

**§3.F.00 | REVIEW OF ORDERS ENTERED BY THE LOWER TRIBUNAL<sup>151</sup>**

Many orders entered by the lower tribunal during the course of an appellate proceeding may be challenged by filing a motion for review in the appellate court. A separate appeal is not necessary because the appellate court already has jurisdiction under the original notice or petition. Appellate review is available by motion for each order discussed below.

Motions for review frequently are employed to challenge orders of the lower tribunal relating to stays and post-trial release. Rule 9.310(f) provides that an order of the lower tribunal granting or denying a stay while an appellate proceeding is pending is subject to review by motion filed in the appellate court.<sup>152</sup> Similarly, Rule 9.140(g)(4) allows a party who wishes to challenge the correctness of a post-trial release order in a criminal case to do so simply by filing a motion for review in the appellate court.<sup>153</sup>

The opportunity for appellate review by motion also exists for alimony and support orders entered by the lower court during an appeal in family-law cases. Rule 9.600(c)(1) provides that the lower court has continuing jurisdiction to enter orders on alimony, child support, and other family-law matters during appeals in dissolution-of-marriage actions.<sup>154</sup> All such orders can be reviewed by filing a motion in the appellate court in the pending review proceeding.<sup>155</sup>

An order of the lower tribunal on motions to tax costs on appeal also is subject to review by motion in the appellate court. The lower tribunals have exclusive authority to tax costs following an appeal. Although the appellate court determines the issue of entitlement to appellate attorneys' fees, the amount frequently is set by order in the lower tribunal at the direction of the appellate court. An order determining the amount of appellate attorneys' fees also is subject to review by motion in the appellate court. As in each of the previous examples, a party who is aggrieved by an order of the lower tribunal taxing costs or assessing the amount of appellate attorneys' fees may challenge the order by filing a motion for review in the appellate court.<sup>156</sup>

Before the record is transmitted, the lower tribunals have concurrent jurisdiction with the appellate courts to enter orders on all procedural matters except for the extension of any time period prescribed by the appellate rules. Rule 9.600(a) states that the lower tribunals may exercise their concurrent jurisdiction "subject to the control" of the appellate court.<sup>157</sup>



Although the Rule does not explain how an appellate court would exercise control over a procedural order of the lower tribunal, the logical procedure for challenging such an order would be to file a motion for review in the appellate court.

In some situations discussed above, the opportunity to seek review by motion is governed by a time limitation, while in other situations it is not. For example, there is a thirty-day time limit for filing a motion to review an order taxing costs or attorneys' fees and all motions for review in dissolution-of-marriage cases,<sup>158</sup> but there is no established time limit for filing a motion to review an order granting or denying a stay pending review or an order determining the issue of post-trial release in a criminal case.<sup>159</sup> Because the time requirements for review by motion are not uniform, attorneys must examine the applicable rule in every case.

Motions for review of orders of the lower tribunal should meet the same requirements of form and content that apply to preparing and filing of appellate motions generally.

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#### Footnotes

<sup>151</sup>. See Padovano, *supra* n. 1, at ch. 14 for the source of the material that is adapted in this Subsection.

<sup>152</sup>. Fla. R. App. P. 9.310(f).

<sup>153</sup>. See *Peacock v. State*, 798 S.2d 909, 910 (Fla. Dist. App. 5th 2001) (treating a petition for writ of habeas corpus as a motion to review an order on a motion for post-trial release).

<sup>154</sup>. Fla. R. App. P. 9.600(c)(1).

<sup>155</sup>. Rule 9.600(c)(1) provides that in family-law matters “[t]he lower tribunal shall retain jurisdiction to enter and enforce orders awarding separate maintenance, child support, alimony” or other awards “necessary to protect the welfare and rights of any party pending appeal” including costs and attorneys’ fees. Review of such orders is by motion filed in the court within thirty days of rendition of the order. Id. 9.600(c)(3).

<sup>156</sup>. Id. 9.400(c).

<sup>157</sup>. Id. 9.600(a).

<sup>158</sup>. Id. 9.400(c). Likewise, Rule 9.600(c)(3) requires that a motion to review an order in a dissolution-of-marriage case must be filed in the appellate court within thirty days of rendition.

<sup>159</sup>. Id. 9.310(f); id. 9.140(g)(4).

