

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA
RULES OF APPELLATE PROCEDURE

CASE NO.

REPORT OF APPELLATE COURT RULES COMMITTEE

This report of the Appellate Court Rules Committee of The Florida Bar is filed by Susan W. Fox, Chair of the Appellate Court Rules Committee, and John F. Harkness, Executive Director of The Florida Bar. This report reflects the four year cycle amendments developed by the Appellate Court Rules Committee during the four year cycle that began in 1996 and ended in the year 2000. This report is filed in accordance with *Fla. R. Jud. Admin.* 2.130(c).

The committee proposes amendments to the rules as shown on the attached table of contents. The voting record for the committee for each amendment is shown on the table of contents. As required by *Fla. R. Jud. Admin.* 2.130, the amendments have been reviewed by the Board of Governors of The Florida Bar. The board's vote on each amendment is also shown on the table of contents. The appendix presents each proposed rule change in two-column format. If the court desires to obtain other background materials that may be available on any proposal, these materials may be obtained from the chair.

Rule 9.020(h), Definitions

The proposed changes to *Rule* 9.020(h), the definition of "Rendition (of an Order)," fall into three categories: (1) editorial; (2) reorganization to retain consistency; and (3) correction of a discrepancy pointed out by this Court. The changes will be addressed in that order.

First, there are editorial changes in the main text of *Rule* 9.020(h). In addition, reference to judgment "notwithstanding verdict" was eliminated as obsolete, and the rule now refers to judgment "in accordance with prior motion for a directed verdict" or "to challenge the verdict," and other types of post-trial motions.

Next, the substance of current subdivision (i) of *Rule 9.020*, dealing with rendition of orders of hearing officers in family cases was merged into the text of subdivision (h) to maintain consistency in the definitional portions of the rule and to eliminate unnecessary verbiage. A separate subdivision dealing with rendition of family orders was deemed unnecessary.

Subdivision (h)(4) of the rule was created to correct a problem noted by this Court in *St. Paul Fire & Marine Insurance Co. v. Indemnity Insurance Co. of North American*, 675 So. 2d 590 (Fla. 1996). As now organized, subdivisions (h)(1) through (h)(3) govern rendition in all lower tribunals except the District Courts of Appeal. Subdivision (h)(4) will govern rendition in the District Courts of Appeal and provide, consistent with *St. Paul Fire*. Such an order is not deemed rendered until the district court disposes of all motions for rehearing. A party who wishes to seek further review in the Supreme Court may not do so until the court has disposed of all motions for rehearing, clarification, certification, or rehearing en banc. Rendition of district court orders is not treated the same as trial court orders, but the committee feels there is a strong reason for treating these orders differently. The proposed rule is consistent with the holding in *St. Paul Fire* that “a district court's order is not ‘rendered’ until there has been a disposition of all motions relative to that order.” *Id.* at 592.

Rule 9.030(c)(1)(B), Jurisdiction of Circuit Courts

This proposal codifies the ruling in *Blore v. Fierro*, 636 So. 2d 1329, 1331 (Fla.1994), that jurisdiction of circuit courts is as established by general law:

The Florida Constitution establishes a controlling distinction between the appellate jurisdiction of the district courts of appeal and the appellate jurisdiction of the circuit court. Article V, section 4(b)(1), of the Florida Constitution, which allocates jurisdiction to the district courts of appeal, reads as follows:

District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable

to the supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.

Art. V, Sec. 4(b)(1).

Article V, section 5(b), Florida Constitution, which sets forth the jurisdiction of the circuit courts, reads as follows:

The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action prescribed by general law.

Art. V, Sec. 5(b) (emphasis added).

The proposed amendment corrects the language of the current rule which indicates that jurisdiction is in accordance with *Rule 9.030*. A companion amendment to *Rule 9.130(a)(1)* corrects the language of that rule.

9.040 (b), Forum

Challenges to appellate venue are not common, but when the issue does arise, it is a nightmare. A case that demonstrates this is *Cottingham v. State*, 672 So. 2d 28 (Fla. 1996)¹. In that case, two circuit court clerks were in disagreement over which one

¹The undersigned chair of the Appellate Court Rules Committee was counsel of record in *Cottingham*.

of them should accept a notice of appeal when venue had been transferred from Hernando County to Leon County. Ultimately, the appeal was docketed in the Fifth District which transferred it to the First District, citing *Vasilinda v. Lozano*, 631 So. 2d 1082 (Fla. 1994). The First District disagreed and transferred the case back to the Fifth District. To spare the poor litigant further volleying back and forth, the venue question was certified to the Supreme Court. Under *Vasilinda* (and now *Cottingham*), the question of appellate venue in a civil case depended on when the transfer fees were paid and when the file was sent to the transferee court. The committee feels that this leads to arbitrary results and can allow forum shopping². In addition, because the fees often are paid by mail, this procedure leaves the parties in limbo for some period of time, unable to determine which court actually has jurisdiction until a receipt is returned by the clerk. For all these reasons, the committee is proposing a rule that specifies which court should review orders transferring venue to another lower tribunal outside the appellate district of the transferring court.

The proposed revision to *Rule* 9.040 places the current text of subdivision (b), “Forum,” into subdivision (1), which would continue to provide that “[i]f a proceeding is commenced in an inappropriate court, that court shall transfer the cause to an appropriate court.” Subdivision (2) contains new language regarding appellate venue, which makes the date of the venue order the critical factor in determining which court should review such orders, rather than the date fees are paid or the file is received by the transferee court. Under the committee’s proposal, review of the order transferring venue, as well as other reviewable non-final orders rendered before the change of venue order or simultaneously with it, is in the appellate court that normally reviews orders from the transferor lower tribunal. For orders after the time the venue order is rendered, review should be in the court that reviews orders from the transferee court with two exceptions: orders staying or vacating the transfer order or orders dismissing the cause for failure to pay the transfer fees.

The proposed rule applies equally in civil and criminal cases.

The vote on this proposal was divided (19-13), but in general there was consensus as to the need for a rule addressing this problem. Some committee

² The Committee also feels that this result is inconsistent with current *Rule* 9.130(a)(7), and that this provision has turned out to be ambiguous in application, and thus also is recommending deleting this subdivision.

members felt the current proposal was too long and that the language might be ambiguous, *e.g.*, as to “reviewable non-final orders,” and questioned whether the rule as written would prevent the transferee court from reviewing on plenary appeal reviewable but unappealed orders entered before the venue order. The majority of members felt this was not ambiguous. One member expressed a preference for a rule closer to that espoused in *Vasilinda*.

Rule 9.120(d), Briefs on Jurisdiction

Justice Pariente, as the Supreme Court’s liaison to this committee, requested adoption of an amendment limiting the contents of the appendix to briefs on jurisdiction to “only” a conformed copy of the decision of the district court of appeals. The internal procedures of the court eliminate the need for filing copies of cases cited for conflict, and the court feels that the appendix is sometimes used to bring extraneous materials before the court. Accordingly, after discussion, the committee is recommending this amendment.

Rule 9.130, Proceedings to Review Non-Final Orders

Title: The title to *Rule* 9.130 was amended to add “and Specified Final Orders” because the title was misleading. Appeals of orders determining class certification, insurance coverage, and relief under *Rule* 1.540 may be final orders, but are still appealable under this rule. See, *e.g.*, *Canal Insurance Co. v. Reed*, 666 So. 2d 888 (Fla.1996) (ruling that declaratory judgments determining insurance coverage are immediately appealable as final orders, the Florida Supreme Court suggested “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. *Id.* at 892).

Subdivision 9.130(a)(1): See the discussion concerning amendment to *Rule* 9.030 above. This is a companion amendment.

Subdivision 9.130(a)(3)(C)(iv): Perhaps the most substantial change included in this petition is repeal of *Rule* 9.130(a)(3)(C)(iv), which allows review of non-final orders determining liability. The committee feels that decisional law has given an expansive reading to this rule, allowing non-final appeals in situations not intended by the committee to be reviewable and in which review is contrary to the underlying

philosophy of the rules. Because of the problems encountered in applying the rule for the past 20+ years, the committee feels the rule should be repealed altogether.

During the current four-year cycle, the proposed repeal first arose in conjunction with a movement to abolish all non-final appeals to reduce the workload of the appellate courts. Initially, the committee voted to abolish many types of interlocutory appeals. The initial vote was reconsidered, but after more thorough debate, the committee felt that repeal of just this subdivision was warranted and would help to streamline the appellate process while removing the most objectionable type of non-final appeals. The committee reached this decision in 1997, but because the rule change was not an emergency, the proposal was held until the end of the four-year cycle. In the meantime, however, the Supreme Court issued its decision in *Meyers v. Metropolitan Dade County*, 748 So. 2d 920 (Fla. 1999), finding that a verdict entered in a bifurcated trial proceeding was an appealable non-final order under this rule and that a motion to defeat the verdict on liability tolls the appeal time. In *Meyers*, the Supreme Court asked the committee to review and clarify the rules in this respect. However, as of the date of the filing of this report, the *Meyers* opinion has not become final and may still be subject to modification on rehearing.

In addressing the issue raised in *Meyers*, the committee noted that the court apparently was unaware of its pending recommendation for repeal. Therefore, the committee addressed the issue again and prepared a detailed report that was designed to be incorporated into the present report to the court. The comments below are drawn from this report.

Justification for Repeal of Rule 9.130(a)(3)(C)(iv)

In an early construction of *Rule 9.130(a)(3)(C)(iv)*, the Supreme Court read the rule very narrowly, with the following explanation: “The thrust of rule 9.130 is to restrict the number of appealable nonfinal orders. The theory underlying the more restrictive rule is that appellate review of nonfinal judgments serves to waste court resources and needlessly delays final judgment.” *Travelers Insurance Co. v. Bruns*, 443 So. 2d 959, 961 (Fla. 1984) (holding that a summary judgment order determining that a defendant/insurer’s policy provided coverage for a co-defendant/insured was not appealable under the rule).

Even narrowly read, the rule is somewhat of an anomaly. It has no counterpart in the federal system and few, if any, counterparts in the remaining states. As a general rule, interlocutory rulings relating to resolution of the merits of the controversy are reviewable only after final judgment, when all the bits and pieces of the merits of the controversy have been resolved. *Rule 9.130* is generally consistent with this philosophy. All but one of the orders listed in *Rule 9.130* deal with threshold defenses and interlocutory matters unrelated to resolution of the merits of the controversy; *Rule 9.130(a)(3)(C)(iv)* is the sole exception.

The apparent justification for the exception is that an adjudication of liability on a motion for summary judgment, without a trial of the facts, is one of those “most urgent interlocutory orders” deserving immediate review. While this proposition is debatable, summary judgments in favor of parties seeking affirmative relief are infrequent, and permitting appeals from them therefore does not overburden the appellate courts. If the rule had been limited in that fashion, as its predecessor was, it would not have been particularly burdensome or problematic. Unfortunately, litigants began to use the rule for other purposes.

The issue came to a head in *Dauer v. Freed*, 444 So. 2d 1012 (Fla. 3d DCA 1984). In that case, the trial court bifurcated the case and tried the liability issues to a jury, which returned a verdict against the defendants. The transcript of the trial was 18,000 pages in length. The defendants invoked the rule and appealed the verdict. The district court concluded that the rule — which required that the record consist of a mere appendix and that briefs be filed within 15 days after filing the notice of appeal — neither contemplated nor permitted such an appeal. *See also Peters v. Menendez*, 491 So. 2d 1300 (Fla. 3d DCA 1986).

In 1990, the committee considered a proposal to codify these decisions and limit the rule to orders that determine “the issue of liability in favor of a party seeking affirmative relief, if entered prior to the commencement of trial. . . .” This proposal failed. Instead, primarily because of the urging of several district court judges on the committee, the committee voted to repeal the rule altogether. Before this recommendation was considered, however, the Supreme Court overruled *Dauer v. Freed*. In *Metropolitan Dade County v. Green*, 596 So. 2d 458, 459 (Fla. 1992), the Court concluded that jury verdicts in bifurcated trials were immediately appealable under “the plain language of the rule.” Turning the reasoning of the *Bruns* decision on its head, the Court observed that judicial resources would be wasted if interlocutory

appeals of such verdicts were not allowed. Subsequently, and without explanation, the Court rejected the committee's recommendation that the rule be repealed. *See In Re Amendments to the Florida Rules of Appellate Procedure*, 609 So. 2d 516, 517 (Fla. 1992).

In *Green*, the Court left unanswered the problems of whether post-trial motions could be filed after a verdict finding liability in a bifurcated trial, whether such motions would toll rendition of the verdict, what aspects of the proceedings were reviewable in an appeal from the verdict, and the like. In 1997, at the request of several district court judges on the committee, the committee explored ways in which to reduce the workload of the appellate courts. Once again, finding no substantial justification for the anomalous rule, and in an effort to reduce the number of interlocutory appeals, the committee voted to repeal the rule. That recommendation is scheduled for submission to the Supreme Court at the end of the current cycle in June 2000.

Recently, in *Meyers v. Metropolitan Dade County*, 748 So. 2d 920 (Fla. 1999), apparently unaware of the committee's pending recommendation, the Supreme Court concluded that post-trial motions could be directed to jury verdicts in bifurcated proceedings and that such motions will toll rendition of the verdict. Although this conclusion was contrary to the plain language of *Rule 9.020(h)* (and a score of decisions holding that rendition of interlocutory orders cannot be tolled by motions directed to them), the Court concluded that "the current appellate rules do not specifically address the unique issues presented by this case," and it directed the committee to "recommend appropriate revisions to the rules." The question that remains is whether the committee should adhere to its recommendation to repeal the rule altogether, which will moot the problem entirely, or whether it should undertake the drastic revisions contemplated by *Meyers*.

If the rule had been narrowly read and limited to summary judgment orders determining liability, it probably would have been palatable. Even in that circumstance, however, the rule is frequently used for little purpose other than to derail and delay the proceedings in the trial court, often adding up to a year to resolution of the controversy. Because such orders are cautiously granted in the first place, reversals are rare. But the real difficulty with the rule is that it has not been read narrowly, and the expansive reading it has been given has rendered it highly problematical in application, confusing and difficult to square with other rules in operation, and unduly burdensome on the appellate courts.

For example, in its short existence, the rule has required the Supreme Court to resolve conflicts in and questions concerning its interpretation on at least six occasions. In addition to *Bruns*, *Green*, and *Meyers*, see *Doctor's Hospital of Hollywood, Inc. v. Madison*, 411 So. 2d 190 (Fla. 1992); *Sunny South Aircraft Service, Inc. v. Inversiones*, 1120 C.A., 417 So. 2d 676 (Fla. 1982); *Canal Insurance Co. v. Reed*, 666 So. 2d 888 (Fla. 1996). The district courts have spent an *inordinate* amount of time writing opinions resolving motions to dismiss directed to appeals taken from the rule, often with inconsistent results. See the numerous decisions collected in Padovano, *Florida Appellate Practice*, §22.9 (2nd Ed. 1997).

The most difficult problems created by the expansive reading of the rule arise in the context of orders determining liability during the course of a trial on the merits. For example, if a trial court were to direct a verdict on liability in favor of a plaintiff at the close of the evidence, the present construction of the rule would appear to permit an immediate interlocutory appeal of that order. If such an appeal were taken, then a motion to stay further proceedings would lie in the trial court under *Rule* 9.130(f), and the trial court's ruling would be reviewable in the district court under *Rule* 9.310(f) — all notwithstanding that the case is ready for submission to the jury for a determination of damages. Even if the motion to stay were denied, the trial court would still be prohibited from entering a final judgment on the subsequent jury verdict by *Rule* 9.130(f) until the interlocutory appeal was decided with finality. What usually follows in this circumstance is a motion to relinquish jurisdiction to permit the trial court to enter a final judgment on the jury verdict, which moots the interlocutory appeal and requires a second, plenary appeal of the final judgment. The entire exercise amounts to a vast shuffling of papers with little purpose but delay, confusion, and the waste of time and resources.

A similar scenario is presented when a trial court bifurcates the liability issues from the damage issues but intends to try the damage issues to the same jury if the plaintiff receives a favorable verdict on liability (as all trial courts now must do in every case in which punitive damages are in issue). Upon return of a verdict favoring the plaintiff on liability, the defendant may immediately appeal, leading to the same rounds of motion practice and shuffling of papers which arise in the prior example.

Even in the situation in which interlocutory appeals are authorized by *Green* — a verdict on liability in a bifurcated trial where the damages are to be tried to a separate finder-of-fact in the future — the problems are enormous. At present (with the

exception of *Meyers*), the case law uniformly holds that motions directed to interlocutory orders do not toll their rendition, and *Rule 9.020(h)* is rather explicit on this point. The Rules of Civil Procedure are also somewhat ambiguous as to whether post-trial motions can be filed in such a circumstance, or whether they must await resolution of the entire controversy. Post-trial motions directed to the verdict must be filed to preserve certain issues for appeal, of course, so the appeals recognized in *Green* will require a drastic rewrite of both the appellate rules and the Rules of Civil Procedure (which must logically require that post-order motions directed to *any* order determining liability in favor of a party seeking affirmative relief, like a summary judgment order to that effect, toll rendition of such orders as well). In addition, permitting an appeal of a verdict in this circumstance inevitably stops the case in its tracks, because it is the rare circuit court judge who will try the damage issues while an interlocutory appeal of the liability verdict is pending and entry of a final judgment is prohibited. The result is typically a delay of a year or more in resolution of the merits of the controversy.

Moreover, in all three of the circumstances outlined above, a complete record and a transcript of the trial will be required, and *Rule 9.130* — which limits the record to a mere appendix and requires service of the appellant’s brief within 15 days of filing the notice of appeal — is obviously not designed for such an appeal. The inevitable result is a motion to treat the appeal as a plenary appeal under *Rule 9.110*, which is usually granted, and the purpose of *Rule 9.130*'s form of expedited review is entirely defeated. If such appeals are to be treated as plenary appeals in any event, as they ordinarily are, it would make far more sense to allow the trial court to complete its labors and then review the entire case in a plenary appeal from the final judgment.

It should also be observed that permitting appeals from jury verdicts in bifurcated trials finds no support in the apparent justification for the rule. As noted previously, the apparent justification for the rule is that an adjudication of liability on a motion for summary judgment, without a trial of the facts, is one of those “most urgent interlocutory orders” deserving of immediate review. But once the liability issues have been tried to resolution by a jury in a bifurcated trial, that justification no longer exists. The only other arguable justification for permitting such appeals is to save the parties and the trial court the additional time and expense of a trial of the damage issues if the verdict is ultimately overturned on appeal. Courts have routinely rejected this as a justification for permitting interlocutory review by way of certiorari. Thus, it would

appear to be a poor justification for the interlocutory review authorized by *Green*. See, e. g., *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1100 (Fla. 1987).

The foregoing conundrums are not the only conundrums created by an expansive reading of the rule. After *New Deal Cab Co. v. Stubbs*, 90 So. 2d 614 (Fla. 1956), and *Davis v. Sobik's Sandwich Shops, Inc.*, 351 So. 2d 17 (Fla. 1977), trial courts are permitted to enter summary judgments and grant directed verdicts in favor of a plaintiff but against no particular defendant, leaving it to a jury to determine which of the several defendants is ultimately to be found liable to the plaintiff. District courts have reviewed such orders under *Rule* 9.130(a)(3)(C)(iv). See, e. g., *Jartran, Inc. v. Abel*, 500 So. 2d 638 (Fla. 3d DCA 1986). Review of such orders is entirely anomalous, however, because it permits interlocutory appeals by defendants who may never be found liable to the plaintiff at all.

What of the circumstance of the multi-count action in which a plaintiff receives a summary judgment, a directed verdict, or a jury verdict in a bifurcated trial on the issue of liability on one count of the action but not on the others? According to the dissenting judge in *Miami Columbus, Inc. v. Ramlawi*, 687 So. 2d 1378 (Fla. 3d DCA), *rev. denied*, 697 So. 2d 511 (Fla. 1997), the plain language of the rule and the expansive reading given to it by *Green* authorizes an appeal of such an order. According to the majority, however, the rule “applies only to orders which determine ‘the’ rather than ‘an’ issue of liability” (687 So. 2d at 1379), and it therefore does not authorize an interlocutory appeal of such an order. See also *Yelner v. Ryder Truck Rental*, 683 So. 2d 655 (Fla. 4th DCA 1996), and *Winkelman v. Toll*, 632 So. 2d 130 (Fla. 4th DCA 1994), which reach similar conclusions in analogous circumstances. A rule which is subject to such hair-splitting has little to recommend it and creates an inordinate burden on the appellate courts that is plainly undesirable. The result in *Ramlawi* (and similar cases) was most likely motivated, in any event, by a desire to rigorously restrict the reach of the rule rather than expand it further, which is recommendation enough for repeal of the rule altogether.

What of the circumstance in which a defendant counterclaims against a plaintiff and the liability issues on both claims are bifurcated and tried, the plaintiff wins on its claim, the counter-plaintiff loses on its claim, and an appeal is taken from the verdict finding in favor of the plaintiff? Is such an appeal to be dismissed under the reasoning of *Ramlawi*, or is it to be entertained under the “plain language of the rule” and the expansive reading given to it by *Green*? If the appeal is entertained, what is the scope

of review in the interlocutory appeal? Can the district court review errors affecting both claims in the single trial, or is it limited to reviewing errors affecting only the plaintiff's claim and reviewing errors affecting the defendant's counterclaim in a separate plenary appeal from the final judgment entered on the counterclaim? At present, there is no answer to this conundrum in the decisional law. Additional conundrums are certain to appear in the future as the limits of the rule are probed and tested for various tactical and strategic purposes by ever-inventive counsel.

As the majority noted in *Ramlawi*, it is the “general principle that piecemeal appeals in pending litigation are undesirable” (687 So. 2d at 1379). Yet that is precisely what *Rule* 9.130(a)(3)(C)(iv) now permits, in numerous circumstances, at a level of complexity that has consistently taxed the acumen of the appellate courts and taken up an inordinate amount of their time. All of the orders that are now appealable under *Rule* 9.130(a)(3)(C)(iv) can be reviewed in a plenary appeal from a final judgment under *Rule* 9.110, which is the rule they are typically reviewed under in any event and which is where they are reviewed in nearly every other jurisdiction in the nation.

To permit review of these orders in the courts of this state causes substantial delays in resolution of the merits of controversies and, on balance, wastes a considerable amount of time and judicial resources. It also reflects a level of cynicism in the trial courts of this state that is entirely unwarranted. At a minimum, the rule should be limited, as its predecessor was, to summary judgments finding liability prior to the commencement of trial, but there is really very little reason to justify even this limited type of piecemeal review. Because the workload of the appellate courts deserves to be pared wherever it can reasonably be reduced without substantial prejudice to litigants, the rule should be repealed in its entirety.”

At its June 1999 meeting, the committee voted (with near unanimity) to stick to its previous recommendation that *Rule* 9.130(a)(3)(C)(iv) be repealed in its entirety. It also voted to recommend as an alternative that the rule at least be limited to its apparent initial intent — to review of non-final orders determining the issue of liability in favor of a party seeking affirmative relief, “if entered prior to trial.”

The Board of Governors voted to recommend this change as well after a spirited debate. A motion to adopt the committee's alternate proposal failed by a vote of 23-17. [All the other proposals in this report were approved without debate.] The primary argument in favor of the alternative proposal was that it may be considered unfair for

a defendant to incur the expense of a trial on damages if the verdict on liability would be overturned. It is anticipated that these views will be made known to the court through comments to be filed concerning this proposal.

Subdivision 9.130(a)(5): A reference to *Rule 7.190 Fla. Sm. Cl. R.* was added so that review of orders determining motions for relief from judgment under the small claims rule is the same as under other rules of procedure. There is no perceived reason to treat review of such orders differently, and there is no other rule applicable to such orders.

Subdivision 9.130(a)(7): See discussion concerning amendment to *Rule 9.040* above. This is a companion amendment.

Rule 9.140(b)(1), Proceedings in Criminal Cases

Subdivision (b)(1)(B): In *State v. Schultz*, 720 So. 2d 247 (Fla.1998), this court held that an order withholding adjudication of guilt without imposing probation is an appealable order under *Rule 9.140(b)(1)(C)*. Accordingly, the proposed rule has been drafted to add this express provision and renumber the other subdivisions.

Subdivision (b)(1)(D): Subdivision (b)(1)(D) of this rule was designed to reflect the longstanding practice of a defendant's right to appeal orders denying post-conviction relief.

Subdivisions 9.140(b)(2), (c)(2), and (e)(3)–(e)(5): The changes in these sections are editorial changes suggested by The Florida Bar legal editors to comply with adopted editorial guidelines for rules.

Subdivision 9.140(b)(6)(B): *Rule 9.140(b)(6)(B)* has been amended to require court reporters to file the record in capital cases on computer disk. This change was requested by the Attorney General's office, appellate public defenders, and persons who represent defendants in death penalty cases. The rationale is that many attorneys must deal with the record at state and federal levels over the course of several years; a paper record becomes deteriorated and may no longer be usable. The committee recognizes that the material on disk may become unreadable due to obsolescence but feels that it will be helpful to have the material available electronically.

Subdivision 9.140(i): Proposed *Rule 9.140(i)* codifies the procedures and requirements for filing *Anders* briefs. This would be a significant change in the rules.

A rule codifying *Anders* procedures is necessary to obtain compliance in an *Anders* situation when private attorneys are appointed in indigent criminal appeals. More and more private attorneys are getting involved in criminal appeals as appointed counsel — some as conflict attorneys and some as special assistant public defenders. The committee believes this rule to be necessary to give guidance to attorneys who do not have access to the procedures properly followed by assistant public defenders.

In addition to setting forth the procedures for filing *Anders* briefs, the committee created procedures for filing *Anders* memorandum in cases where the appellant has pled guilty or nolo contendere without reserving a right to appeal or raising any

substantive issue. In these cases the appellant has no right to an appeal, and the committee believes a streamlined approach to handling such appeals would be of great benefit to the appellant and the court.

The proposal also moves the material currently in *Rules* 9.140(i) and (j) to a new *Rule* 9.141, which deals solely with review proceedings in collateral and post-conviction criminal cases.

9.141, Review Proceedings in Collateral and Post-Conviction Criminal Cases

Rule 9.141 is a new rule that was created to encompass appellate review of collateral or post-conviction orders in criminal cases. Most of what is in this new rule was contained in what is currently *Rules* 9.140(i) and (j). The committee felt that *Rule* 9.140 was becoming too lengthy, and the collateral/post-conviction area was one that should be given its own rule. Some changes and clarifications were made to prior 9.140(i) and (j).

Rule 9.141(a) points out that this rule does not apply to death penalty cases. The death penalty cases have their own set of rules.

Rule 9.141(b)(1) states that the civil rules of appellate procedure shall apply unless otherwise noted within this rule. *Rule* 9.141(b)(2) contains an addition that addresses the record in an appeal from a summary denial in collateral/post-conviction proceedings. This section addresses a conflict between *Summers v. State*, 570 So. 2d 990 (Fla. 1st DCA 1990), and *Flemming v. State*, 709 So. 2d 135 (Fla. 2d DCA 1998), regarding indexing and paginating of records. The committee determined not to require indexing and pagination unless the court directs otherwise, thereby allowing individual courts to administratively require indexing and pagination if they so desire. The committee also determined that copies of the index or record need not be sent to the parties as the parties should already have all of the relevant documents. *Rule* 9.141(b)(2)(D) reflects current case law that the court can reverse not only for an evidentiary hearing but also for other appropriate relief.

Rule 9.141(b)(3) is new and addresses review of orders in collateral or post-conviction criminal cases after an evidentiary hearing. This rule addresses the problem of the pro se litigant who fails to request preparation of the necessary transcripts. 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 *Rule* 9.141(b)(3)(B) and (C) are for preparation of the record and service of briefs in a manner similar to those provided in *Rule* 9.140 for direct appeals from judgments and sentences. Inasmuch as appellate counsel is frequently provided for in appeals from evidentiary hearings in collateral/post-conviction cases, there is a need for preparation of a proper record and a schedule for filing briefs. The committee believes such procedures needed to be set forth in this rule.

Rule 9.141(c) is a slightly reorganized and clarified version of the present 9.140(j). No substantive changes were made.

Rule 9.190, Stays Pending Review of Administrative Action

Subdivision (c)(6): This revision corrects a typographical error in the reference to *Rule* 9.200(a)(3).

Subdivision (e): After extensive study by a subcommittee composed of administrative agency representatives, administrative law practitioners, and judges, the subcommittee recommended adoption of a new rule concerning stays pending review of administrative action, which the full committee adopted. Subdivision (1) of this proposed rule states that the filing of a notice of appeal does not operate as a stay except as provided in *Rule* 9.310(b)(2) (*i.e.*, granting automatic stays to public officers) “or where timely review is sought of an award by an administrative law judge on a claim for birth-related neurological injuries.”

Subdivision (2) requires the party seeking a stay of administrative action to 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, but cautions that the motion shall not act as a stay. The lower tribunal or court may grant a stay on appropriate terms, and review of orders entered by a lower tribunal on such motion shall be by motion.

When the agency has ordered an emergency suspension, restriction, or limitation of a license under section 120.60(6), Florida Statutes (1999), a licensee may file for a stay on an expedited basis. When an agency has suspended or revoked a license other than on an emergency basis, the licensee may file the motion for stay on an expedited basis, and the court shall issue the stay unless the agency demonstrates that a stay

would constitute a probable danger to the public welfare. When an order suspending or revoking a license has been stayed, an agency may apply to the court for dissolution or modification of the stay on the ground that subsequently acquired information demonstrates a probable danger to the public welfare. In cases not governed by the Administrative Procedures Act, the party seeking a stay must file a motion in the lower tribunal, which has continuing jurisdiction and authority to grant, modify, or deny a stay and to condition it on the posting of bond or other conditions. Any stay entered by the lower tribunal or court remains in effect until a mandate issues.

The provisions of the proposed rule are a codification of current practice in the first district, which hears most motions for stay related to administrative actions. The stay provision was deemed necessary because there are a number of agencies that meet sporadically, which frequently force a licensee to cease operation with no avenue of relief. Section 120.60(a)(3), Florida Statutes (1999), provides a stay as of right to a licensee subject to license suspension, but this right may be meaningless if the licensee is unable to obtain a prompt hearing on the motion for stay. Thus, the proposal provides an alternative avenue for relief and short time frames that will help to ensure that relief will be meaningful.

Rule 9.200, The Record

There are two proposed revisions to *Rule* 9.200(a)(1). The first is exclusion of notices of hearing and deposition from the record, and the second is the requirement for inclusion of a case progress docket. Subdivision (d)(1)(A) and (d)(2), concerning the duties of the clerk, also would require the case progress docket to be incorporated into the record on appeal immediately after the index.

The first revision, which describes documents that are to be excluded from the “automatic record,” changes the reference to “notices” to “notices of hearing or of taking deposition.” Apparently, some clerk’s offices interpreted the rule strictly by omitting all “notices” from the record unless specifically designated by the parties. Some of these clerks would refuse to include notices of filing, notices of lis pendens, and other substantive notices needed in the record. Accordingly, the committee sought to avoid this problem, while still keeping most of the “garbage” notices out of the record. To accomplish this, the rule specifies that only notices of hearing or deposition are omitted from the record unless otherwise designated.

The recommendation to incorporate a case progress docket in the record on appeal arose because of the inevitable questions regarding whether a particular document was filed with the lower tribunal. The question arises in issues relating to supplementation of the record on appeal and is a frequent problem for appellate public defenders who have difficulty getting a complete set of documents from opposing counsel and may not be in the county where the physical record is located. Some appellate public defenders advised the committee that they have had difficulty getting the clerk to give them a progress docket that lists all of the items filed with the court. The amendment requires, in *Rule 9.200(a)(1)*, that a progress docket be included in the record on appeal, and in *Rule 9.200(d)(1)(A)* and *(d)(2)*, that the clerk attach a copy of the progress docket to the index to the record. This is consistent with federal practice which uses the case progress docket as the record on appeal in most cases.

Rule 9.210, Briefs

Subdivision (a)(2): As usual, the nuts-and-bolts issues like typeface and brief binding can be the hardest to resolve. The current rule requires typeface of at least 10 characters per inch (“cpi”). This rule virtually requires use of Legal Courier 12, a nonproportional font in which each letter takes up the same space. The current rule is obsolete, because modern word processors use proportional fonts that give each letter the space it needs and thus do not produce an accurate cpi count.

There was no question that this rule had to be amended to facilitate use of modern proportional fonts consistent with current technology and practice. The difficulty, however, was to achieve a consensus on a new standard. The 10 cpi rule has the benefit of controlling the amount of text that can be squeezed into a 50 page brief. Some members were concerned that the proportional fonts could be manipulated to allow extra text and wanted to place strict limits on the font and formatting to be used. Some members wanted a 14 point proportional font that would reduce the amount of text in a 50 page brief by approximately five pages (as compared to the current cpi standard). Other members felt that the attorneys should have more freedom and that using a reasonably sized font was simply a matter of good appellate practice. Ultimately, the committee attempted to adopt a proportional font that produces an amount of text closest to the current 10 cpi rule. This resulted in 13 pt. Times New Roman, C.G. Times, or similar fonts, with no more than 23 lines per page.

There were 12 dissenting votes. To understand the dissenting viewpoints, it may be helpful to know that the committee had voted on this rule amendment on two earlier occasions, first voting to eliminate the typeface limitations altogether (on a belief that presenting a brief in readable print is a matter of good appellate advocacy), and then reconsidering that position and adopting the 13 point typeface without a limitation as to the number of lines per page. In feedback from the Supreme Court liaison, the committee was advised that the latter proposal would not be acceptable. It is believed that most of the dissenters favored 13 point type without the lines per page limitation. There was little or no support for a 14 point font because the committee felt this was a pretext for reducing text which is a separate issue to be considered (if at all) on its own merits.

Subdivision (a)(3): Clarification of the binding of briefs also has been proposed. Under the proposed amendment, briefs may be bound either along the left-hand side or by a staple in the upper left-hand corner. Briefs still must “lie flat when open.” Binding is optional, as many courts prefer a simple staple in the upper left-hand corner.

Subdivision (b)(5): *Rule 9.210(b)(5)* has been amended to add a provision that the argument section of every brief should address the applicable appellate standard of review. The committee reached a consensus, at the urging of its judicial members, that addressing the appellate standard of review will enhance the quality of appellate briefs and provide valuable assistance to the courts. This section of the brief can be short, but should state whether review is de novo, is based on lack of competent substantial evidence, or is based on an abuse of discretion, and provide a citation of authority for the standard.

Rule 9.330, Rehearing; Clarification; Certification

Rule 9.330(a) has been clarified, cleaned up, and conformed to current practice. By omitting the sentence that prohibits rearguing the merits of the court’s order, the committee intended to clarify the permissible scope of motions for rehearing. Nevertheless, the essential purpose of a motion for rehearing remains the same. It should be used to bring to the attention of the court points of law or fact that the court has overlooked or misapprehended in its decision. The motion should not be used to express mere disagreement with the resolution of the issues on appeal.

The rule also has been amended to prohibit presentation of “issues not previously raised in the proceeding.” This amendment is a codification of decisional law. Finally, a sentence has been added stating: “A motion for clarification shall state with particularity the points of law or fact in the court’s decision that in the opinion of the movement are in need of clarification.” These changes are not considered to be a significant modification of current practice.

Rule 9.420, Filing; Service of Copies; Computation of Time

This proposal creates a new subdivision (a)(2) which adopts the “mailbox rule” for filing of papers by a pro se inmate. Under this provision, a paper is deemed timely filed if placed in the institutional internal mail system before the final date for filing. Proof of such deposit is made by a notarized statement or declaration. This provision is based on *Fed. R. App. P. 25(a)(c)*.

Editorial changes were made in the certificate of service form.

Rule 9.800, Uniform Citation System

The committee proposes removal of the requirement for parallel citation to the Florida Reporter. This requirement is deemed to be obsolete. Many libraries no longer even have Florida Reporter. The subdivisions of this provision have been renumbered accordingly.

The committee also recommends amending the citation form for Florida Standard Jury Instructions (Criminal) to delete the reference to page numbers. Instead, the reference should be to titles or section numbers.

Rule 9.900, Forms

These are editorial changes only.

Conclusion

Based on the foregoing, the committee requests the court to approve the recommendations contained in this report.

Respectfully submitted by:

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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 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) **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 ~~or, for rehearing, for clarification, or for certification,~~ to alter or amend~~;~~ for judgment ~~notwithstanding verdict or in accordance with prior motion for directed verdict, or in 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 the plea after sentencing pursuant to Florida Rule of Criminal Procedure 3.170(l), or a challenge to the verdict to vacate an order based upon the recommendations of a hearing officer in accordance with Florida Family Law Rule of Procedure 12.492, the following exceptions apply:

(1) If such a motion or motions have been filed, the final order shall not be deemed rendered with respect to any claim between the movant and any party against whom relief is sought by the motion or motions until the filing of a signed, written order disposing of all such motions between such parties.

(2) If such a motion or motions have been filed, 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) If such a motion or motions have been filed and a notice of appeal is filed before the filing of a signed, written order disposing of all such motions, all motions filed by the appealing party that are pending at the time shall be deemed abandoned, and the final order shall be deemed rendered by the filing of the notice of appeal as to all claims between parties who then have no such motions pending between them. However, a pending motion to correct a sentence or order of probation or a motion to withdraw the plea after sentencing shall not be affected by the filing of a notice of appeal from a judgment of guilt. In such instance, the notice of appeal shall be treated as prematurely filed and the appeal held in abeyance until the filing of a signed, written order disposing of such motion.

(4) If such a motion or motions have been filed in a district court of appeal, the final order shall not be deemed rendered as to any party to the appeal until the filing of a written order disposing of all such motions.

~~(i) — **Rendition (of an Order Based on Florida Family Law Rule of Procedure 12.492).** An order based upon the recommendation of a hearing officer in accordance with Florida Family Law Rule of Procedure 12.492 shall not be deemed rendered if there has been filed in the lower tribunal an authorized and timely motion to vacate until the filing of a signed, written order disposing of such motion.~~

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. Subdivision (h)(4) was created to correct the problem noted by the Supreme Court in *St. Paul Fire & Marine Insurance Co. v. Indemnity Insurance Co. of North America*, 675 So. 2d 590 (Fla. 1996). Subdivisions (h)(1) through (h)(3) govern rendition in all lower tribunals except the district courts of appeal; subdivision (h)(4) governs rendition in the district courts of appeal.

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.

RULE 9.030. JURISDICTION OF COURTS

(a) Jurisdiction of Supreme Court.

(1) Appeal Jurisdiction.

(A) The supreme court shall review, by appeal

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

(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

(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 that⁵

(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;

(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, and⁶

(i) to be of great public importance, or

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

(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;

(B) non-final orders of circuit courts as prescribed by rule 9.130;⁹

(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 orders of lower tribunals other than as prescribed by rule 9.130;

(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;

(B) non-final 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 orders of lower tribunals as ~~prescribed by rule 9.130~~ provided by general law;⁹

(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 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.

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 orders is as follows:

(A) After rendition of an order transferring venue, the appropriate court to review the non-final venue order, all other reviewable non-final 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 which would review non-final 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 order, except for those orders listed in subdivision (b)(2)(A), is the court which 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 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 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 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 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.

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 irreparable 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 9.120. 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 2 copies of a notice, accompanied by the 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.** 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. 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 rules 9.030(a)(2)(A)(v) or (a)(2)(A)(vi) (certifications by the district courts 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 transmit the record.

(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. 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.

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

(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 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 and serve on the parties a suggestion that the order to be reviewed should be certified by the district court 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 statement of why the appeal requires immediate resolution by the supreme court.

(2) 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 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.

/s/ _____
Attorney for(name of party).....
Florida Bar No.

- (4) An appendix containing a conformed copy of the order to be reviewed.

(f) **Effect of Suggestion.** The district court shall not be required to rule on the suggestion and neither the filing of a suggestion nor the rendition by the district court 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 wWhen Supreme Court 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, and the clerk of the lower tribunal. The clerk of the district court shall transfer the record in the case to the supreme court within 10 days thereafter. The time limitations of the applicable jurisdictional rule will continue in effect, except that all papers formerly required to be filed in the district court shall be filed in the supreme court.

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 ORDERS
AND SPECIFIED FINAL ORDERS**

(a) Applicability.

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

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

(3) ~~Review~~Appeals to the district courts of appeal of non-final orders of ~~lower tribunals is~~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;

(iii) the right to immediate monetary relief or child custody in family law matters;

~~(iv) the issue of liability in favor of a party seeking affirmative relief;~~

(iv) the entitlement of a party to arbitration;

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

(vii) that a class should be certified; or

(viii) 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;

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

(4) Non-final orders entered after final order on motions that suspend rendition are not reviewable; provided that orders granting motions for new trial in jury and non-jury cases are reviewable by the method prescribed in rule 9.110. Other non-final orders entered after final order on authorized motions are reviewable by the method prescribed by this rule.

(5) Orders entered on motions filed under Florida Rule of Civil Procedure 1.540, Small Claims Rule 7.190, and Florida Family Law Rule of Procedure 12.540 are reviewable by the method prescribed by this rule.

(6) Orders that deny motions to certify a class may be reviewed by the method prescribed by this rule.

~~(7) Review authorized by this rule shall be by the court that has jurisdiction to review the final order in the cause.~~

(b) **Commencement.** The jurisdiction to seek review of orders described in subdivisions (a)(3)–(a)(6) shall be invoked by filing 2 copies of a notice, accompanied by the 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 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.** 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 order, the lower tribunal may proceed with all matters, including trial or final hearing; provided that the lower tribunal may not render a final order disposing of the cause pending such review.

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

(h) **Scope of Review.** Multiple non-final 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.

[Committee Note for Alternate Proposal: Subdivision (a)(3)(c)(iv) was amended so that orders determining liability entered during trial or as result of bifurcated trial proceedings are not reviewable 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.

RULE 9.130 Alternative.

**PROCEEDINGS TO REVIEW NON-FINAL
ORDERS AND SPECIFIED FINAL
ORDERS**

(a) Applicability.

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

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

(3) Review Appeals to the district courts of appeal of non-final orders of lower tribunals is 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;

(iii) the right to immediate monetary relief or child custody in family law matters;

(iv) the issue of liability in favor of a party seeking affirmative relief, if entered prior to trial;

(v) the entitlement of a party to arbitration;

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

(vii) that a class should be certified; or

(viii) 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;

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

(4) Non-final orders entered after final order on motions that suspend rendition are not reviewable; provided that orders granting motions for new trial in jury and non-jury cases are reviewable by the method prescribed in rule 9.110. Other non-final orders entered after final order on authorized motions are reviewable by the method prescribed by this rule.

(5) Orders entered on motions filed under Florida Rule of Civil Procedure 1.540, Small Claims Rule 7.190, and Florida Family Law Rule of Procedure 12.540 are reviewable by the method prescribed by this rule.

(6) Orders that deny motions to certify a class may be reviewed by the method prescribed by this rule.

~~(7) Review authorized by this rule shall be by the court that has jurisdiction to review the final order in the cause.~~

(b) **Commencement.** The jurisdiction to seek review of orders described in subdivisions (a)(3)– (a)(6) shall be invoked by filing 2 copies of a notice, accompanied by the 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 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.** 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 order, the lower tribunal may proceed with all matters, including trial or final hearing; provided that the lower tribunal may not render a final order disposing of the cause pending such review.

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

(h) **Scope of Review.** Multiple non-final 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. 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)(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.

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;

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

(~~E~~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 Rule of Criminal Procedure 3.800(a) or 3.850;

(~~D~~E) an unlawful or illegal sentence;

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

or

(~~F~~G) as otherwise provided by general law.

(2) **Guilty or Nolo Contendre Pleas.**

(~~2~~A) **Pleas.** A defendant may not appeal from a guilty or nolo contendere plea except as follows:

(~~A~~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.

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

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

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

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

(iv)d. a sentencing error, if preserved; or

(v)e. as otherwise provided by law.

(EB) **Record.**

(i) Except for appeals under subdivision (b)(2)(A) 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;

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

(ii) Upon good cause shown, the court, or the lower tribunal before the record is 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 ~~rule~~ 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.

(5) **Withdrawal of Defense Counsel after Judgment and Sentence.** The attorney of record for a defendant in a criminal proceeding shall not be relieved of any professional duties, or be permitted to withdraw as counsel of record, except with approval of the lower tribunal on good cause shown on written motion, until after

(A) the following have been completed:

(i) The notice of appeal has been filed.

(ii) The statement of judicial acts to be reviewed has been filed, if a transcript will require the expenditure of public funds.

(iii) Directions to the clerk have been filed, if necessary.

(iv) A designation of that portion of the reporter's transcript necessary to support the statement of judicial acts to be reviewed has been filed, if a transcript will require expenditure of public funds.

(v) Substitute counsel has been obtained or appointed, or a statement has been filed with the appellate court that the appellant has exercised the right to self-representation. In publicly-funded cases, the public defender for the local circuit court shall initially be appointed until the record is transmitted to the appellate court.

Or

(B) the time has expired for the filing of notice of appeal, and no such notice has been filed.

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).

(6) Procedure in Death Penalty Appeals.

(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.

(B) 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 Rule of Criminal Procedure 3.850, and on resentencing matters, the schedules set forth in subdivision (f) of this rule will control. In addition to filing paper copies of

transcripts, the court reporter shall file with the clerk of the lower tribunal, on clearly labeled computer disks in a format approved by the supreme court, sufficient copies of these transcripts for the clerk of the lower tribunal to include the disks in the record transmitted to the court and to the parties.

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

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

(E) In death penalty cases, all petitions for extraordinary relief over which the supreme court has original jurisdiction, including petitions for writ of habeas corpus, 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 3.850. ~~Subdivision (j) of this rule shall not apply to death penalty cases.~~

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

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

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

(L) denying restitution; or

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

(2) **Non-Final Orders.** The state as provided by general law may appeal to the circuit court non-final 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)(I), 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 rule 3.800(b)(2). Copies shall be served on the defendant and the attorney of record. An appeal by the state shall stay further proceedings in the lower tribunal only by order of the lower tribunal.

(d) **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).

(e) **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.

(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 court reporter 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 (e)(2)(D) of this rule, the parties shall designate the court reporter to file with the clerk of the lower tribunal the original transcripts for the court and sufficient copies for the state and all indigent defendants.

(D) Non-indigent defendants represented by counsel may designate the court reporter to prepare only original transcripts. Counsel adopting this procedure shall, within 5 days of receipt of the original transcripts from the court reporter, file the original transcripts along with securely bound copies for the state and all defendants. 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 copy certifying that it is an accurate and complete copy of the original transcript. When this procedure is used, the clerk of the lower tribunal upon conclusion of the appeal shall retain the original transcript for use as needed by the state in any collateral proceedings and

shall not destroy the transcripts without the consent of the Office of the Attorney General.

(E) In state appeals, the state shall designate the court reporter to prepare and file with the clerk of the lower tribunal the original transcripts and sufficient copies for all separately represented defendants. Alternatively, the state may elect to use the procedure specified in subdivision (e)(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 court reporter to prepare the necessary copies of the original transcripts.

(3) **Retention of Documents.** Unless otherwise ordered by the court, the clerk of the lower tribunal shall retain all original documents except the original transcripts designated for appeal which shall be included in the record transmitted to the court.

(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 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.

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

(A) 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. The clerk shall transmit the supplement to the appellate court within 5 days of the filing of the order ruling on the motion. If an order is not filed within 60 days from the

filing of the motion, this time shall run from the expiration of the 60 day period, and the clerk shall supplement the record with the motion and a statement that no order was timely filed.

(B) 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 of the supplement described in subdivision (A), 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 appellate court. The procedure for this supplementation shall be in accordance with Florida Rule of Appellate Procedure 9.140(e), except that counsel is not required to file a revised statement of judicial acts to be reviewed, the court reporter shall deliver the transcript within 15 days, and the clerk shall supplement the record with the transcript within 5 days of its receipt.

(f) **Briefs.** Initial briefs shall be served within 30 days of service of the record or designation of appointed counsel, whichever is later. Additional briefs shall be served as prescribed by rule 9.210.

(g) **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 is filed; provided that the defendant may not be released from custody until the notice 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.

(h) **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. In death penalty cases, the court shall review the evidence to determine if the interest of justice requires a new trial, whether or not insufficiency of the evidence is an issue presented for review.

[Editor's Note: Subdivisions 9.140(i) and (j) were transferred as amended to proposed new rule 9.141.]

~~(i) **Appeals from Summary Denial of Motion for Post-Conviction Relief Under Florida Rule of Criminal Procedure 3.800(a) or 3.850.** An appeal from an order denying relief under Florida Rule of Criminal Procedure 3.800(a) or 3.850 without a hearing shall be commenced as prescribed by rule 9.110. The clerk of the lower tribunal shall, along with the certified copy of the notice, transmit to the court as the record, conformed copies of the motion, order, motion for rehearing, and order thereon, and attachments to any of the foregoing. No briefs or oral argument shall be required, but any appellant's brief shall be filed within 15 days of the filing of the notice of appeal. 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. The court may request a response from the state before ruling.~~

~~(j) **Petitions Seeking Belated Appeal or Alleging Ineffective Assistance of Appellate Counsel:**~~

~~——— (1) **Forum.** Petitions seeking belated appeal or alleging ineffective assistance of appellate counsel shall be filed in the appellate court to which the appeal was or should have been taken.~~

~~——— (2) **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 proceedings in the lower tribunal and, if any, in appellate courts;~~

~~_____ (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 facts sworn to by the petitioner or petitioner's counsel that constitute the alleged ineffective assistance of counsel or basis for entitlement to belated appeal, including in the case of a petition for belated appeal whether the petitioner requested counsel to proceed with the appeal.~~

~~_____ (3) **Time limits.**~~

~~_____ (A) A petition for belated appeal shall not be filed more than two 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~~

~~_____ (i) was unaware an appeal had not been timely filed or was not advised of the right to an appeal; and~~

~~_____ (ii) should not have ascertained such facts by the exercise of reasonable diligence.~~

~~_____ (B) A petition alleging ineffective assistance of appellate counsel shall not be filed more than two years after the conviction becomes 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.~~

~~—————(C) Time periods under this subdivision shall not begin to run prior to the effective date of this rule.~~

~~—————(4) **Service.** The petitioner shall serve copies of the petition on the attorney general and state attorney.~~

~~—————(5) **Procedure:**~~

~~—————(A) Rule 9.100 shall govern the processing of the petition.~~

~~—————(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.~~

(i) **Anders Briefs.** When court-appointed counsel for an indigent appellant in a criminal appeal determines to file a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), the following procedures apply:

(1) *Anders* briefs shall contain the following:

(A) A cover page identifying the brief as an *Anders* brief and otherwise conforming to rule 9.210(a)(4);

(B) A table of contents and a table of citations, as described in rules 9.210(b)(1) and (b)(2);

(C) A summary of the argument, which

- (i) states that an *Anders* brief has been filed;
 - (ii) states that copies of the brief and the record have been sent to the appellant;
 - (iii) states the issues raised in the brief;
 - (iv) asks the court to review the record for any errors that counsel might have overlooked; and
 - (v) asks the court either to return the brief to counsel for additional briefing or to appoint alternative counsel, if the court's review uncovers arguable errors;
- (D) A thorough statement of the case and of the facts, as described in rule 9.210(b)(3);
- (E) An argument, consisting of a discussion of anything in the record that might arguably support the appeal, with references to the record where appropriate and citations of relevant authorities; and
- (F) A certificate of service, both to the appellant and to counsel for the state.
- (2) If the appellant has pleaded guilty or nolo contendere without reserving a right to appeal or raising any substantive issue, counsel shall file an *Anders* memorandum rather than a brief, which contains the following:
- (A) A statement of the case and facts with references to the record, which establishes the jurisdiction of the lower tribunal and describes the nature and dates of the charges, plea, any plea agreement, any motion to withdraw plea and ruling thereon, judgment, and disposition of the case;
 - (B) A summary of the argument, as described in subdivision (i)(1)(C) of this rule;

(C) An argument, limited to a discussion of the issues identified in subdivision (b)(2)(B) of this rule, with references to the record and citations of relevant authority, if any; and

(D) A certificate of service, both to the appellant and to counsel for the state.

(3) To the extent possible while maintaining adherence to the rules of professional conduct, counsel who file *Anders* briefs or memoranda shall act as advocates and shall not argue against the interests of their clients. The briefs or memoranda shall reflect a complete and thorough review of the record.

(4) *Anders* briefs or memoranda may include arguments on the merits relating to minor sentencing errors.

(5) Motions to withdraw are not permitted solely on the ground that an *Anders* brief or memorandum has been filed, and counsel shall remain available to assist their clients and the court in handling and resolving the appeal.

(6) Counsel shall send a copy of the *Anders* brief or memorandum to the appellant, as well as the record or a copy thereof.

(7) On receiving the *Anders* brief or memorandum, the court shall send the appellant a Notice of 30 Days for Appellant to File Pro Se Brief, which states that:

(A) The appellant has 30 days in which to file an additional pro se brief with the court but is not required to do so;

(B) The pro se brief shall conform to the extent possible to the requirements of rule 9.210; and

(C) The pro se brief must be served on both counsel for the appellant and counsel for the state and must include a certificate of service stating that they have been served.

(8) Answer briefs are permitted but not required. Answer briefs, if any, shall be served on both the appellant and appellant's counsel within 20 days of service of the appellant's pro se brief, or , if no pro se brief is filed, within 40 days of service of the court's notice. Answer briefs shall not adopt the *Anders* brief or memorandum and shall independently address the matters raised on appeal.

(9) If the appellant has filed a pro se brief and the state has filed an answer brief, the appellant may serve a reply pro se brief within 20 days of service of the state's brief, as described in rule 9.210(d).

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.

New subdivision (i), for briefs filed pursuant to *Anders v. California*, 386 U.S. 738 (1967), is not intended to alter the substance of current Florida law and requires counsel to strike a balance between the two most common *Anders* errors. On the one hand, counsel should not write *Anders* briefs that are too spare, do not aid the courts or the appellants, and fail to provide assurance to the courts and the appellants that counsel have done their duty. On the other hand, this subdivision does not allow counsel to abandon their role as advocates and requires them, to the extent possible, to argue for their clients rather than for the state. Striking this balance is not always easy, but the committee believes it is required under current Florida law and can be done in a manner that is consistent with counsel's responsibilities to their clients and the courts.

A primary purpose for new subdivision (i) is to provide guidance to private appointed counsel who are handling criminal appeals. While each appellate public defender's office has substantial experience in filing *Anders* briefs, private appointed counsel do not have this background. Therefore, they are more likely to file *Anders* briefs that do not conform to Florida and federal requirements. A second purpose is to adopt uniform procedures that apply statewide. The committee understands that the various appellate public defender's offices follow different *Anders* procedures, and it believes these cases should be handled in a more uniform manner.

Subdivision (i) also accomplishes several other purposes. It provides streamlined procedures for *Anders* appeals from guilty or nolo contendere pleas. It requires counsel to remain available to assist their clients and the courts, rather than move to

withdraw. The committee believes that motions to withdraw usually are unnecessary in *Anders* cases. The new subdivision also permits the state not to file answer briefs. Finally, it clarifies the time limits for filing answer and reply briefs.

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.

9.141. REVIEW PROCEEDINGS IN COLLATERAL OR POST-CONVICTION CRIMINAL CASES

(a) Death Penalty Cases. This rule does not apply to cases in which the death penalty was imposed.

(b) Appeals from Post-Conviction Proceedings Under Florida Rule of Criminal Procedure 3.800(a) or 3.850.

(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 Motion Without Evidentiary Hearing.

(A) When a motion for post-conviction relief under rule 3.800(a) or 3.850 is granted or denied without an evidentiary hearing, the clerk of the lower tribunal shall transmit to the court, as the record, copies of 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) Unless directed otherwise by the court, the clerk of the lower tribunal shall not index or paginate the record or send copies of the index or record to the parties.

(C) No briefs or oral argument shall be required, but any appellant's brief shall be filed within 15 days of the filing of the notice of appeal. The court may request a response from the appellee before ruling.

(D) 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 Evidentiary Hearing.

(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 3.850 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 post-conviction relief under rule 3.850 is granted or denied after an evidentiary hearing, the clerk of the lower tribunal shall index, paginate, and transmit to the court as the record, within 50 days of the filing of the notice of appeal, copies of 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 original transcript of the evidentiary hearing.

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

(iii) 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 Alleging Ineffective Assistance of Appellate Counsel.

(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) **Forum.** Petitions seeking belated appeal or alleging ineffective assistance of appellate counsel shall be filed in the appellate court to which the appeal was or should have been taken.

(3) **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 proceedings in the lower tribunal and, if any, in appellate courts;

(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 or basis for entitlement to belated appeal, including in the case of a petition for belated appeal whether the petitioner requested counsel to proceed with the appeal.

(4) **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

(i) was unaware an appeal had not been timely filed or was not advised of the right to an appeal; and

(ii) should not have ascertained such facts by the exercise of reasonable diligence.

(B) A petition alleging ineffective assistance of appellate counsel shall not be filed more than 2 years after the conviction becomes 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.

(C) Time periods under this subdivision shall not begin to run prior to January 1, 1997.

(5) **Procedure.**

(A) The petitioner shall serve copies of the petition on the attorney general and state attorney.

(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.

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.

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 as modified by this rule.

(b) **Appeals Permitted.** Any child, any parent, guardian ad litem, or legal custodian of any child, 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 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, 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 Family Services 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.

(d) **Retention of Jurisdiction.** Transmittal of the record to the appellate 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 papers filed in the court shall be entitled 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 papers, and the decision of the court shall be by initials.

(f) **Confidentiality.** All papers 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) **Expedited Review.** The court shall give priority to appeals under this rule.

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.

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) **Commencement.** Jurisdiction of the court shall be invoked by filing two copies of a notice of appeal with the lower tribunal, accompanied by the filing fee prescribed by law unless a verified petition for relief from payment of the fee has been filed with the lower tribunal within 30 days of the date the order to be reviewed is mailed by the lower tribunal to the parties, which date shall be the date of rendition.

(3) **Notice of Appeal.** The notice shall be substantially in the form prescribed by rule 9.900(a), 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).....

(4) **Notice to Division and General Counsel.** The judge of compensation claims shall send a copy of the notice and a certified copy of the order to the Division of Workers' Compensation and to the general counsel for the Department of Labor and Employment Security.

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

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

(2) **Settlement.** At any time before the record on appeal is filed with 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, 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 approval of the settlement. The court may relinquish jurisdiction for a specified period for entry of an appropriate order. In the event the division 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.**

(1) **District Court.** Within 30 days from a notice or petition invoking the jurisdiction of the court the division 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.** 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 papers 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, depositions or exhibits admitted into evidence, 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.** 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 the estimated record costs if the appellant files a verified petition

to be relieved of costs and a sworn financial affidavit in substantially the same form as form 4.9125 of the Rules of Workers' Compensation Procedure.

(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 is obligated to pay the costs of the appeal due to 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) **Preparation of Record.**

(A) **Selection of Reporter by Lower Tribunal.** The lower tribunal shall supervise the preparation of the record. The lower tribunal or chief judge of compensation claims shall select the reporter or transcriber to prepare the record. The judge who makes the selection shall give the parties notice of the selection.

(B) **Objection to Reporter or Transcriber Selected.** Any party may object to thereporter or transcriber selected by filing written objections with the judge who made the selection within 10 days after receiving 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 Record by Court Reporter or Transcriber.**

The reporter or transcriber designated by the lower tribunal or chief judge of compensation claims shall transcribe, certify, and deliver all necessary copies of the record to the lower tribunal as required under these rules. The record shall be delivered in sufficient time for the lower tribunal to review the record and send it to the court. The reporter or transcriber shall promptly notify all parties in writing when the record is delivered to the lower tribunal.

(D) **Certification and Transmittal by Lower Tribunal.**

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.

(E) **Copies.**

The lower tribunal shall provide a copy of the record to all counsel of record and all unrepresented parties.

(7) **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.

(8) **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 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 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.** Appellant shall serve a copy of the verified petition or motion of indigency, including appellant's financial affidavit or counsel's certificate, whichever is applicable, on all interested parties, including the Division, general counsel of the Department of Labor and Employment Security, 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 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, 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 (D) in a form substantially the same as form 4.9125 of the Rules of Workers' Compensation Procedure.

(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 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. The sworn financial affidavit shall be substantially the same as form 4.9125.

(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, the office of general counsel of the Department of Labor and Employment Security, and the clerk of the court.

(F) **Hearing on Petition to Be Relieved of Costs.** After giving 15 days' notice to the division 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: Petition Granted.** 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.

(H) **Extension of Appeal Deadlines: Petition Denied.** 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.

(I) **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.

(J) **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 file an original and 3 copies of the initial brief with the court. A copy shall be served on the appellee. Additional briefs shall be served as prescribed by rule 9.210.

(2) **Briefs: Non-final Appeals.** 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 attorney 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.

RULE 9.190. JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

(a) **Applicability.** Judicial review of administrative action shall be governed by the general rules of appellate procedure except as specifically modified herein.

(b) **Commencement.**

(1) An appeal from final agency action as defined in the Administrative Procedure Act, chapter 120, 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 agency action, including non-final action by an administrative law judge, under the Administrative Procedure Act 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) 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) 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) 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; 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) 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) In an appeal from a rule adoption pursuant to sections 120.54 (rule adoption) and 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.

(3) **Review of Non-Final 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 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 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)(23).

(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. The assessment of attorneys' fees may be remanded to the lower tribunal or the administrative law judge or referred to a special master.

(2) **Review.** Review of orders rendered under this rule shall be by motion filed in the court within 30 days of the order's rendition. Review of objections to reports of special masters shall be on motion filed in the court within 30 days of the report's filing.

(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 where 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 limitation of a license under section 120.60(6), Florida Statutes, a licensee 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 reviewing court a motion for stay on an expedited basis. Unless the agency files with the court within 10 days thereafter or within a shorter time period set by the court a response demonstrating that a stay would constitute a probable danger to the health, safety, or welfare of the state, the court shall issue a stay.

(D) When an order suspending or revoking a license has been stayed pursuant to subdivision (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 jurisdiction or 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.

RULE 9.200. THE RECORD

(a) Contents.

(1) Except as otherwise designated by the parties, the record shall consist of the original documents, exhibits, and transcript(s) of proceedings, if any, filed in the lower tribunal, except summonses, praecipes, subpoenas, returns, notices; of hearing or of taking deposition, depositions, other discovery, and physical evidence. The record shall also include a progress docket.

(2) In family law cases the record shall include those items designated in subdivision (a)(1) except that the clerk of the lower tribunal shall retain the original orders, reports and recommendations of masters or hearing officers, and judgments within the file of the lower tribunal and shall include copies thereof within the record.

(3) 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(f). 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.

(4) 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 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) Within 10 days of filing the notice, the appellant shall designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record. Within 20 days of filing the notice, an appellee may designate additional portions of the proceedings. Copies of designations shall be served on the court reporter. Costs of the original and all copies 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) Within 30 days of service of a designation, or within the additional time provided for under subdivision (b)(3) of this rule, the court reporter shall transcribe and deliver to the clerk of the lower tribunal the designated proceedings and shall furnish copies as requested in the designation. If a designating party directs the court reporter 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 days of receipt from the court reporter. The transcript of the trial shall be securely bound in consecutively numbered volumes not to exceed 200 pages each, and each page shall be numbered consecutively. Each volume shall be prefaced by an 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.

(3) On service of a designation, the reporter shall acknowledge at the foot of the designation the fact that it has been received and the date on which the reporter expects to have the transcript(s) completed and shall transmit the designation, so endorsed, to the parties and to the clerk of the appellate court within 5 days of service. If the transcript(s) cannot be completed within 30 days of service of the designation, the reporter shall request such additional time as is reasonably necessary and shall state the reasons therefor. If the reporter requests an extension of time, the court shall allow the parties 5 days in which to object or agree. The appellate 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) If no report of the proceedings was made, or if the transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee, who may serve objections or proposed amendments to it within 10 days of service. Thereafter, the statement and any objections or proposed amendments shall be submitted to 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, 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 of Record.**

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

(A) 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 incorporated at the end of the record, and shall not be renumbered by the clerk. The progress docket shall be incorporated into the record immediately after the index.

(B) The remainder of the record, including all supplements and any transcripts other than the transcript of the trial, shall be consecutively numbered. The record shall be securely bound in consecutively numbered volumes not to exceed 200 pages each. The cover sheet of each volume shall contain the name of the lower tribunal and the style and number of the case.

(2) The clerk of the lower tribunal shall prepare a complete index to the record and shall attach a copy of the progress docket to the index.

(3) The clerk of the lower tribunal shall certify and transmit the record to the court as prescribed by these rules; provided that if the parties stipulate or the lower tribunal orders that the original record be retained, the clerk shall prepare and transmit a certified copy.

(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 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.

(g) **Return of Record.** In civil cases, the record shall be returned to the lower tribunal after final disposition by the court.

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(1). 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.

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 ~~tone~~ 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) Briefs shall be printed, typewritten, or duplicated on opaque, white, unglossed ~~8 ½-by-11 inch paper~~. ~~If printed, the brief shall be 6 by 9 inches; if typewritten, the brief shall be 8 ½ by 11 inches.~~

(2) The lettering in briefs shall be black and in distinct type, double-spaced, ~~and~~ with margins no less than 1 inch. Lettering in script or type made in imitation of handwriting shall not be permitted. ~~Text shall be printed in type of no more than 10 characters per inch. Text should be double spaced so that there are no more than 27 lines per page.~~ Footnotes and quotations may be single spaced and shall be in the same size type, with the same spacing between characters, as the text. Typed matter that is not proportionally spaced shall be in 12 point or larger type and shall not exceed 10 characters per inch (10 pitch) and 27 lines per page; typed matter that is proportionally spaced shall be in 13 point or larger Times Roman, Times New Roman, CG Times, or similar type and shall not exceed 23 lines per page.

(3) Briefs ~~should~~shall be securely bound in book form and fastened along the left side in a manner that will allow them to lie flat when opened. ~~Alternatively, briefs may be or be~~ securely stapled in the upper left corner. ~~No other method of securing the brief is acceptable.~~ Headings shall be in capital letters and, if printed, and subheadings shall be at least as large as the brief text and may be in bold type not less than 11 points single spaced.

(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 of the attorney filing the brief.

(5) The initial and answer briefs shall not exceed 50 pages in length. Reply briefs shall not exceed 15 pages in length; provided that if a cross-appeal has been filed, the reply 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/cross-appellant's brief. Cross-reply briefs shall not exceed 15 pages. Briefs on jurisdiction shall not exceed 10 pages. The table of contents and the citation of authorities shall be excluded from the computation. Longer briefs may be permitted by the court.

(b) **Contents of Initial Brief.** The initial brief shall contain the following, in order:

(1) A table of contents listing the issues presented for review, with references to pages.

(2) 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 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. References to the appropriate volume and pages of the record or transcript shall be made.

(4) A summary of argument, suitably paragraphed, condensing succinctly, accurately, and clearly the argument actually made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged. It should seldom exceed 2 and never 5 pages.

(5) Argument with regard to each issue including the applicable appellate standard of review.

(6) A conclusion, of not more than 1 page, setting forth the precise relief sought.

(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 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.

(e) **Contents of Cross-Reply Brief.** The cross-reply brief is limited to rebuttal of argument of the cross-appellee.

(f) **Times for Service of Briefs.** The times for serving jurisdiction 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.

(g) **Filing with Courts.** The filing requirements of the courts are as follows:

(1) **Circuit Courts.** Original and 1 copy.

(2) **District Courts of Appeal.** Original and 3 copies.

(3) **Supreme Court.** Original and 7 copies; except that 5 copies only shall accompany the original jurisdictional briefs prescribed in rule 9.120(d).

(h) **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.

2000 Amendment. Subdivisions (a)(1) through (a)(3) were amended to allow the use of modern proportional fonts and to better reflect current technology and practice.

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.

RULE 9.330. REHEARING; CLARIFICATION; CERTIFICATION

(a) **Time for Filing; Contents; Reply Response.** A motion for rehearing, clarification, or certification may be filed within 15 days of an order or within such other time set by the court. A motion for rehearing ~~or clarification~~ 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 decision, and shall not present issues not previously raised in the proceeding. A motion for clarification shall state with particularity the points of law or fact in the court's decision that in the opinion of the movant are in need of clarification. ~~The motion shall not re-argue the merits of the court's order.~~ A reply response may be served within 10 days of service of the motion.

(b) **Limitation.** A party shall not file more than 1 motion for rehearing or for clarification of decision and 1 motion for certification with respect to a particular decision.

(c) **Exception; Bond Validation Proceedings.** A motion for rehearing or for clarification of a 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 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 under Rule 9.120.** No motion for rehearing or for clarification may be filed in the supreme court addressed to the grant or denial of a request for the court to exercise its discretion to review a decision described in rule 9.120.

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.

RULE 9.350. DISMISSAL OF CAUSES

(a) **Dismissal of Causes ~~w~~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 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 the notice of appeal or until 10 days after the time prescribed by rule 9.110(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.

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).

RULE 9.420. FILING; SERVICE OF COPIES; COMPUTATION OF TIME

(a) **Filing.**

(1) **Generally.** Filing may be accomplished by filing with the clerk; provided that a justice or judge may accept the documents for filing, and shall note the filing date and ~~forthwith~~ immediately transmit them to the office of the clerk.

(2) **Inmate Filing.** A paper filed by a pro se inmate confined in an institution is timely filed if deposited in the institution's internal mail system on or before the last day for filing. Timely filing of a paper by an inmate confined in an institution may be shown by a notarized statement or a declaration (in compliance with Section 95.525, Florida Statutes) setting forth the date of deposit.

(b) **Service.** All original papers 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.

(c) **Method and Proof of Service.**

(1) **How Made.** If service is required or permitted to be made on a party represented by an attorney, service shall be made on the attorney unless service on the party is ordered by the court. Service on the attorney or party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule shall mean (A) handing it to the attorney or to the party, or (B) leaving it at the attorney's or party's office with the clerk or other person in charge thereof, or (C) if there is no one in charge, leaving it in a conspicuous place therein, or (D) if the office is closed or the person to be served has no office, leaving it at the attorney's or party's usual place of abode with some person of the attorney's

or party's family above 15 years of age and informing such person of the contents. Service by mail shall be complete on mailing.

(2) **Certificate of Service.** If any attorney shall certify in substance:

I certify that a copy hereof has been furnished to(here insert name or names).....
by(delivery) (mail)..... ~~this~~ day of, 19.....on(date).....

Attorney for(name of party).....
.....(address and phone number).....
Florida Bar No.

the certificate shall be taken as prima facie proof of such service in compliance with these rules. The certificate shall specify the party each attorney represents.

(d) **Additional Time After Service by Mail.** If a party, court reporter, or clerk is required or permitted to do an act within some prescribed time after service of a document, and the document is served by mail, 5 days shall be added to the prescribed period.

(e) **Computation.** In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a holiday described below, in which event, the period shall run until the end of the next day that is neither a Saturday, Sunday, nor holiday. If the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. As used in this rule, holiday means

- (1) New Year's Day;
- (2) Martin Luther King, Jr.'s Birthday, the third Monday in January;

- (3) Washington's Birthday, the third Monday in February;
- (4) Good Friday;
- (5) Memorial Day, the last Monday in May;
- (6) Independence Day;
- (7) Labor Day, the first Monday in September;
- (8) Columbus Day, the second Monday in October;
- (9) Veterans' Day;
- (10) General Election Day;
- (11) Thanksgiving Day, the fourth Thursday in November;
- (12) Christmas Day;
- (13) any statewide primary day;
- (14) any Monday immediately following a Sunday on which one of the foregoing holidays falls; and
- (15) any other day when the clerk's office is closed.

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.

2000 Amendment. The amendment to subdivision (a)(2) follows *Haag v. State*, 591 So. 2d 614 (Fla. 1992), and adopts the mailbox rule for pro se inmate filings.

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) 1846–1886: *Livingston v. L'Engle*, 22 Fla. 427 (1886).

~~———— (2) 1887–1948: *Hanna v. Martin*, 160 Fla. 967, 37 So. 2d 579 (1948). (This is the last case for parallel citation.)~~

~~(32) 1948–date: *Fenelon v. State*, 594 So. 2d 292 (Fla. 1992).~~

~~(43) 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: *Traylor v. State*, No. 70,051 (Fla. Jan. 16, 1992).~~

(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 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: *Myers v. State*, No. 90-1092 (Fla. 4th DCA June 5, 1991).

(c) Florida Circuit Courts and County Courts.

(1) *Whidden v. Francis*, 27 Fla. Supp. 80 (Fla. 11th Cir. Ct. 1966).

(2) *State v. Alvarez*, 42 Fla. Supp. 83 (Fla. Dade Cty. Ct. 1975).

(3) For opinions not published in Florida Supplement, cite to Florida Law Weekly: *State v. Campeau*, 16 Fla. L. Weekly C65 (Fla. 9th Cir. Ct. Nov. 7, 1990). If not therein, cite to the slip opinion: *State v. Campeau*, No. 90-4363 (Fla. 9th Cir. Ct. Nov. 7, 1990).

(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).

(2) For decisions of the Florida Public Service Commission: *In re Application of Tampa Elec. Co.*, 81 F.P.S.C. 2:120 (1981).

(3) For decisions of all other agencies: *Insurance Co. v. Department of Ins.*, 2 F.A.L.R. 648-A (Fla. Dept. of Insurance 1980).

(e) **Florida Constitution.** (Year of adoption should be given if necessary to avoid confusion.)

Art. V, § 3(b)(3), Fla. Const.

(f) **Florida Statutes (Official).**

§ 350.34, Fla. Stat. (1973).

§ 120.53, Fla. Stat. (Supp. 1974).

(g) **Florida Statutes Annotated.** (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).

(h) **Florida Laws.** (Cite if not in Fla. Stat. or if desired for clarity or adoption reference.)

(1) After 1956: Ch. 74-177, § 5, at 473, Laws of Fla.

(2) Before 1957: Ch. 22000, Laws of Fla. (1943).

(i) **Florida Rules.**

Fla. R. Civ. P. 1.180.

Fla. R. Jud. Admin. 2.035.

Fla. R. Crim. P. 3.850.

Fla. R. Work. Comp. P. 4.113.

Fla. Prob. R. 5.120.

Fla. R. Traf. Ct. 6.165.

Fla. Sm. Cl. R. 7.070.

Fla. R. Juv. P. 8.070.

Fla. R. App. P. 9.100.

Fla. R. Med. 10.010

Fla. R. Arb. 11.010

Fla. Fam. L. R. P. 12.010

Fla. Admin. Code R. 8H-3.02.

Fla. Code Jud. Conduct, Canon 5B.

Fla. Bar Code Prof. Resp. D.R. 1-101(A)

R. Regulating Fla. Bar 4-1.10.

Fla. Bar Found. By-Laws, art. 2.18(b).

Fla. Bar Found. Charter, art. 3.4.

Fla. Bar Integr. R., art XI, rule 11.09.

Fla. Bd. Bar Exam. R. III.

Fla. Jud. Qual. Comm'n R. 9.

Fla. Std. Jury Instr. (Civ.) 6.4(c).

Fla. Std. Jury Instr. (Crim.) ~~[page number]~~2.03.

Fla. Std. Jury Instr. (Crim.) Robbery.

Fla. Stds. Imposing Law. Sancs. 9.3

Fla. Stds. Imposing Law. Sancs. (Drug Cases) 3

Fla. Bar Admiss. R., art. III.

(j) **Florida Attorney General Opinions.**

Op. Att'y Gen. Fla. 73-178 (1973).

(k) **United States Supreme Court.**

Sansone v. United States, 380 U.S. 343 (1965).

(Cite to United States Reports, if published therein; 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).

(l) **Federal Courts of Appeals.**

Gulf Oil Corp. v. Bivins, 276 F.2d 753 (5th Cir. 1960).

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).

(m) **Federal District Courts.**

Pugh v. Rainwater, 332 F. Supp. 1107 (S.D. Fla. 1971).

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).

(n) **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 latest edition of *The Bluebook: A Uniform System of Citation*, The Harvard Law Review Association, Gannett House, Cambridge, Mass. 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, Fla. 32306.

(o) **Case Names.** Case names shall be underscored (or italicized) in text and in footnotes.

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.

RULE 9.900. FORMS

(a) Notice of Appeal.

IN THE(NAME OF LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. _____

_____)	
Defendant /Appellant,)	
)	
v.)	NOTICE OF APPEAL
)	
_____)	
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(h)] _____, 19____.....(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 and phone number).....
Florida Bar No.

(b) Notice of Cross-Appeal.

IN THE(NAME OF LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. _____

_____,)	
Defendant/Appellant,)	
Cross-Appellee,)	
)	
v.)	NOTICE OF
)	CROSS-APPEAL
_____,)	
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(h)] _____, 19____.....(date)..... The nature of the order is a final order(state nature of the order).....

 Attorney for(name of party).....
(address and phone number).....
 Florida Bar No.

(c) Notice of Appeal of Non-Final Order.

IN THE(NAME OF LOWER TRIBUNAL WHOSE NON-FINAL ORDER IS TO BE REVIEWED).....

Case No. _____

_____,)
 Defendant/Appellant,)
)
 v.) NOTICE OF APPEAL
) OF A NON-FINAL
 _____,) ORDER
 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(h)] _____, 19____.....(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 order(state nature of the order).....

 Attorney for(name of party).....
(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,)
)
 v.) NOTICE TO INVOKE
) 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(h)] _____, 19_____(date)..... The decision(state why the decision is within the supreme court's jurisdiction).....¹

Attorney for(name of party).....
.....(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).

(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,)

v.)
) NOTICE OF
) ADMINISTRATIVE
) 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(h)] _____, 19_____(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 and phone number).....
 Florida Bar No.

*or other appropriate designation.

(f) 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 original 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).

(g) Designation to Reporter.

IN THE(NAME OF LOWER
TRIBUNAL WHOSE ORDER IS TO BE
REVIEWED).....

Case No. _____

_____ ,)	
Plaintiff/Appellant,)	
)	
v.)	DESIGNATION
)	TO REPORTER
)	AND REPORTER'S
_____ ,)	ACKNOWLEDGMENT
Defendant/Appellee.)	
_____)	

I. DESIGNATION

Plaintiff/Appellant, _____, files this Designation to Reporter and directs(name of court reporter).... to transcribe an original and _____ copies of the following portions of the trial proceedings to be used in this appeal:

1. The entire trial proceedings recorded by the reporter on _____, 19_____(date)....., before the Honorable(judge)....., except _____.

2. [Indicate all other portions of reported proceedings.]

3. The court reporter is directed to file the original with the clerk of the lower tribunal and to serve one copy on each of the following:

- 1.
- 2.
- 3.

I, counsel for Appellant, certify that satisfactory financial arrangements have been made with the court reporter for preparation of the transcript.

Attorney for(name of party).....
.....(address and phone number).....
Florida Bar No.

II. REPORTER'S ACKNOWLEDGMENT

1. The foregoing designation was served on _____, 19_____(date)....., and received on _____, 19_____(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 the _____ day of _____, 19____.....(date).....

OR

5b. For the following reason(s) the court reporter requests an extension of time of _____ days for preparation of the transcript that will be filed on or before the _____ day of _____, 19____.....(date).....

6. Completion and filing of this acknowledgment by the court reporter constitutes submission to the jurisdiction of the court for all purposes in connection with these appellate proceedings.

7. The undersigned court reporter certifies that the foregoing is true and correct and that a copy has been furnished by mail () hand delivery () on this _____ day of _____, 19____.....(date)....., to each of the parties or their counsel.

Court Reporter
.....(address).....

Note: The foregoing court reporter's acknowledgment to be placed "at the foot of" or attached to a copy of the designation, shall be properly completed, signed by the court reporter, and filed with the clerk of the appellate court within 5 days of service of the designation on the court reporter. 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), (2), & (3).

(h) **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

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).