~. See rule 9.800 for a uniform citation system.~~;

(3) ~~A~~a statement of the case and of the facts, which shall include the nature of the case, the course of the proceedings, and the disposition in the lower tribunal~~.~~, with ~~R~~references to the appropriate pages of the record or transcript~~ shall be made.~~;

(4) ~~A~~a summary of argument, suitably paragraphed, condensing succinctly, accurately, and clearly the argument actually made in the body of the brief~~. It~~, which should not be a mere repetition of the headings under which the argument is arranged~~. It~~, and should seldom exceed 2 and never 5 pages~~.~~;

(5) ~~A~~argument with regard to each issue, with citation to appropriate authorities, and including the applicable appellate standard of review~~.~~;

(6) ~~A~~a conclusion, of not more than 1 page, setting forth the precise relief sought~~.~~;

(7) ~~A~~a certificate of service~~.~~; and

(8) ~~A~~a certificate of compliance for computer-generated briefs.

(c) Contents of Answer Brief. The answer brief shall be prepared in the same manner as the initial brief, provided that the statement of the case and of the facts may be omitted, if the corresponding section of the initial brief is deemed satisfactory. If a cross-appeal has been filed, the answer brief shall include the issues in the cross-appeal that are presented for review, and argument in support of those issues.

(d) Contents of Reply Brief. The reply brief shall contain argument in response and rebuttal to argument presented in the answer brief. A table of contents, a table of citations, a certificate of service, and, for computer-generated briefs, a certificate of compliance shall be included in the same manner as in the initial brief.

(e) Contents of Cross-Reply Brief. The cross-reply brief is limited to rebuttal of argument of the cross-appellee. A table of contents, a table of citations, a certificate of service, and, for computer-generated briefs, a certificate of compliance shall be included in the same manner as in the initial brief.

(f) Times for Service of Briefs. The times for serving jurisdictional and initial briefs are prescribed by rules 9.110, 9.120, 9.130, and 9.140. Unless otherwise required, the answer brief shall be served within 20 days after service of the initial brief; the reply brief, if any, shall be served within 20 days after service of the answer brief; and the cross-reply brief, if any, shall be served within 20 days thereafter. In any appeal or cross-appeal, if more than 1 initial or answer brief is authorized, the responsive brief shall be served within 20 days after the last initial or answer brief was served or could have been timely served, whichever is later.

(g) Citations. Counsel are requested to use the uniform citation system prescribed by rule 9.800.

Committee Notes

1977 Amendment. This rule essentially retains the substance of former rule 3.7. Under subdivision (a) only 4 briefs on the merits are permitted to be filed in any 1 proceeding: an initial brief by the appellant or petitioner, an answer brief by the appellee or respondent, a reply brief by the appellant or petitioner, and a cross-reply brief by the appellee or respondent (if a cross-appeal or petition has been filed). A limit of 50 pages has been placed on the length of the initial and answer briefs, 15 pages for reply and cross-reply briefs (unless a cross-appeal or petition has been filed), and 20 pages for jurisdictional briefs, exclusive of the table of contents and citations of authorities. Although the court may by order permit briefs longer than allowed by this rule, the advisory committee contemplates that extensions in length will not be readily granted by the courts under these rules. General experience has been that even briefs within the limits of the rule are usually excessively long.

Subdivisions (b), (c), (d), and (e) set forth the format for briefs and retain the substance of former rules 3.7(f), (g), and (h). Particular note must be taken of the requirement that the statement of the case and facts include reference to the record. The abolition of assignments of error requires that counsel be vigilant in specifying for the court the errors committed; that greater attention be given the formulation of questions presented; and that counsel comply with subdivision (b)(5) by setting forth the precise relief sought. The table of contents will contain the statement of issues presented. The pages of the brief on which argument on each issue begins must be given. It is optional to have a second, separate listing of the issues. Subdivision (c) affirmatively requires that no statement of the facts of the case be made by an appellee or respondent unless there is disagreement with the initial brief, and then only to the extent of disagreement. It is unacceptable in an answer brief to make a general statement that the facts in the initial brief are accepted,

except as rejected in the argument section of the answer brief. Parties are encouraged to place every fact utilized in the argument section of the brief in the statement of facts.

Subdivision (f) sets forth the times for service of briefs after service of the initial brief. Times for service of the initial brief are governed by the relevant rule.

Subdivision (g) authorizes the filing of notices of supplemental authority at any time between the submission of briefs and rendition of a decision. Argument in such a notice is absolutely prohibited.

Subdivision (h) states the number of copies of each brief that must be filed with the clerk of the court involved 1 copy for each judge or justice in addition to the original for the permanent court file. This rule is not intended to limit the power of the court to require additional briefs at any time.

The style and form for the citation of authorities should conform to the uniform citation system adopted by the Supreme Court of Florida, which is reproduced in rule 9.800.

The advisory committee urges counsel to minimize references in their briefs to the parties by such designations as “appellant,” “appellee,” “petitioner,” and “respondent.” It promotes clarity to use actual names or descriptive terms such as “the employee,” “the taxpayer,” “the agency,” etc. See Fed. R. App. P. 28(d).

1980 Amendment. Jurisdictional briefs, now limited to 10 pages by subdivision (a), are to be filed only in the 4 situations presented in rules 9.030(a)(2)(A)(i), (ii), (iii), and (iv).

A district court decision without opinion is not reviewable on discretionary conflict jurisdiction. See *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980); *Dodi Publishing Co. v. Editorial Am., S.A.*, 385 So. 2d 1369 (Fla. 1980). The discussion of jurisdictional brief requirements in such cases that is contained in the 1977 revision of the committee notes to rule 9.120 should be disregarded.

1984 Amendment. Subdivision (b)(4) is new; subdivision (b)(5) has been renumbered from former (b)(4); subdivision (b)(6) has been renumbered from former (b)(5). Subdivision (g) has been amended.

The summary of argument required by (b)(4) is designed to assist the court in studying briefs and preparing for argument; the rule is similar to rules of the various United States courts of appeals.

1992 Amendment. Subdivision (a)(2) was amended to bring into uniformity the type size and spacing on all briefs filed under these rules. Practice under the previous rule allowed briefs to be filed with footnotes and quotations in different, usually smaller, type sizes and spacing. Use of such smaller type allowed some overly long briefs to circumvent the reasonable length requirements established by subdivision (a)(5) of this rule. The small type size and spacing of briefs allowed under the old rule also resulted in briefs that were difficult to read. The amended rule requires that all textual material wherever found in the brief will be printed in the same size type with the same spacing.

Subdivision (g) was amended to provide that notices of supplemental authority may call the court's attention, not only to decisions, rules, or statutes, but also to other authorities that have been discovered since the last brief was served. The amendment further provides that the notice may identify briefly the points on appeal to which the supplemental authorities are pertinent. This amendment continues to prohibit argument in such notices, but should allow the court and opposing counsel to identify more quickly those issues on appeal to which these notices are relevant.

1996 Amendment. Former subdivision (g) concerning notices of supplemental authority was transferred to new rule 9.225.

Court Commentary

1987. The commission expressed the view that the existing page limits for briefs, in cases other than those in the Supreme Court of Florida, are tailored to the "extraordinary" case rather than the "ordinary" case. In accordance with this view, the commission proposed that the page limits of briefs in appellate courts other than the supreme court be reduced. The appellate courts would, however, be given discretion to expand the reduced page limits in the "extraordinary" case.

2000. As to computer-generated briefs, strict font requirements were imposed in subdivision (a)(2) for at least three reasons:

First and foremost, appellate briefs are public records that the people have a right to inspect. The clear policy of the Florida Supreme Court is that advances in technology should benefit the people whenever possible by lowering financial and

physical barriers to public record inspection. The Court's eventual goal is to make all public records widely and readily available, especially via the Internet. Unlike paper documents, electronic documents on the Internet will not display properly on all computers if they are set in fonts that are unusual. In some instances, such electronic documents may even be unreadable. Thus, the Court adopted the policy that all computer-generated appellate briefs be filed in one of two fonts—either Times New Roman 14-point or Courier New 12-point—that are commonplace on computers with Internet connections. This step will help ensure that the right to inspect public records on the Internet will be genuinely available to the largest number of people.

Second, Florida's court system as a whole is working toward the day when electronic filing of all court documents will be an everyday reality. Though the technology involved in electronic filing is changing rapidly, it is clear that the Internet is the single most significant factor influencing the development of this technology. Electronic filing must be compatible with Internet standards as they evolve over time. It is imperative for the legal profession to become accustomed to using electronic document formats that are most consistent with the Internet.

Third, the proliferation of vast new varieties of fonts in recent years poses a real threat that page-limitation rules can be circumvented through computerized typesetting. The only way to prevent this is to establish an enforceable rule on standards for font use. The subject font requirements are most consistent with this purpose and the other two purposes noted above.

Subdivision (a)(2) was also amended to require that immediately after the certificate of service in computer-generated briefs, counsel (or the party if unrepresented) shall sign a certificate of compliance with the font standards set forth in this rule for computer-generated briefs.

RULE 9.225. NOTICE OF SUPPLEMENTAL AUTHORITY

A party may file ~~N~~notice~~s~~ of supplemental authority ~~may be filed~~ with the court before a decision has been rendered to call attention to decisions, rules, statutes, or other authorities that are significant to the issues raised and that have been discovered after service of the party's~~the~~ last brief ~~served~~ in the cause. The notice shall not contain argument, but may identify briefly the issues argued on appeal to which the supplemental authorities are pertinent if the notice is substantially in the form prescribed by rule 9.900(j). Copies of the supplemental authorities shall be attached to the notice.

Committee Notes

1996 Adoption. Formerly rule 9.210(g) with the addition of language that requires that supplemental authorities be significant to the issues raised.

2011 Amendment. When filing a notice of supplemental authority, attorneys and parties are encouraged to use pinpoint citations to direct the court to specific pages or sections of any cited supplemental authority.

RULE 9.310. STAY PENDING REVIEW

(a) Application. Except as provided by general law and in subdivision (b) of this rule, a party seeking to stay a final or ~~non-final~~nonfinal order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief. A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both.

(b) Exceptions.

(1) Money Judgments. If the order is a judgment solely for the payment of money, a party may obtain an automatic stay of execution pending review, without the necessity of a motion or order, by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest. Multiple parties having common liability may file a single bond satisfying the above criteria.

(2) Public Bodies; Public Officers. The timely filing of a notice shall automatically operate as a stay pending review, except in criminal cases, in administrative actions under the Administrative Procedure Act, or as otherwise provided by chapter 120, Florida Statutes, when the state, any public officer in an official capacity, board, commission, or other public body seeks review; provided that an automatic stay shall exist for 48 hours after the filing of the notice of appeal for public records and public meeting cases. On motion, the lower tribunal or the court may extend a stay, impose any lawful conditions, or vacate the stay.

(c) Bond.

(1) Defined. A good and sufficient bond is a bond with a principal and a surety company authorized to do business in the State of Florida, or cash deposited in the circuit court clerk's office. The lower tribunal shall have continuing jurisdiction to determine the actual sufficiency of any such bond.

(2) Conditions. The conditions of a bond shall include a condition to pay or comply with the order in full, including costs; interest; fees; and damages for delay, use, detention, and depreciation of property, if the review is dismissed or

order affirmed; and may include such other conditions as may be required by the lower tribunal.

(d) Judgment Against a Surety. A surety on a bond conditioning a stay submits to the jurisdiction of the lower tribunal and the court. The liability of the surety on such bond may be enforced by the lower tribunal or the court, after motion and notice, without the necessity of an independent action.

(e) Duration. A stay entered by a lower tribunal shall remain in effect during the pendency of all review proceedings in Florida courts until a mandate issues, or unless otherwise modified or vacated.

(f) Review. Review of orders entered by lower tribunals under this rule shall be by the court on motion.

Committee Notes

1977 Amendment. This rule replaces former rules 5.1 through 5.12. It implements the Administrative Procedure Act, section 120.68(3), Florida Statutes (Supp. 1976).

Subdivision (a) provides for obtaining a stay pending review by filing a motion in the lower tribunal, and clarifies the authority of the lower tribunal to increase or decrease the bond or deal with other conditions of the stay, even though the case is pending before the court. Exceptions are provided in subdivision (b). The rule preserves any statutory right to a stay. The court has plenary power to alter any requirements imposed by the lower tribunal. A party desiring exercise of the court's power may seek review by motion under subdivision (f) of this rule.

Subdivision (b)(1) replaces former rule 5.7. It establishes a fixed formula for determining the amount of the bond if there is a judgment solely for money. This formula shall be automatically accepted by the clerk. If an insurance company is a party to an action with its insured, and the judgment exceeds the insurance company's limits of liability, the rule permits the insurance company to supersede by posting a bond in the amount of its limits of liability, plus 15 percent. For the insured co-defendant to obtain a stay, bond must be posted for the portion of the judgment entered against the insured co-defendant plus 15 percent. The 15 percent figure was chosen as a reasonable estimate of 2 years' interest and costs, it being very likely that the stay would remain in effect for over 1 year.

Subdivision (b)(2) replaces former rule 5.12. It provides for an automatic stay without bond as soon as a notice invoking jurisdiction is filed by the state or any other public body, other than in criminal cases, which are covered by rule 9.140(c)(3), but the lower tribunal may vacate the stay or require a bond. This rule supersedes *Lewis v. Career Service Commission*, 332 So. 2d 371 (Fla. 1st DCA 1976).

Subdivision (c) retains the substance of former rule 5.6, and states the mandatory conditions of the bond.

Subdivision (d) retains the substance of former rule 5.11, with an additional provision for entry of judgment by the court so that if the lower tribunal is an agency, resort to an independent action is unnecessary.

Subdivision (e) is new and is intended to permit a stay for which a single bond premium has been paid to remain effective during all review proceedings. The stay is vacated by issuance of mandate or an order vacating it. There are no automatic stays of mandate under these rules, except for the state or a public body under subdivision (b)(2) of this rule, or if a stay as of right is guaranteed by statute. See, e.g., § 120.68(3), Fla. Stat. (Supp. 1976). This rule interacts with rule 9.340, however, so that a party has 15 days between rendition of the court's decision and issuance of mandate (unless issuance of mandate is expedited) to move for a stay of mandate pending review. If such motion is granted, any stay and bond previously in effect continues, except to the extent of any modifications, by operation of this rule. If circumstances arise requiring alteration of the terms of the stay, the party asserting the need for such change should apply by motion for the appropriate order.

Subdivision (f) provides for review of orders regarding stays pending appeal by motion in the court.

Although the normal and preferred procedure is for the parties to seek the stay in the lower court, this rule is not intended to limit the constitutional power of the court to issue stay orders after its jurisdiction has been invoked. It is intended that if review of the decision of a Florida court is sought in the United States Supreme Court, a party may move for a stay of mandate, but subdivision (e) does not apply in such cases.

1984 Amendment. Because of recent increases in the statutory rate of interest on judgments, subdivision (b)(1) was amended to provide that 2 years' interest on the judgment, rather than 15 percent of the judgment, be posted in

addition to the principal amount of the judgment. In addition, the subdivision was amended to cure a deficiency in the prior rule revealed by *Proprietors Insurance Co. v. Valsecchi*, 385 So. 2d 749 (Fla. 3d DCA 1980). As under the former rule, if a party has an obligation to pay interest only on the judgment, the bond required for that party shall be equal to the principal amount of the judgment plus 2 years' interest on it. In some cases, however, an insurer may be liable under its policy to pay interest on the entire amount of the judgment against its insured, notwithstanding that the judgment against it may be limited to a lesser amount by its policy limits. See *Highway Casualty Co. v. Johnston*, 104 So. 2d 734 (Fla. 1958). In that situation, the amended rule requires the insurance company to supersede the limited judgment against it by posting a bond in the amount of the judgment plus 2 years' interest on the judgment against its insured, so that the bond will more closely approximate the insurer's actual liability to the plaintiff at the end of the duration of the stay. If such a bond is posted by an insurer, the insured may obtain a stay by posting a bond in the amount of the judgment against it in excess of that superseded by the insurer. The extent of coverage and obligation to pay interest may, in certain cases, require an evidentiary determination by the court.

1992 Amendment. Subdivision (c)(1) was amended to eliminate the ability of a party posting a bond to do so through the use of 2 personal sureties. The committee was of the opinion that a meaningful supersedeas could be obtained only through the use of either a surety company or the posting of cash. The committee also felt, however, that it was appropriate to note that the lower tribunal retained continuing jurisdiction over the actual sufficiency of any such bond.

RULE 9.330. REHEARING; CLARIFICATION; CERTIFICATION; WRITTEN OPINION

(a) Time for Filing; Contents; Response.

(1) Time for Filing. A motion for rehearing, clarification, certification, or issuance of a written opinion may be filed within 15 days of an order or decision of the court or within such other time set by the court.

(2) Contents.

(A) Motion for Rehearing. A motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its order or decision~~, and~~. The motion shall not present issues not previously raised in the proceeding.

(B) Motion for Clarification. A motion for clarification shall state with particularity the points of law or fact in the court's order or decision that, in the opinion of the movant, are in need of clarification.

(C) Motion for Certification. A motion for certification shall set forth the case(s) that expressly and directly conflicts with the order or decision or set forth the issue or question to be certified as one of great public importance.

(D) Motion for Written Opinion. A motion for written opinion shall set forth the reasons that the party believes that a written opinion would provide:

(i) a legitimate basis for supreme court review;

(ii) an explanation for an apparent deviation from prior precedent; or

(iii) guidance to the parties or lower tribunal when:

a. the issue decided is also present in other cases pending before the court or another district court of appeal;

b. the issue decided is expected to recur in future cases;

c. there are conflicting decisions on the issue from lower tribunals;

d. the issue decided is one of first impression; or

e. the issue arises in a case in which the court has exclusive subject matter jurisdiction.

(3) Response. A response may be served within 10 days of service of the motion. ~~When a decision is entered without opinion, and a party believes that a written opinion would provide a legitimate basis for supreme court review, the party may request that the court issue a written opinion. If such a request is made by an attorney, it shall include the following statement:~~

> ~~I express a belief, based upon a reasoned and studied professional judgment, that a written opinion will provide a legitimate basis for supreme court review because (state with specificity the reasons why the supreme court would be likely to grant review if an opinion were written).~~
>
> ~~s/ _____~~
> ~~Attorney for _____~~
> ~~(Name of Party)~~
> ~~_____~~
> ~~_____~~
> ~~_____~~
> ~~_____~~
> ~~(address, e-mail address, and phone number)~~
> ~~_____~~
> ~~(Florida Bar number)~~

(b) Limitation. A party shall not file more than 1 motion for rehearing, ~~or for~~ clarification, ~~of decision and 1 motion for~~ certification, or written opinion with respect to a particular order or decision of the court. All motions filed under this rule with respect to a particular order or decision must be combined in a single document.

(c) Exception; Bond Validation Proceedings. A motion for rehearing or for clarification of an order or decision in proceedings for the validation of bonds or certificates of indebtedness as provided by rule 9.030(a)(1)(B)(ii) may be filed within 10 days of an order or decision or within such other time set by the court. A reply may be served within 5 days of service of the motion. The mandate shall issue forthwith if a timely motion has not been filed. A timely motion shall receive immediate consideration by the court and, if denied, the mandate shall issue forthwith.

(d) Exception; Review of District Court of Appeal Decisions. No motion for rehearing or clarification may be filed in the supreme court addressing:

(1) the dismissal of an appeal that attempts to invoke the court's mandatory jurisdiction under rule 9.030(a)(1)(A)(ii) when the appeal seeks to review a decision of a district court of appeal without opinion~~,~~; or

(2) the grant or denial of a request for the court to exercise its discretion to review a decision described in rule 9.030(a)(2)(A)~~,~~; or

(3) the dismissal of a petition for an extraordinary writ described in rule 9.030(a)(3) when such writ is used to seek review of a district court of appeal decision without opinion.

(e) Application. This rule applies only to appellate orders or decisions that adjudicate, resolve, or otherwise dispose of an appeal, original proceeding, or motion for appellate attorneys' fees. The rule is not meant to limit the court's inherent authority to reconsider nonfinal appellate orders and decisions.

Committee Notes

1977 Amendment. This rule replaces former rule 3.14. Rehearing now must be sought by motion, not by petition. The motion must be filed within 15 days of rendition and a response may be served within 10 days of service of the motion. Only 1 motion will be accepted by the clerk. Re-argument of the issues involved in the case is prohibited.

Subdivision (c) provides expedited procedures for issuing a mandate in bond validation cases, in lieu of those prescribed by rule 9.340.

Subdivision (d) makes clear that motions for rehearing or for clarification are not permitted as to any decision of the supreme court granting or denying discretionary review under rule 9.120.

2000 Amendment. The amendment has a dual purpose. By omitting the sentence "The motion shall not re-argue the merits of the court's order," the amendment is intended to clarify the permissible scope of motions for rehearing and clarification. Nevertheless, the essential purpose of a motion for rehearing remains the same. It should be utilized to bring to the attention of the court points of law or fact that it has overlooked or misapprehended in its decision, not to express mere disagreement with its resolution of the issues on appeal. The amendment also codifies the decisional law's prohibition against issues in post-decision motions that have not previously been raised in the proceeding.

2002 Amendment. The addition of the language at the end of subdivision (a) allows a party to request the court to issue a written opinion that would allow review to the supreme court, if the initial decision is issued without opinion. This language is not intended to restrict the ability of parties to seek rehearing or clarification of such decisions on other grounds.

2008 Amendment. Subdivision (d) has been amended to reflect the holding in *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006).

20__ Amendment. This rule has been amended to broaden the grounds upon which a party may permissibly seek a written opinion following the issuance of a per curiam affirmance. Subdivision (a)(2)(D)(iii)e. is intended to address situations in which a specific district court of appeal has exclusive subject matter jurisdiction over a type of case by operation of law, such as the First District Court of Appeal regarding workers' compensation matters.

RULE 9.331. DETERMINATION OF CAUSES IN A DISTRICT COURT OF APPEAL EN BANC

(a) En Banc Proceedings~~:~~; Generally. A majority of the participating judges of a district court of appeal ~~participating~~ may order that a proceeding pending before the court be determined en banc. If a majority of the participating judges order that a proceeding will be determined en banc, the district court of appeal shall promptly notify the parties that the proceeding will be determined en banc. A district court of appeal en banc shall consist of the judges in regular active service on the court. En banc hearings and rehearing shall not be ordered unless the case or issue is of exceptional importance or unless necessary to maintain uniformity in the court's decisions. The en banc decision shall be by a majority of the active judges actually participating and voting on the case. In the event of a tie vote, the panel decision of the district court of appeal shall stand as the decision of the court. If there is no panel decision, a tie vote will affirm the trial court decision.

(b) En Banc Proceedings by Divisions. If a district court of appeal chooses to sit in subject-matter divisions as approved by the ~~S~~supreme ~~C~~court, en banc determinations shall be limited to those regular active judges within the division to which the case is assigned, unless the chief judge determines that the case involves matters of general application and that en banc determination should be made by all regular active judges. However, in the absence of such determination by the chief judge, the full court may determine by an affirmative vote of three-fifths of the active judges that the case involves matters that should be heard and decided by the full court, in which event en banc determination on the merits of the case shall be made by an affirmative vote of a majority of the regular active judges participating.

(c) Hearings En Banc. A hearing en banc may be ordered only by a district court of appeal on its own motion. A party may not request an en banc hearing. A motion seeking the hearing shall be stricken.

(d) Rehearings En Banc.

(1) Generally. A rehearing en banc may be ordered by a district court of appeal on its own motion or on motion of a party. Within the time prescribed by rule 9.330, a party may move for an en banc rehearing solely on the grounds that the case or issue is of exceptional importance or that such consideration is necessary to maintain uniformity in the court's decisions. A

motion based on any other ground shall be stricken. A response may be served within 10 days of service of the motion. A vote will not be taken on the motion unless requested by a judge on the panel that heard the proceeding, or by any judge in regular active service on the court. Judges who did not sit on the panel are under no obligation to consider the motion unless a vote is requested.

(2) Required Statement for Rehearing En Banc. A rehearing en banc is an extraordinary proceeding. In every case the duty of counsel is discharged without filing a motion for rehearing en banc unless ~~one~~1 of the grounds set forth in (d)(1) is clearly met. If filed by an attorney, the motion shall contain either or both of the following statements:

> I express a belief, based on a reasoned and studied professional judgment, that the case or issue is of exceptional importance.
>
> Or
>
> I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of this court and that a consideration by the full court is necessary to maintain uniformity of decisions in this court (citing specifically the case or cases).

~~/s/~~ _____
_____
_____
~~Attorney for~~ _____
~~(name of party)~~
_____
_____
_____
~~(address, e-mail address, and phone number)~~
~~Florida Bar No.~~ _____

(3) Disposition of Motion for Rehearing En Banc. A motion for rehearing en banc shall be disposed of by order. If rehearing en banc is granted, the court may limit the issues to be reheard, require the filing of additional briefs, ~~and may~~ require additional argument, or any combination of those options.

Committee Notes

1982 Amendment. This rule is patterned in part after the en banc rule of the United States Court of Appeals for the Fifth and Eleventh Circuits. The rule is an essential part of the philosophy of our present appellate structure because the supreme court no longer has jurisdiction to review intra-district conflict. The new appellate structural scheme requires the district courts of appeal to resolve conflict within their respective districts through the en banc process. By so doing, this should result in a clear statement of the law applicable to that particular district.

Subdivision (a) provides that a majority vote of the active and participating members of the district court is necessary to set a case for hearing en banc or rehearing en banc. The issues on the merits will be decided by a simple majority of the judges actually participating in the en banc process, without regard to recusals or a judge's absence for illness. All judges in regular active service, not excluded for cause, will constitute the en banc panel. Counsel are reminded that en banc proceedings are extraordinary and will be ordered only in the enumerated circumstances. The ground, maintenance of uniformity in the court's decisions, is the equivalent of decisional conflict as developed by supreme court precedent in the exercise of its conflict jurisdiction. The district courts are free, however, to develop their own concept of decisional uniformity. The effect of an en banc tie vote is self-explanatory, but such a vote does suggest that the matter is one that should be certified to the supreme court for resolution.

Subdivision (b) provides that hearings en banc may not be sought by the litigants; such hearings may be ordered only by the district court sua sponte.

Subdivision (c)(1) governs rehearings en banc. A litigant may apply for an en banc rehearing only on the ground that intra-district conflict of decisions exists, and then only in conjunction with a timely filed motion for rehearing under rule 9.330. The en banc rule does not allow for a separate motion for an en banc rehearing nor does it require the district court to enter a separate order on such request. Once a timely motion for rehearing en banc is filed in conjunction with a traditional petition for rehearing, the 3 judges on the initial panel must consider the motion. A vote of the entire court may be initiated by any single judge on the panel. Any other judge on the court may also trigger a vote by the entire court. Nonpanel judges are not required to review petitions for rehearing en banc until a vote is requested by another judge, although all petitions for rehearing en banc should be circulated to nonpanel judges. The court may on its own motion order a rehearing en banc.

Subdivision (c)(2) requires a signed statement of counsel certifying a bona fide belief that an en banc hearing is necessary to ensure decisional harmony within the district.

Subdivision (c)(3) is intended to prevent baseless motions for en banc rehearings from absorbing excessive judicial time and labor. The district courts will not enter orders denying motions for en banc rehearings. If a rehearing en banc is granted, the court may order briefs from the parties and set the case for oral argument.

1992 Amendment. Subdivision (c)(3) was amended to correct a linguistic error found in the original subdivision.

Court Commentary

1994 Amendment. The intent of this amendment is to authorize courts sitting in subject-matter divisions to have cases that are assigned to a division decided en banc by that division without participation by the regular active judges assigned to another division. The presumption is that en banc consideration will usually be limited to the division in which the case is pending. However, recognizing that in exceptional instances it may be preferable for the matter under review to be considered by the whole court, the case can be brought before all regular active judges by the chief judge or by an affirmative vote of three-fifths of the regular active judges on the whole court. Once the matter is before the whole court en banc, a vote on the merits will be by a majority of the regular active judges as now provided in rule 9.331.

RULE 9.350. DISMISSAL OF CAUSES

(a) Dismissal of Causes When Settled. When any cause pending in the court is settled before a decision on the merits, the parties shall immediately notify the court by filing a signed stipulation for dismissal.

(b) Voluntary Dismissal. A proceeding of an appellant or a petitioner may be dismissed before a decision on the merits by filing a notice of dismissal with the clerk of the court without affecting the proceedings filed by joinder or cross-appeal; provided that dismissal shall not be effective until 10 days after ~~filing~~service of the notice of appeal or until 10 days after the time prescribed by rule 9.110(b), whichever is later. In a proceeding commenced under rule 9.120, dismissal shall not be effective until 10 days after the serving of the notice to invoke discretionary jurisdiction or until 10 days after the time prescribed by rule 9.120(b), whichever is later.

(c) Clerk's Duty. When a proceeding is dismissed under this rule, the clerk of the court shall notify the clerk of the lower tribunal.

(d) Automatic Stay. The filing of a stipulation for dismissal or notice of dismissal automatically stays that portion of the proceedings for which a dismissal is being sought, pending further order of the court.

Committee Notes

1977 Amendment. Subdivision (a) retains the substance of former rule 3.13(a). On the filing of a stipulation of dismissal, the clerk of the court will dismiss the case as to the parties signing the stipulation.

Subdivision (b) is intended to allow an appellant to dismiss the appeal but a timely perfected cross-appeal would continue. A voluntary dismissal would not be effective until after the time for joinder in appeal or cross-appeal. This limitation was created so that an opposing party desiring to have adverse rulings reviewed by a cross-appeal cannot be trapped by a voluntary dismissal by the appellant after the appeal time has run, but before an appellee has filed the notice of joinder or cross-appeal.

Subdivision (c) retains the substance of former rule 3.13(c).

2014 Amendment. The addition of subdivision (d) clarifies that the filing of a stipulation or notice of dismissal does not itself dismiss the cause, while now providing for an automatic stay once a stipulation or notice is filed. The amendment is intended to limit any further litigation regarding matters that are settled or may be voluntarily dismissed, until the court determines whether to recognize the dismissal.

RULE 9.360. PARTIES

(a) Joinder for Realignment as Appellant or Petitioner. An ~~party to the cause in the lower tribunal~~appellee or respondent who desires to ~~join in a proceeding~~realign as ~~a petitioner or~~an appellant or petitioner shall serve a notice ~~to that effect~~of joinder no later than the latest of the following:

(~~i~~1) within 10 days of service of a timely filed ~~petition or~~ notice of appeal or petition;

(~~ii~~2) within the time prescribed for filing a notice of appeal; or

(~~iii~~3) within the time prescribed in rule 9.100(c).

The notice of joinder, accompanied by any filing fees prescribed by law, shall be filed either before service or immediately thereafter ~~in the same manner as the petition or notice of appeal~~. The body of the notice shall set forth the proposed new caption. Upon filing of the notice and payment of the fee, the clerk shall change the caption to reflect the realignment of the parties in the notice.

(b) Attorneys~~,~~; Representatives~~,~~; ~~and~~ Guardians Ad Litem. Attorneys, representatives, and guardians ad litem in the lower tribunal shall retain their status in the court unless others are duly appointed or substituted; however, for limited representation proceedings under Florida Family Law Rule of Procedure 12.040, representation terminates upon the filing of a notice of completion titled "Termination of Limited Appearance" pursuant to rule 12.040(c).

(c) Substitution of Parties.

(1) If substitution of a party is necessary for any reason, the court may so order on its own motion or that of a party.

(2) Public officers as parties in their official capacities may be described by their official titles rather than by name. Their successors in office shall be automatically substituted as parties.

(3) If a party dies while a proceeding is pending and that party's rights survive, the court may order the substitution of the proper party on its own motion or that of any interested person.

(4) If a person entitled to file a notice of appeal dies before filing and that person's rights survive, the notice may be filed by the personal representative, the person's attorney ~~of record~~, or, if none, by any interested person. Following filing, the proper party shall be substituted.

Committee Notes

1977 Amendment. This rule is intended as a simplification of the former rules with no substantial change in practice.

Subdivision (a) is a simplification of the provisions of former rule 3.11(b), with modifications recognizing the elimination of assignments of error.

Subdivision (b) retains the substance of former rule 3.11(d).

Subdivision (c)(1) substantially simplifies the procedure for substituting parties. This change is in keeping with the overall concept of this revision that these rules should identify material events that may or should occur in appellate proceedings and specify in general terms how that event should be brought to the attention of the court and how the parties should proceed. The manner in which these events shall be resolved is left to the courts, the parties, the substantive law, and the circumstances of the particular case.

Subdivision (c)(2) is new and is intended to avoid the necessity of motions for substitution if the person holding a public office is changed during the course of proceedings. It should be noted that the style of the case does not necessarily change.

Subdivision (c)(4) is new, and is intended to simplify the procedure and avoid confusion if a party dies before an appellate proceeding is instituted. Substitutions in such cases are to be made according to subdivision (c)(1).

20__ Amendment. The title of subdivision (a) was amended to clarify that the joinder permitted by this rule is only for the purpose of realigning existing parties to the appeal. The required notice pursuant to subdivision (a) retains the original terminology and continues to be referred to as a "notice of joinder" consistent with the existing statutory scheme to collect a fee for filing such a notice. Subdivision (a) was also amended to remove the prior directions for filing the notice "in the same manner as the petition or notice of appeal," so that a notice of realignment is now properly filed in the court.

RULE 9.370. AMICUS CURIAE

(a) When Permitted. An amicus curiae may file a brief only by leave of court. A motion for leave to file must state the movant's interest, the particular issue to be addressed, how the movant can assist the court in the disposition of the case, and whether all parties consent to the filing of the amicus brief.

(b) Contents and Form. An amicus brief must comply with ~~R~~rule 9.210(b) but shall omit a statement of the case and facts and may not exceed 20 pages. The cover must identify the party or parties supported. An amicus brief must include a concise statement of the identity of the amicus curiae and its interest in the case.

(c) Time for Service. An amicus curiae must serve its brief no later than 10 days after the first brief, petition, or response of the party being supported is filed. An amicus curiae that does not support either party must serve its brief no later than 10 days after the initial brief or petition is filed. A court may grant leave for later service, specifying the time within which an opposing party may respond. The service of an amicus ~~curiae~~ brief does not alter or extend the briefing deadlines for the parties. An amicus curiae may not file a reply brief. Leave of court is required to serve an amicus brief in support of or opposition to a motion for rehearing, rehearing en banc, or for certification to the supreme court.

(d) Notice of Intent to File Amicus Brief in the Supreme Court of Florida. When a party has invoked the discretionary jurisdiction of the supreme court, an amicus curiae may file a notice with the court indicating its intent to seek leave to file an amicus brief on the merits should the court accept jurisdiction. The notice shall state briefly why the case is of interest to the amicus curiae, but shall not contain argument. The body of the notice shall not exceed ~~one~~1 page.

Committee Notes

1977 Amendment. This rule replaces former rule 3.7(k) and expands the circumstances in which amicus curiae briefs may be filed to recognize the power of the court to request amicus curiae briefs.

2008 Amendment. Subdivision (d) was added to establish a procedure for an amicus curiae to expeditiously inform the supreme court of its intent to seek leave to file an amicus brief on the merits should the court accept jurisdiction. This

rule imposes no obligation on the supreme court to delay its determination of jurisdiction. Thus, an amicus curiae should file its notice as soon as possible after the filing of the notice to invoke discretionary jurisdiction of the supreme court. The filing of a notice under subdivision (d) is optional and shall not relieve an amicus curiae from compliance with the provisions of subdivision (a) of this rule if the court accepts jurisdiction.

RULE 9.380. NOTICE OF RELATED CASE OR ISSUE

A party is permitted to file a notice of related case or issue informing the court of a pending, related case arising out of the same proceeding in the lower tribunal or involving a similar issue of law. The notice shall only include information identifying the related case. The notice shall not contain argument and shall be in substantially the format prescribed by rule 9.900(k).

RULE 9.400. COSTS AND ATTORNEYS' FEES

(a) Costs. Costs shall be taxed in favor of the prevailing party unless the court orders otherwise. Taxable costs shall include:

(1) fees for filing and service of process;

(2) charges for preparation of the record and any hearing or trial transcripts necessary to determine the proceeding;

(3) bond premiums; and

(4) other costs permitted by law.

Costs shall be taxed by the lower tribunal on a motion served no later than 45 days after rendition of the court's order. If an order is entered either staying the issuance of or recalling a mandate, the lower tribunal is prohibited from taking any further action on costs pending the issuance of a mandate or further order of the court.

(b) Attorneys' Fees. With the exception of motions filed pursuant to rule 9.410(b), a motion for attorneys' fees shall state the grounds on which recovery is sought and shall be served not later than:

(1) in appeals, the time for service of the reply brief; ~~or~~

(2) in original proceedings, the time for service of the petitioner's reply to the response to the petition~~.~~;

(3) in discretionary review proceedings commenced under rule 9.030(a)(2)(A) in which jurisdictional briefs are permitted, the time for serving the respondent's brief on jurisdiction, or if jurisdiction is accepted, the time for serving the reply brief; or

(4) in discretionary review proceedings in which jurisdiction is invoked under rule 9.030(a)(2)(A)(v), not later than 5 days after the filing of the notice, or if jurisdiction is accepted, the time for serving the reply brief.

The assessment of attorneys' fees may be remanded to the lower tribunal. If attorneys' fees are assessed by the court, the lower tribunal may enforce payment.

(c) Review. Review of orders rendered by the lower tribunal under this rule shall be by motion filed in the court within 30 days of rendition.

Committee Notes

1977 Amendment. Subdivision (a) replaces former rules 3.16(a) and (b). It specifies allowable cost items according to the current practice. Item (3) is not intended to apply to bail bond premiums. Item (4) is intended to permit future flexibility. This rule provides that the prevailing party must move for costs in the lower tribunal within 30 days after issuance of the mandate.

Subdivision (b) retains the substance of former rule 3.16(e). The motion for attorneys' fees must contain a statement of the legal basis for recovery. The elimination of the reference in the former rule to attorneys' fees "allowable by law" is not intended to give a right to assessment of attorneys' fees unless otherwise permitted by substantive law.

Subdivision (c) replaces former rules 3.16(c) and (d). It changes from 20 days to 30 days the time for filing a motion to review an assessment of costs or attorneys' fees by a lower tribunal acting under order of the court.

20__ Amendment. Subdivision (b) is amended to specify the time limit for serving a motion for attorneys' fees in a discretionary review proceeding in the Supreme Court of Florida. Absent a statement to the contrary in the motion, any timely motion for attorneys' fees, whether served before or after the acceptance of jurisdiction, will function to request attorneys' fees incurred in both the jurisdiction and merits phases of the proceeding. As a result, generally only 1 motion per party per proceeding is contemplated.

RULE 9.410. SANCTIONS

(a) Court's Motion. After 10 days' notice, on its own motion, the court may impose sanctions for any violation of these rules, or for the filing of any proceeding, motion, brief, or other ~~paper~~document that is frivolous or in bad faith. Such sanctions may include reprimand, contempt, striking of briefs or pleadings, dismissal of proceedings, costs, attorneys' fees, or other sanctions.

(b) Motion by a Party.

(1) Applicability. Any contrary requirements in these rules notwithstanding, the following procedures apply to a party seeking an award of attorneys' fees as a sanction against another party or its counsel pursuant to general law.

(2) Proof of Service. A motion seeking attorneys' fees as a sanction shall include an initial certificate of service, pursuant to rule 9.420(d) and subdivision (b)(3) of this rule, and a certificate of filing, pursuant to subdivision (b)(4) of this rule.

(3) Initial Service. A copy of a motion for attorneys' fees as a sanction must initially be served only on the party against whom sanctions are sought. That motion shall be served no later than the time for serving any permitted response to a challenged ~~paper~~document or, if no response is permitted as of right, within 15 days after a challenged ~~paper~~document is served or a challenged claim, defense, contention, allegation, or denial is made at oral argument. A certificate of service that complies with rule 9.420(d) and that reflects service pursuant to this subdivision shall accompany the motion and shall be taken as prima facie proof of the date of service pursuant to this subdivision. A certificate of filing pursuant to subdivision (b)(4) of this rule shall also accompany the motion, but should remain undated and unsigned at the time of the initial service pursuant to this subdivision.

(4) Filing and Final Service. If the challenged ~~paper~~document, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected within 21 days after initial service of the motion under subdivision (b)(3), the movant may file the motion for attorneys' fees as a sanction with the court (~~a~~A) no later than the time for service of the reply brief, if applicable, or (~~b~~B) no later than 45 days after initial service of the motion, whichever is later.

The movant shall serve upon all parties the motion filed with the court. A certificate of filing ~~which~~that complies in substance with the form below, and which shall be dated and signed at the time of final service pursuant to this subdivision, shall be taken as prima facie proof of such final service.

I certify that on .....(date)....., a copy of this previously served motion has been furnished to .....(court)..... by .....hand delivery/mail/other delivery source..... and has been furnished to .....(name or names)..... by .....hand delivery/mail/other delivery source.....

~~/s/ _____~~
~~Attorney for …..(name of party)…..~~
~~…..(address, e-mail address, and phone number)…..~~
~~Florida Bar No. ……..~~

(5) Response. A party against whom sanctions are sought may serve 1 response to the motion within 10 days of the final service of the motion. The court may shorten or extend the time for response to the motion.

Committee Notes

1977 Amendment. This rule replaces former rule 3.17. This rule specifies the penalties or sanctions that generally are imposed, but does not limit the sanctions available to the court. The only change in substance is that this rule provides for 10 days notice to the offending party before imposition of sanctions.

2010 Amendment. Subdivision (b) is adopted to make rule 9.410 consistent with section 57.105, Florida Statutes (2009).

RULE 9.420. FILING; SERVICE OF COPIES; COMPUTATION OF TIME

(a) Filing.

(1) Generally. Filing may be accomplished in a manner in conformity with the requirements of Florida Rule of Judicial Administration 2.525.

(2) Inmate Filing. The filing date of a document filed by a pro se inmate confined in an institution shall be presumed to be the date it is stamped for filing by the clerk of the court, except as follows:

(A) ~~T~~the document shall be presumed to be filed on the date the inmate places it in the hands of an institutional official for mailing if the institution has a system designed for legal mail, the inmate uses that system, and the institution's system records that date~~,~~; or

(B) ~~T~~the document shall be presumed to be filed on the date reflected on a certificate of service contained in the document if the certificate is in substantially the form prescribed by subdivision (d)(1) of this rule and either:

(i) the institution does not have a system designed for legal mail; or

(ii) the inmate used the institution's system designed for legal mail, if any, but the institution's system does not provide for a way to record the date the inmate places the document in the hands of an institutional official for mailing.

(b) Service.

(1) By a Party or Amicus Curiae. All documents shall be filed either before service or immediately thereafter. A copy of all documents filed under these rules shall, before filing or immediately thereafter, be served on each of the parties. The lower tribunal, before the record is transmitted, or the court, on motion, may limit the number of copies to be served.

(2) By the Clerk of Court. A copy of all orders and decisions shall be transmitted, in the manner set forth for service in rule 9.420(c), by the clerk of

the court to all parties at the time of entry of the order or decision, without first requiring payment of any costs for the copies of those orders and decisions. Prior to the court's entry of an order or decision, the court may require that the parties furnish the court with stamped, addressed envelopes for ~~transmittal~~transmission of the order or decision.

(c) Method of Service. Service of every document filed in a proceeding governed by these rules (including any briefs, motions, notices, responses, petitions, and appendices) shall be made in conformity with the requirements of Florida Rule of Judicial Administration 2.516, except that ~~the initial document filed in a proceeding governed by these rules (including any notice to invoke jurisdiction, notice of appeal, or petition for an original writ)~~petitions invoking the original jurisdiction of the court under rule 9.030(a)(3), (b)(3), or (c)(3) shall be served both by e-mail pursuant to rule 2.516(b)(1) and in paper format pursuant to rule 2.516(b)(2).

(d) Proof of Service. A certificate of service by an attorney that complies in substance with the requirements of Florida Rule of Judicial Administration 2.516(f) and a certificate of service by a pro se party that complies in substance with the appropriate form below shall be taken as prima facie proof of service in compliance with these rules. The certificate shall specify the party each attorney represents.

(1) By Pro Se Inmate:

I certify that I placed this document in the hands of .....(here insert name of institution official)..... for mailing to .....(here insert name or names and addresses used for service)..... on .....(date).....

_____
…..(name)…..
…..(address)…..
…..(prison identification number)…..

(2) By Other Pro Se Litigants:

I certify that a copy hereof has been furnished to .....(here insert name or names and addresses used for service)..... by .....(e-mail) (delivery) (mail)..... on .....(date).....

_____

…..(name)…..
…..(address)…..
…..(phone number)…...

(e) Computation. Computation of time shall be governed by Florida Rule of Judicial Administration 2.514.

Committee Notes

1977 Amendment. Subdivision (a) replaces former rule 3.4(a). The last sentence of former rule 3.4(a) was eliminated as superfluous. The filing of papers with a judge or justice is permitted at the discretion of the judge or justice. The advisory committee recommends that the ability to file with a judge or justice be exercised only if necessary, and that care be taken not to discuss in any manner the merits of the document being filed. See Fla. Code Prof. Resp., DR 7-110(B) (now R. Regulating Fla. Bar 4-3.5(b)); Fla. Code Jud. Conduct, Canon 3(A)(4).

Subdivision (b) replaces and simplifies former rules 3.4(b)(5) and 3.6(i)(3). The substance of the last sentence of former rule 3.4(b)(5) is preserved. It should be noted that except for the notices or petitions that invoke jurisdiction, these rules generally provide for service by a certain time rather than filing. Under this provision filing must be done before service or immediately thereafter. Emphasis has been placed on service so as to eliminate the hardship on parties caused by tardy service under the former rules and to eliminate the burden placed on the courts by motions for extension of time resulting from such tardy service. It is anticipated that tardy filing will occur less frequently under these rules than tardy service under the former rules because the parties are unlikely to act in a manner that would irritate the court. The manner for service and proof thereof is provided in subdivision (c).

Subdivision (d) replaces former rule 3.4(b)(3) and provides that if a party or clerk is required or permitted to do an act within a prescribed time after service, 5 days (instead of 3 days under the former rule) shall be added to the time if service is by mail.

Subdivision (e) replaces former rule 3.18 with no substantial change. “Holiday” is defined to include any day the clerk’s office is closed whether or not done by order of the court. The holidays specifically listed have been included, even though many courts do not recognize them as holidays, to not place a burden on practitioners to check whether an individual court plans to observe a particular holiday.

1980 Amendment. Subdivision (b) was amended to provide that either the lower tribunal or the court may limit the number of copies to be served. The rule contemplates that the number of copies may be limited on any showing of good cause, for example, that the number of copies involved is onerous or that the appeal involves questions with which some parties have no interest in the outcome or are so remotely involved as not to justify furnishing a complete record to them at appellant's initial cost. The availability of the original record at the clerk's office of the lower tribunal until due at the appellate court is a factor to be considered.

2014 Amendment. Subdivision (a)(2) has been completely rewritten to conform this rule to *Thompson v. State*, 761 So. 2d 324 (Fla. 2000), and the federal mailbox rule adopted in *Haag v. State*, 591 So. 2d 614 (Fla. 1992). The amendment clarifies that an inmate is required to use the institutional system designed for legal mail, if there is one, in order to receive the benefits of the mailbox rule embodied in this subdivision. If the institution's legal mail system records the date the document is provided to institutional officials for mailing (e.g. Rule 33-210.102(8), Florida Administrative Code (2010)), that date is presumed to be the date of filing. If the institution's legal mail system does not record the date the document is provided to institutional officials—or if the institution does not have a system for legal mail at all—the date of filing is presumed to be the date reflected on the certificate of service contained in the document, if the certificate of service is in substantial conformity with subdivision (d)(1) of this rule. If the inmate does not use the institution's legal mail system when one exists—or if the inmate does not include in the document a certificate of service when the institution does not have a legal mail system—the date the document is filed is presumed to be the date it is stamped for filing by the clerk of the court.

Court Commentary

2000. Subdivision (a)(2) codifies the Florida Supreme Court's holding in *Thompson v. State*, 761 So. 2d 324 (Fla. 2000).

RULE 9.430. PROCEEDINGS BY INDIGENTS

(a) Appeals. A party who has the right to seek review by appeal without payment of costs shall, unless the court directs otherwise, file a signed application for determination of indigent status with the clerk of the lower tribunal, using an application form approved by the ~~S~~supreme ~~C~~court for use by circuit court clerks. The clerk of the lower tribunal's reasons for denying the application shall be stated in writing and are reviewable by the lower tribunal. Review of decisions by the lower tribunal shall be by motion filed in the court.

(b) Original Proceedings. A party who seeks review by an original proceeding under rule 9.100 without the payment of costs shall, unless the court directs otherwise, file with the court a motion to proceed in forma pauperis. If the motion is granted, the party may proceed without further application to the court.

(c) Incarcerated Parties.

(1) Presumptions. In the absence of evidence to the contrary, a court may, in its discretion, presume that:

(A) assertions in an application for determination of indigent status filed by an incarcerated party under this rule are true~~,~~; and

(B) in cases involving criminal or collateral criminal proceedings, an incarcerated party who has been declared indigent for purposes of proceedings in the lower tribunal remains indigent.

(2) Non-Criminal Proceedings. Except in cases involving criminal or collateral proceedings, an application for determination of indigent status filed under this rule by a person who has been convicted of a crime and is incarcerated for that crime or who is being held in custody pending extradition or sentencing shall contain substantially the same information as required by an application form approved by the ~~S~~supreme ~~C~~court for use by circuit court clerks. The determination of whether the case involves an appeal from an original criminal or collateral proceeding depends on the substance of the issues raised and not on the form or title of the petition or complaint. In these non-criminal cases, the clerk of the lower tribunal shall require the party to make a partial prepayment of court costs or fees and to make continued partial payments until the full amount is paid.

(d) Parties in Juvenile Dependency and Termination of Parental Rights Cases; Presumption. In cases involving dependency or termination of parental rights, a court may, in its discretion, presume that any party who has been declared indigent for purposes of proceedings by the lower tribunal remains indigent, in the absence of evidence to the contrary.

Committee Notes

1977 Adoption. This rule governs the manner in which an indigent may proceed with an appeal without payment of fees or costs and without bond. Adverse rulings by the lower tribunal must state in writing the reasons for denial. Provision is made for review by motion. Such motion may be made without the filing of fees as long as a notice has been filed, the filing of fees not being jurisdictional. This rule is not intended to expand the rights of indigents to proceed with an appeal without payment of fees or costs. The existence of such rights is a matter governed by substantive law.

2008 Amendment. Subdivision (b) was created to differentiate the treatment of original proceedings from appeals under this rule. Each subdivision was further amended to comply with statutory amendments to section 27.52, Florida Statutes, the legislature's enactment of section 57.082, Florida Statutes, and the Florida Supreme Court's opinion in *In re Approval of Application for Determination of Indigent Status Forms for Use by Clerks*, 910 So. 2d 194 (Fla. 2005).

RULE 9.500. ADVISORY OPINIONS TO GOVERNOR

(a) Filing. A request by the governor for an advisory opinion from the justices of the supreme court on a question affecting gubernatorial powers and duties shall be in writing. The request shall be filed with the clerk of the supreme court.

(b) Procedure. As soon as practicable after the filing of the request, the justices shall determine whether the request is within the purview of article IV, section 1(c)~~,~~ of the Florida Constitution, and proceed as follows:

(1) If 4 justices concur that the question is not within ~~that purview~~the purview of article IV, section 1(c) of the Florida Constitution, the governor shall be advised forthwith in writing and a copy shall be filed in the clerk's office.

(2) If the request is within ~~that~~the purview of article IV, section 1(c) of the Florida Constitution, the court ~~may~~shall permit ~~persons whose substantial interests may be affected to be heard~~, subject to its rules of procedure, interested persons to be heard on the questions presented through briefs, oral argument, or both. ~~If the court determines to receive briefs or hear oral argument, it shall set the time for filing briefs, the date of argument, and the time allotted. The court may appoint amicus curiae and prescribe their duties.~~

(3) The justices shall file their opinions in the clerk's office not earlier than 10 days from the filing and docketing of the request, unless in their judgment the delay would cause public injury. The governor shall be advised forthwith in writing. ~~Copies shall be delivered to the governor.~~

Committee Notes

1977 Amendment. This rule simplifies former rule 2.1(h) without material change.

RULE 9.510. ADVISORY OPINIONS TO ATTORNEY GENERAL

(a) Filing. A request by the attorney general for an advisory opinion from the justices of the supreme court concerning the validity of an initiative petition for the amendment of the Florida Constitution shall be in writing. The request shall be filed with the clerk of the supreme court.

(b) Contents of Request. In addition to the language of the proposed amendment, the request referenced in subdivision (a) must contain the following information:

(1) the name and address of the sponsor of the initiative petition;

(2) the name and address of the sponsor's attorney, if the sponsor is represented;

(3) a statement as to whether the sponsor has obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot;

(4) if the sponsor has not obtained the requisite number of signatures on the initiative petition to have the proposed amendment put on the ballot, the current status of the signature-collection process;

(5) the date of the election during which the sponsor is planning to submit the proposed amendment to the voters;

(6) the last possible date that the ballot for the target election can be printed in order to be ready for the election;

(7) a statement identifying the date by which the Financial Impact Statement will be filed, if the Financial Impact Statement is not filed concurrently with the request; and

(8) the names and complete mailing addresses of all of the parties who are to be served.

(c) Procedure. ~~The justices must initially determine whether the request is within the purview of article V, section 3(b)(10), Florida Constitution, and proceed as follows:~~

~~(1) If 4 justices concur that the request is not within that purview, the attorney general will be advised immediately in writing and a copy will be filed in the clerk's office.~~

~~(2)~~(1) ~~If the request is within the purview, t~~The court ~~may~~shall permit, ~~the attorney general and other interested persons to be heard~~subject to its rules of procedure, interested persons to be heard on the questions presented through briefs, oral argument, or both. ~~If the court decides to receive briefs or hear oral argument, it will establish the time for filing briefs, the date of argument, and the time allotted.~~

(2) The justices shall render their opinions no later than April 1 of the year in which the initiative is to be submitted to the voters pursuant to article XI, section 5 of the Florida Constitution.

Committee Notes

1980 Amendment. This rule has been replaced in its entirety by new Rule 9.150.

RULE 9.700. MEDIATION RULES

(a) Applicability. Rules 9.700–9.740 apply to all appellate courts, including circuit courts exercising jurisdiction under rule 9.030(c), district courts of appeal, and the ~~S~~supreme ~~C~~court ~~of Florida~~.

(b) Referral. The court, upon its own motion or upon motion of a party, may refer a case to mediation at any time. Such motion from a party shall contain a certificate that the movant has consulted opposing counsel or unrepresented party and that the movant is authorized to represent that opposing counsel or unrepresented party:

(1) has no objection;

(2) objects and cites the specific reasons for objection; or

(3) will promptly file an objection.

(c) Time Frames for Mediation. The first mediation conference shall be commenced within 45 days of referral by the court, unless the parties agree to postpone mediation until after the period for filing briefs has expired. The mediation shall be completed within 30 days of the first mediation conference. These times may be modified by order of the court.

(d) Tolling of Times. Unless otherwise ordered, or upon agreement of the parties to postpone mediation until after the expiration of time for filing the appellate briefs, all times under these rules for the processing of cases shall be tolled for the period of time from the referral of a case to mediation until mediation ends pursuant to section 44.404, Florida Statutes. The court, by administrative order, may provide for additional tolling of deadlines. A motion for mediation filed by a party within 30 days of the notice of appeal shall toll all deadlines under these rules until the motion is ruled upon by the court.

(e) Motion to Dispense with Mediation. A motion to dispense with mediation may be served not later than 10 days after the discovery of the facts ~~which~~that constitute the grounds for the motion, if:

(1) the order violates rule 9.710; or

(2) other good cause is shown.

RULE 9.710. ELIGIBILITY FOR MEDIATION

Any case filed may be referred to mediation at the discretion of the court, but under no circumstances may the following categories of actions be referred:

~~**(a) Criminal and post-conviction cases.**~~

~~**(b) Habeas corpus and extraordinary writs.**~~

~~**(c) Civil or criminal contempt.**~~

~~**(d) Involuntary civil commitments of sexually violent predators.**~~

~~**(e) Collateral criminal cases.**~~

~~**(f) Other matters as may be specified by administrative order.**~~

(a) criminal and postconviction cases;

(b) habeas corpus and extraordinary writs;

(c) civil or criminal contempt;

(d) involuntary civil commitments of sexually violent predators;

(e) collateral criminal cases; and

(f) other matters as may be specified by administrative order.

RULE 9.720. MEDIATION PROCEDURES

(a) Appearance. If a party to mediation is a public entity required to conduct its business pursuant to chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. Otherwise, unless changed by order of the court, a party is deemed to appear at a mediation conference if the following persons are physically present or appear electronically upon agreement of the parties:

(1) ~~T~~the party or its representative having full authority to settle without further consultation~~.~~;

(2) ~~T~~the party's trial or appellate counsel of record, if any. If a party has more than ~~one~~1 counsel, the appearance of only ~~one~~1 counsel is required~~.~~; and

(3) ~~A~~a representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle without further consultation.

(b) Sanctions. If a party fails to appear at a duly noticed mediation conference without good cause, the court, upon motion of a party or upon its own motion, may impose sanctions, including, but not limited to, any or all of the following, against the party failing to appear:

(1) ~~A~~an award of mediator and attorneys' fees and other costs or monetary sanctions~~.~~;

(2) ~~T~~the striking of briefs~~.~~;

(3) ~~E~~elimination of oral argument~~.~~; or

(4) ~~D~~dismissal or summary affirmance.

(c) Scheduling and Adjournments. Consistent with the time frames established in rule 9.700(c) and after consulting with the parties, the mediator shall set the initial conference date. The mediator may adjourn the mediation conference

at any time and may set times for reconvening the adjourned conference. The mediator shall notify the parties in writing of the date, time, and place of any mediation conference, except no further notification is required for parties present at an adjourned mediation conference.

(d) Control of Procedures. The mediator shall at all times be in control of the procedures to be followed in the mediation.

(e) Communication with Parties. The mediator may meet and consult privately with any party or parties or their counsel. Counsel shall be permitted to communicate privately with their clients.

(f) Party Representative Having Full Authority to Settle. Except as provided in subdivision (a) as to public entities, a "party or its representative having full authority to settle" shall mean the final decision maker with respect to all issues presented by the case who has the legal capacity to execute a binding settlement agreement on behalf of the party. Nothing herein shall be deemed to require any party or party representative who appears at a mediation conference in compliance with this rule to enter into a settlement agreement.

(g) Certificate of Authority. Unless otherwise stipulated by the parties, each party, 10 days prior to appearing at a mediation conference, shall file with the court and serve upon all parties a written notice identifying the person or persons who will be attending the mediation conference as a party representative or as an insurance carrier representative, and confirming that those persons have the authority required by this rule.

Committee Note

2014 Amendment. The amendment adding subdivisions (f) and (g) is intended to make this rule consistent with the November 2011 amendments to Florida Rule of Civil Procedure 1.720.

RULE 9.800. UNIFORM CITATION SYSTEM

This rule applies to all legal documents, including court opinions. Except for citations to case reporters, all citation forms should be spelled out in full if used as an integral part of a sentence either in the text or in footnotes. Abbreviated forms as shown in this rule should be used if the citation is intended to stand alone either in the text or in footnotes.

(a) Florida Supreme Court.

(1) 1887–present: *Fenelon v. State*, 594 So. 2d 292 (Fla. 1992).

(2) 1846–1886: *Livingston v. L'Engle*, 22 Fla. 427 (1886).

~~(2) *Fenelon v. State*, 594 So. 2d 292 (Fla. 1992).~~

(3) For ~~recent~~ opinions not ~~yet~~ published in the Southern Reporter, cite to ~~Florida Law Weekly: *Traylor v. State*, 17 Fla. L. Weekly S42 (Fla. Jan. 16, 1992). If not therein, cite to the slip opinion: *Medina v. State*, No. SC00-280 (Fla. Mar. 14, 2002).~~any of the following:

(A) the slip opinion: *Medina v. State*, No. SC00-280 (Fla. Mar. 14, 2002);

(B) Florida Law Weekly: *Traylor v. State*, No. 70051, 17 FLW S42 (Fla. Jan. 16, 1992);

(C) Westlaw: *Singh v. State*, No. SC10-1544, 2014 WL 7463592 (Fla. Dec. 30, 2014); or

(D) LEXIS: *Johnston v. State*, No. SC09-839, 2010 Fla. LEXIS 62 (Fla. Jan. 21, 2010).

(b) Florida District Courts of Appeal.

(1) *Sotolongo v. State*, 530 So. 2d 514 (Fla. 2d DCA 1988); *Buncayo v. Dribin*, 533 So. 2d 935 (Fla. 3d DCA 1988).

(2) For ~~recent~~ opinions not ~~yet~~ published in the Southern Reporter, cite to ~~Florida Law Weekly: *Myers v. State*, 16 Fla. L. Weekly D1507 (Fla. 4th~~

~~DCA June 5, 1991). If not therein, cite to the slip opinion: *Fleming v. State*, No. 1D01-2734 (Fla. 1st DCA Mar. 6, 2002).~~any of the following:

(A) the slip opinion: *Fleming v. State*, No. 1D01-2734 (Fla. 1st DCA Mar. 6, 2002);

(B) Florida Law Weekly: *Myers v. State*, No. 90-1092, 16 FLW D1507 (Fla. 4th DCA June 5, 1991);

(C) Westlaw: *Williams v. State*, No. 2D14-2438, 2014 WL 3418358 (Fla. 2d DCA June 12, 2014); or

(D) LEXIS: *Minakan v. Husted*, No. 4D09-4439, 2010 Fla. App. LEXIS 288 (Fla. 4th DCA Jan. 20, 2010).

(c) Florida Circuit Courts and County Courts.

(1) ~~*Whidden v. Francis*, 27 Fla. Supp. 80 (Fla. 11th Cir. Ct. 1966)~~Circuit Court: *State v. Campeau*, No. 1990-CF-4363, 16 FLW C65 (Fla. 9th Cir. Ct. Nov. 7, 1990).

(2) ~~*State v. Alvarez*, 42 Fla. Supp. 83 (Fla. Dade Cty. Ct. 1975)~~County Court: *Gables Ins. Recovery v. Progressive Am. Ins. Co.*, No. 2012-24280-SP-05, 22 FLW Supp. 637 (Miami-Dade Cty. Oct. 8, 2014).

(3) For opinions not published in Florida Law Weekly or Florida Law Weekly Supplement, cite to ~~Florida Law Weekly Supplement: *State* v. *Ruoff*, 17 Fla. L. Weekly Supp. 619 (Fla. 17th Cir. Ct. Feb. 13, 2010). If not therein, cite to Florida Law Weekly: *State* v. *Cahill*, 16 Fla. L. Weekly C41 (Fla. 19th Cir. Ct. Mar. 5, 1991). If not therein, cite to the slip opinion: *Jones* v. *City of Ocoee*, No. CVAI-93-18 (Fla. 9th Cir. Ct. Dec. 9, 1996).~~any of the following:

(A) the slip opinion: *Jones v. City of Ocoee*, No. CVAI-93-18 (Fla. 9th Cir. Ct. Dec. 9, 1996);

(B) Florida Supplement: *Whidden v. Francis*, No. 1965-L-2107, 27 Fla. Supp. 80 (Fla. 11th Cir. Ct. July 12, 1966);

(C) Westlaw: *Berne v. State*, No. 2006-CA-9772-O, 2009 WL 8626616 (Fla. 9th Cir. Ct. Oct. 26, 2009); or

(D) LEXIS: *Alberti v. Gangell*, No. 51-2008-CA-0198-WS/H, 2014 Fla. Cir. LEXIS 55 (Fla. 6th Cir. Ct. April 16, 2014).

(d) Florida Administrative Agencies. ~~(Cite if not in Southern Reporter.)~~

(1) ~~For decisions of the Public Employees Relations Commission: *Indian River Educ. Ass'n v. School Bd.*, 4 F.P.E.R. 4262 (1978)~~For agency final orders: *Dep't of Health v. Migicovsky*, No. 2011-16915 (Fla. Bd. of Med. Dec. 17, 2012) (Final Order No. DOH-12-2692-FOF-MQA).

(2) For decisions of the ~~Florida Public Service Commission: *In re Application of Tampa Elec. Co.*, 81 F.P.S.C. 2:120 (1981).~~Division of Administrative Hearings: *Dep't of Fin. Servs., Div. of Ins. Agent & Agency Servs. v. Pearson*, No. 13-4478PL (Fla. DOAH Oct. 15, 2014) (Recommended Order).

~~(3) For decisions posted on the Division of Administrative Hearings' website: *Big Bend Hospice, Inc. v. Agency for Health Care Administration*, Case No. 01-4415 CON (Fla. DOAH Nov. 7, 2002; Fla. AHCA Apr. 8, 2003).~~

~~(4) For decisions that are not posted on the Division of Administrative Hearings' website but are reported in the Florida Administrative Law Reports: *Insurance Co. v. Dep't of Ins.*, 2 F.A.L.R. 648-A (Fla. Dep't of Ins. 1980).~~

~~(5) For orders that are not posted on the Division of Administrative Hearings' website or reported in one of the above reporters: *In re Town of Inglis Petition for Waiver*, Final Order No. 07-0590 (Fla. DEP Apr. 12, 2007) (available from the agency clerk).~~

(3) To cite a case's subsequent history at the agency and in the courts: *Dep't of Health v. Sabates*, No. 10-9430PL (Fla. DOAH June 23, 2011) (Recommended Order), *adopted with reduced penalty*, No. 2009-06686 (Fla. Bd. of Med. Aug. 29, 2011) (Final Order No. DOH-11-2101-FOF-MQA), *aff'd in part and rev'd in part*, 104 So. 3d 1227 (Fla. 4th DCA 2012).

(4) For decisions that are not available online but are published in an administrative law reporter:

(A) The Florida Administrative Law Reports: *Dep't of Health v. Sabates*, 34 F.A.L.R. 2378 (Fla. Bd. of Med. 2011);

(B) The Florida Career Service Reporter: *Arenas v. Dep't of Corr.*, 25 F.C.S.R. 309 (Fla. Pub. Emp. Rel. Comm'n 2010);

(C) The Environmental and Land Use Administrative Law Reporter: *In the Matter of Riverview Pointe, Manatee Cty.*, 2013 E.R. F.A.L.R. 50, at 2 (Fla. Dep't of Envtl. Prot. 2012);

(D) The Florida Department of Revenue Tax Reporter: *Technical Ass't Advm't 09A-049*, 2009 Tax F.A.L.R. 431 (Fla. Dep't of Rev. 2009);

(E) The Florida Public Employee Reporter: *Delgado v. Sch. Dist. of Broward Cty., Fla.*, 36 F.P.E.R. 207 (Fla. Pub. Emp. Rel. Comm'n Gen. Counsel 2010);

(F) The Florida Public Service Commission Reporter: *In re: Nuclear Cost Recovery Clause*, 2013 F.P.S.C. no. 10, at 149 (Fla. Pub. Serv. Comm'n 2013).

(G) The Florida Compensation Reports: *Whitney v. Mercy Hosp.*, 9 F.C.R. 373 (Fla. Indust. Rel. Comm'n 1976);

(H) The Florida Division of Administrative Hearings Reports: *Fla. Real Estate Comm'n v. Warrington*, 39 F.D.O.A.H. 747 (Fla. Real Estate Comm'n 1977); or

(I) The Florida Administrative Reporter: *Cockrell v. Comptroller*, 12 F.A.R. 192 (Fla. Comptroller 1979).

(e) Florida Constitution. ~~(Year of adoption should be given if necessary to avoid confusion.)~~

(1) Current provision: Art. V, § 3(b)(3), Fla. Const.

(2) Historical provision: Art. III, § 19(c), Fla. Const. (2005).

(f) Florida Statutes (Official).

(1) § ~~350.34, Fla. Stat. (1973)~~48.031, Fla. Stat. (2014).

(2) § 120.53, Fla. Stat. (Supp. 1974).

(g) Florida ~~Statutes Annotated~~Administrative Code. ~~(To be used only for court-adopted rules, or references to other nonstatutory materials that do not appear in an official publication.)~~

~~32 Fla. Stat. Ann. 116 (Supp. 1975)~~Fla. Admin. Code R. 62D-2.014 (effective 2007).

(h) Florida Laws. (Cite if not in ~~Fla. Stat.~~the Florida Statutes or if desired for clarity or adoption reference.)

(1) 1997–present: Ch. 2001-01, § 3, Laws of Fla.

~~(1)~~(2) ~~After 1956~~1957–1996: Ch. 74-177, § 5, ~~at 473,~~ Laws of Fla.

~~(2)~~(3) Before 1957: Ch. 22000, 1943 Laws of Fla. ~~(1943)~~172.

(i) Florida Rules.

(1) Florida Rules of Civil Procedure: Fla. R. Civ. P. 1.180.

(2) Florida Rules of Civil Procedure for Involuntary Commitment of Sexually Violent Predators: Fla. R. Civ. P.–S.V.P. 4.010.

(3) Florida Rules of Judicial Administration: Fla. R. Jud. Admin. 2.110.

(4) Florida Rules of Criminal Procedure: Fla. R. Crim. P. 3.850.

(5) Florida Probate Rules: Fla. Prob. R. 5.120.

(6) Florida Rules of Traffic Court: Fla. R. Traf. Ct. 6.165.

(7) Florida Small Claims Rules: Fla. Sm. Cl. R. 7.070.

(8) Florida Rules of Juvenile Procedure: Fla. R. Juv. P. 8.070.

(9) Florida Rules of Appellate Procedure: Fla. R. App. P. 9.100.

(10) Florida Rules of Mediation: Fla. R. Med. 10.100.

(11) Florida Rules of Arbitration: Fla. R. Arb. 11.010.

(12) Florida Family Law Rules of Procedure: Fla. Fam. L. R. P. 12.010.

~~Fla. Admin. Code R. 62D-2.014.~~

(13) Rules Regulating The Florida Bar: R. Regulating Fla. Bar 4-1.10.

(14) Florida Judicial Code of Conduct: Fla. Code Jud. Conduct, Canon 4B.

(15) Florida Board of Bar Examiners Rules: Fla. Bd. Bar Exam. R. II.

(16) Florida Bar Foundation By-Laws: Fla. Bar Found. By-Laws, art. 2.19(b).

(17) Florida Bar Foundation Charter: Fla. Bar Found. Charter, art. III, § 3.4.

(18) Florida Bar Integration Rules: Fla. Bar Integr. R., art. XI, § 11.09.

(19) Florida Judicial Qualifications Commission Rules: Fla. Jud. Qual. Comm'n R. 9.

(20) Florida Standard Jury Instructions, Civil: Fla. Std. Jury Instr. (Civ.) 601.4.

(21) Florida Standard Jury Instructions, Contract and Business: Fla. Std. Jury Instr. (Cont. & Bus.) 416.12.

(22) Florida Standard Jury Instructions, Criminal: Fla. Std. Jury Instr. (Crim.) 3.7.

(23) Florida Standards Imposing Lawyer Sanctions: Fla. Stds. Imposing Law. Sancs. 9.32(a).

(24) Florida Bar Admission Rules: Fla. Bar Admiss. R. 3-23.1.

(j) Florida Attorney General Opinions.

Op. Att'y Gen. ~~Fla.~~ 73-178 (Fla. 1973).

(k) United States Supreme Court.

(1) *Sansone v. United States*, 380 U.S. 343 (1965).

(2) ~~(~~Cite to United States Reports, if published there~~in~~; otherwise cite to Supreme Court Reporter, Lawyer's Edition, or United States Law Week, in that order of preference. For opinions not published in these reporters, cite to ~~Florida Law Weekly Federal: *California v. Hodari D.*, 13 Fla. L. Weekly Fed. S249 (U.S. Apr. 23, 1991).~~any of the following:

(A) the slip opinion: *Frank v. Walker*, No. 14A352 (U.S. Oct. 9, 2014);

(B) Florida Law Weekly Federal: *California v. Hodari D.*, No. 89-1632, 5 FLW Fed. S249 (U.S. Apr. 23, 1991);

(C) Westlaw: *Otter v. Latta*, No. 14A374, 2014 WL 5025970 (U.S. Oct. 8, 2014); or

(D) LEXIS: *Otter v. Latta*, No. 14A374, 2014 U.S. LEXIS 6732 (U.S. Oct. 8, 2014).

(*l*) Federal Courts of Appeals.

(1) *Gulf Oil Corp. v. Bivins*, 276 F.2d 753 (5th Cir. 1960).

(2) For opinions not published in the Federal Reporter, cite to ~~Florida Law Weekly Federal: *Cunningham v. Zant*, 13 Fla. L. Weekly Fed. C591 (11th Cir. March 27, 1991).~~ any of the following:

(A) the slip opinion: *Airtran Airways, Inc. v. Elem*, No. 13-14912 (11th Cir. Sept. 23, 2014);

(B) Federal Appendix: *Evans v. McDonald*, 313 F. App'x 256 (11th Cir. 2009);

(C) Florida Law Weekly Federal: *Cunningham v. Zant*, No. 90-8165, 5 FLW Fed. C591 (11th Cir. March 27, 1991);

(D) Westlaw: *Murphy v. Dulay*, No. 13-14637, 2014 WL 5072710 (11th Cir. Oct. 10, 2014); or

(E) LEXIS: *Murphy v. Dulay*, No. 13-14637, 2014 U.S. App. LEXIS 19311 (11th Cir. Oct. 10, 2014).

(m) Federal District Courts.

(1) *Pugh v. Rainwater*, 332 F. Supp. 1107 (S.D. Fla. 1971).

(2) For opinions not published in the Federal Supplement, cite to ~~Florida Law Weekly Federal: *Wasko v. Dugger*, 13 Fla. L. Weekly Fed. D183 (S.D. Fla. Apr. 2, 1991).~~any of the following:

(A) the slip opinion: *Slay v. Hess*, No. 5:14-cv-264 (N.D. Fla. Oct. 10, 2014);

(B) Florida Law Weekly Federal: *Wasko v. Dugger*, No. 90-312-CIV, 5 FLW Fed. D183 (S.D. Fla. Apr. 2, 1991);

(C) Westlaw: *Taylor v. Bradshaw*, No. 11-80911-CIV, 2014 WL 5325291 (S.D. Fla. Oct. 7, 2014); or

(D) LEXIS: *Taylor v. Bradshaw*, No. 11-80911-CIV, 2014 U.S. Dist. LEXIS 148468 (S.D. Fla. Oct. 7, 2014).

(n) United States Constitution.

(1) Art. IV, § 2, cl. 2, U.S. Const.

(2) Amend. V, U.S. Const.

(*o*) Other Citations. ~~When referring to specific material within a Florida court's opinion, pinpoint citation to the page of the Southern Reporter where that material occurs is optional, although preferred.~~ All other citations shall be in the form prescribed by the Florida Style Manual (available at www.law.fsu.edu/lawreview/florida-style-manual) published by the Florida State University Law Review, Tallahassee, FL 32306. Citations not covered in this rule or in the Florida Style Manual shall be in the form prescribed by the latest edition of The Bluebook: A Uniform System of Citation, The Harvard Law Review Association, Gannett House, Cambridge, MA 02138. ~~Citations not covered in this~~

~~rule or in The Bluebook shall be in the form prescribed by the Florida Style Manual published by the Florida State University Law Review, Tallahassee, FL 32306.~~

(p) Case Names; Pinpoint Citations. Case names shall be underscored ~~(~~or italicized~~)~~ in text and in footnotes. Pinpoint citations are preferred.

Committee Notes

1977 Adoption. This rule is new and is included to standardize appellate practice and ease the burdens on the courts. It is the duty of each litigant and counsel to assist the judicial system by use of these standard forms of citation. Use of these citation forms, however, has not been made mandatory.

1992 Amendment. Rule 9.800 was updated to reflect changes in the available reporters. Additionally, the citations to new rules have been added and citations to rules no longer in use have been deleted.

2011 Amendment. Subdivision (d)(3) was revised and subdivisions (d)(4) and (d)(5) were added to reflect changes in how agencies are publishing their decisions. Section 120.53(2)(a), Florida Statutes, was revised in 2008 to allow agencies to electronically transmit their decisions to the Division of Administrative Hearings for posting on the Division's website in lieu of publishing them in an official reporter. Additionally, recommended and final orders in cases heard by the Division are available on the Division's website, www.doah.state.fl.us. See § 120.57(1)(m), Fla. Stat. Final orders in cases not heard by the Division or electronically submitted to the Division by an agency for posting on the Division's website or published in a reporter should be available from the agency that issues the order.

RULE 9.900. FORMS

(a) Notice of Appeal.

IN THE .....(NAME OF THE LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. _____

_____,)	
Defendant/Appellant,)	
)	NOTICE OF APPEAL
v.)	
)	
_____,)	
Plaintiff/Appellee.)	
)	
_____)	

NOTICE IS GIVEN that ~~.....~~_____, Defendant/Appellant, appeals to the .....(name of court that has appellate jurisdiction)....., the order of this court rendered [see rule 9.020(~~i~~h)] .....(date)..... [Conformed copies of orders designated in the notice of appeal shall be attached in accordance with rules 9.110(d), and 9.160(c).] The nature of the order is a final order .....(state nature of the order).....

_____
Attorney for …..(name of party)…..
…..(address, e-mail address, and phone number)…..
Florida Bar No. …….

(b) Notice of Cross-Appeal.

IN THE .....(NAME OF THE LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. _____

_____,)	
Defendant/Appellant,)	
Cross-Appellee,)	
)	NOTICE OF CROSS-APPEAL
v.)	
)	
_____,)	
Plaintiff/Appellee)	
Cross-Appellant.)	
_____)	

NOTICE IS GIVEN that _____, Plaintiff/Cross-Appellant, appeals to the .....(name of court that has appellate jurisdiction)....., the order of this court rendered [see rule 9.020(~~i~~h)] .....(date)..... The nature of the order is a final order .....(state nature of the order).....

_____
Attorney for …..(name of party)…..
…..(address, e-mail address, and phone number)…..
Florida Bar No. …….

(c) Notice of Appeal of ~~Non-Final~~Nonfinal Order.

(1) Notice of Appeal of ~~Non-Final~~Nonfinal Order

IN THE .....(NAME OF THE LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. _____

_____,)	
Defendant/Appellant,)	
)	NOTICE OF APPEAL OF A ~~NON-FINAL~~ NONFINAL ORDER
v.)	
)	
_____,)	
Plaintiff/Appellee.)	
)	
_____)	

NOTICE IS GIVEN that _____, Defendant/Appellant, appeals to the .....(name of court that has appellate jurisdiction)....., the order of this court rendered [see rule 9.020(~~i~~h)] .....(date)..... [Conformed copies of orders designated in the notice of appeal shall be attached in accordance with rules 9.110(d), 9.130(c), and 9.160(c).] The nature of the order is a ~~non-final~~nonfinal order .....(state nature of the order).....

_____
Attorney for …..(name of party)…..
…..(address, e-mail address, and phone number)…..
Florida Bar No. …….

(2) Notice of Cross-Appeal of ~~Non-Final~~Nonfinal Order.

IN THE .....(NAME OF THE LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. _____

_____,)	
Defendant/Appellant/)	
Cross-Appellee,)	
v.)	NOTICE OF CROSS-APPEAL OF A
)	~~NON-FINAL~~NONFINAL ORDER
_____,)	
Plaintiff/Appellee/)	
Cross-Appellant.)	
_____)	

NOTICE IS GIVEN that _____, Plaintiff/Cross-Appellant, appeals to the .....(name of court that has appellate jurisdiction)....., the order of this court rendered [see rule 9.020(~~i~~h)] .....(date)..... The nature of the order is a ~~non-final~~nonfinal order .....(state nature of the order).....

_____
Attorney for …..(name of party)…..
…..(address, e-mail address, and phone number)…..
Florida Bar No. …….

(d) Notice to Invoke Discretionary Jurisdiction of Supreme Court.

IN THE DISTRICT COURT
OF APPEAL OF FLORIDA,
_____ DISTRICT

Case No. _____

_____,)	
Defendant/Petitioner,)	
)	NOTICE TO INVOKE
v.)	DISCRETIONARY
)	JURISDICTION
_____,)	
Plaintiff/Respondent.)	
)	
_____)	

NOTICE IS GIVEN that _____, Defendant/Petitioner, invokes the discretionary jurisdiction of the supreme court to review the decision of this court rendered [see rule 9.020(~~j~~i)] .....(date)..... The decision .....(state why the decision is within the supreme court's jurisdiction).....[1]

_____
Attorney for …..(name of party)…..
…..(address, e-mail address, and phone number)…..
Florida Bar No. …….

1. The choices are:

a. expressly declares valid a state statute.

b. expressly construes a provision of the state or federal constitution.

c. expressly affects a class of constitutional or state officers.

d. expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

e. passes on a question certified to be of great public importance.

f. is certified to be in direct conflict with decisions of other district courts of appeal.

See rule 9.030(a)(2)(A).

Note: West shows the footnotes for Rule 9.900(d) at the end of the entire rule, and not at the end of subdivision (d).

(e) Notice of Administrative Appeal.

IN THE .....(NAME OF AGENCY, OFFICER, BOARD, COMMISSION, OR BODY WHOSE ORDER IS TO BE REVIEWED)…..

Case No. _____

_____,)	
Defendant */Appellant,)	
)	NOTICE OF ADMINISTRATIVE
v.)	APPEAL
)	
_____,)	
Plaintiff */Appellee.)	
)	
═══════════════)	

NOTICE IS GIVEN that _____, Appellant, appeals to the .....(name of court that has appellate jurisdiction)....., the order of this .....(name of agency, officer, board, commission, or body whose order is to be reviewed)..... rendered [see rule 9.020(~~i~~h)] .....(date)..... [Conformed copies of orders designated in the notice of appeal shall be attached in accordance with rules 9.110(d) and 9.130(c).] The nature of the order is .....(state nature of the order).....

_____
Attorney for …..(name of party)…..
…..(address, e-mail address, and phone number)…..
Florida Bar No. …….

* or other appropriate designation

(f) Notice of Appeal of an Order Dismissing a Petition for a Judicial Waiver of Parental Notice of Termination of Pregnancy and Advisory Notice to Minor.

IN THE CIRCUIT COURT FOR THE
___ JUDICIAL CIRCUIT (NUMERICAL DESIGNATION OF THE CIRCUIT) IN AND FOR _____
COUNTY, FLORIDA

Case No. _____

In re: Petition for a Judicial Waiver of Parental Notice of Termination of Pregnancy.	)	
_____ (Your pseudonym or initials)	)	NOTICE OF APPEAL
Appellant.	)	

NOTICE IS GIVEN that _____ …..(your pseudonym or initials)….., appeals to the _____ .....(District Court of Appeal with appellate jurisdiction)....., the order of this court rendered _____ .....(enter the date that the order was filed on the clerk's docket)..... [See rule 9.020(~~i~~h)]. The nature of the order is a final order dismissing a petition for a judicial waiver of parental notice of termination of pregnancy.

Signature: _____
(As signed on your petition for judicial waiver if you are representing yourself)
Date: _____
OR
Attorney for _____ (pseudonym or initials of appellant)
(address, e-mail address, and phone number of attorney)
Florida Bar No. _____

ADVISORY NOTICE TO THE MINOR YOU ARE NOTIFIED AS FOLLOWS:

1. You are entitled to appeal the order dismissing your petition for a judicial waiver of parental notice of termination of pregnancy. You do not have to pay a filing fee for the appeal.

2. If you wish to appeal, you must file a notice of appeal. A form for the notice of appeal (Fla. R. App. P. 9.900(f)) will be provided to you with the order dismissing your petition. You must fill in every blank on the form with the information requested. If you need assistance with the form, the clerk of the circuit court will help you complete it.

3. You must file the notice of appeal with the clerk of the circuit court where your case was heard. The notice of appeal must be filed within thirty (30) days of the date when the judge's written order dismissing your petition was filed with the clerk of the circuit court. If you do not file your notice of appeal within this time period your appeal will not be heard.

4. The notice of appeal is the only document you need to file in connection with your appeal. You may file a motion to seek permission to file a brief in your case, or to request oral argument of your case. These motions or any other motions or documents you file concerning your appeal, except the notice of appeal, must be mailed or delivered to the appellate court for filing. The appellate court that will be reviewing your case is:

The _____ District Court of Appeal

_____

_____
(address of the District Court of Appeal)

Telephone number: _____

(Note: The clerk of the circuit court will fill in the blanks above with the appropriate court information).

5. You may request a lawyer to represent you in your appeal. You must tell the judge who heard your petition for a judicial waiver of parental notification of termination of pregnancy that you wish to have a lawyer appointed.

(g) Directions to Clerk.

IN THE .....(NAME OF LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. _____

_____ ,)	
Plaintiff/Appellant,)	
)	
v.)	
)	DIRECTIONS TO CLERK
_____,)	
Defendant/Appellee.)	
_____)	

Plaintiff/Appellant, _____, directs the clerk to .....(include/exclude)..... the following items .....(in/from)..... the record described in rule 9.200(a)(1):

ITEM	DATE FILED
1.	
[List of Desired Items]	
2.	

Note: This form is necessary only if a party does not wish to rely on the record that will be automatically prepared by the clerk under rule 9.200(a)(1).

(h) Designation to Approved Court Reporter, Civil Court Reporter, or Approved Transcriptionist.

IN THE .....(NAME OF THE LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. _____

_____,)	
Plaintiff/Appellant,)	DESIGNATION TO APPROVED COURT
)	REPORTER, CIVIL COURT REPORTER,
v.)	OR APPROVED TRANSCRIPTIONIST,
)	AND REPORTER'S OR APPROVED
_____,)	TRANSCRIPTIONIST'S
Defendant/Appellee.)	ACKNOWLEDGEMENT
)	
_____)	

I. DESIGNATION

Plaintiff/Appellant, _____, files this Designation to Approved Court Reporter, Civil Court Reporter, or Approved Transcriptionist and directs .....(name of approved court reporter, civil court reporter, or approved transcriptionist)..... to transcribe the following portions of the trial proceedings to be used in this appeal [for cases where a party is exempt from service by electronic mail as set forth in the Florida Rules of Judicial Administration, state the following and provide paper copies of the transcript(s) in paper format]:

1. The entire trial proceedings recorded by the reporter on .....(date)..... before the Honorable .....(judge)....., except _____.

2. [Indicate all other portions of reported proceedings.]

3. The approved court reporter, civil court reporter, or approved transcriptionist is directed to file the original with the clerk of the lower tribunal and to serve ~~one~~1 copy on each of the following:

1.

2.

3.

I, counsel for ~~A~~appellant, certify that I have made satisfactory financial arrangements ~~have been made~~ with the approved court reporter, civil court reporter, or approved

transcriptionist for preparation of the transcript, and I have served a designation on the approved court reporter, civil court reporter, or approved transcriptionist.

_____
Attorney for …..(name of party)…..
…..(address, e-mail address, and phone number)…..
Florida Bar No. …….

II. APPROVED COURT REPORTER'S, CIVIL COURT REPORTER'S, OR APPROVED TRANSCRIPTIONIST'S ACKNOWLEDGMENT

1. The foregoing designation was served on .....(date)....., and received on .....(date).....

2. Satisfactory arrangements have ( ) have not ( ) been made for payment of the transcript cost. These financial arrangements were completed on .....(date).....

3. Number of trial or hearing days ____.

4. Estimated number of transcript pages ____.

5a. The transcript will be available within 30 days of service of the foregoing designation and will be filed on or before .....(date).....

OR

5b. For the following reason(s) the approved court reporter, civil court reporter, or approved transcriptionist requests an extension of time of ____ days for preparation of the transcript that will be filed on or before .....(date).....

6. Completion and filing of this acknowledgment by the approved court reporter, civil court reporter, or approved transcriptionist constitutes submission to the jurisdiction of the court for all purposes in connection with these appellate proceedings.

7. The undersigned approved court reporter, civil court reporter, or approved transcriptionist certifies that the foregoing is true and correct and that a copy has been furnished by mail ( ) hand delivery ( ) e-mail ( ) on .....(date)....., to each of the parties or their counsel.

_____
Approved Court Reporter, Civil Court Reporter, or Approved Transcriptionist
…..(address)…..

Note: The foregoing approved court reporter's, civil court reporter's, or approved transcriptionist's acknowledgment to be placed "at the foot of" or attached to a copy of the designation, shall be properly completed, signed by the approved court reporter, and filed with

the clerk of the appellate court within 5 days of service of the designation on the approved court reporter, civil court reporter, or approved transcriptionist. A copy shall be served on all parties or their counsel, who shall have 5 days to object to any requested extension of time. See Fla. R. App. P. 9.200(b)(1), (b)(2), & (b)(3).

(i) Civil Supersedeas Bond.

…..(Title of Court)…..

Case No. _____

_____,	)	
Plaintiff,	)	
	)	
v.	)	CIVIL SUPERSEDEAS BOND
	)	
_____,	)	
Defendant.	)	
_____	)	

We, _____ as Principal, and _____ as Surety, are held and firmly bound unto _____ in the principal sum of $_____, for the payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

The condition of this obligation is: the above-named Principal has entered an appeal to the .....(court)..... to review the .....(judgment or order)..... entered in the above case on .....(date)....., and filed in the records of said court in book _____ at page_____.

NOW THEREFORE, if the Principal shall satisfy any money judgment contained in the judgment in full, including, if allowed by law, costs, interest, and attorneys' fees, and damages for delay in the event said appeal is dismissed or said judgment is affirmed, then this obligation shall be null and void; otherwise to remain in full force and effect.

Signed on …..(date)….., at …..(place)…..

/s/_____
Principal

Signed on …..(date)….., at …..(place)…..

/s/_____
Surety

(j) Notice of Supplemental Authority

…..(Title of Court)…..

Case No.÷ _____

_____,)	
Appellant/Petitioner,)	
)	
v.)	NOTICE OF SUPPLEMENTAL
)	AUTHORITY
_____,)	
Appellee/Respondent.)	
_____)	

[Appellant/Petitioner] [Appellee/Respondent], _____, submits as supplemental authority the [decision/rule/statute/other authority] of _____, a copy of which is attached to this notice. The supplemental authority is pertinent to the issue on appeal identified as _____ and [discussed on pages _____ of the _____ brief] [raised at oral argument].

_____
Attorney for …..(name of party)…..
…..(address, e-mail address, and phone number)…..
Florida Bar No. …….

(k) Notice of Related Case.

…..(Title of Court)…..

Case No. _____

_____,)	
Appellant/Petitioner,)	
)	
v.)	NOTICE OF RELATED
)	CASE OR ISSUE
_____,)	
Appellee/Respondent.)	
)	
)	

NOTICE IS GIVEN of .....(case style and number)....., pending in .....(name of court)....., which is related to this matter because .....(identify the same facts from which both matters arise or the similar legal issue being addressed in both matters).....

_____
Attorney for …..(name of party)…..
…..(address, e-mail address, and phone number)…..
Florida Bar No. …….

(f) Notice of Joinder.

…..(Title of Court)…..

Case No. _____

_____,)	
Appellant/Petitioner,)	
)	
v.)	NOTICE OF JOINDER
)	
_____,)	
Appellee/Respondent.)	
)	
)	

NOTICE IS GIVEN that _____, [appellee/respondent] elects to realign as a(n) [appellant/petitioner] in this action, in accordance with rule 9.360(a). The proposed new caption is:

[insert proposed new caption here]

_____
Attorney for …..(name of party)…..
…..(address, e-mail address, and phone number)…..
Florida Bar No. …….

Committee Notes

1980 Amendment. Forms 9.900(a) and (b) under the 1977 rules are modified, and additional forms are provided.

1992 Amendment. Forms 9.900(a), (c), and (e) were revised to remind the practitioner that conformed copies of the order or orders designated in the notice of appeal should be attached to the notice of appeal as provided in rules 9.110(d), 9.130(c), and 9.160(c).