

RULE 9.110 | APPEAL PROCEEDINGS TO REVIEW FINAL ORDERS OF LOWER TRIBUNALS AND ORDERS GRANTING NEW TRIAL IN JURY AND NONJURY CASES

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

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

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

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

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

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

(d) Notice of Appeal. The notice of appeal must be substantially in the form prescribed by rule 9.900(a). The caption must 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 must contain the name of the court to which the appeal is taken, the date of rendition, and the nature of the order to be reviewed. Except in criminal cases, a conformed copy of the order or orders designated in the notice of appeal must be attached to the notice together with any order entered on a timely motion postponing rendition of the order or orders appealed. If a motion postponing rendition under rule 9.020(h) is pending when the notice of appeal is filed, the notice of appeal must indicate the pendency of such a motion and the date it was filed. Within 10 days of either withdrawal of such a motion or rendition of the order being appealed, the appellant must file in the court a notice indicating that the motion has



been withdrawn or a conformed copy of the signed, written order disposing of the motion postponing rendition. The notice must be accompanied by any required filing fee except as provided in rule 9.430 for proceedings by indigents.

(e) Record. Within 50 days of filing the notice, the clerk of the lower tribunal must prepare the record prescribed by rule 9.200 and serve copies of the index on all parties. Within 60 days of filing the notice, the clerk of the lower tribunal must electronically transmit the record to the court or file a notice of inability to complete or transmit the record, specifying the reason. Any notice filed must be served on all parties and, as necessary, on any court reporter.

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

(g) Cross-Appeal. An appellee may cross-appeal by serving a notice within 15 days of service of the appellant's timely filed notice of appeal or within the time prescribed for filing a notice of appeal, whichever is later. The notice of cross-appeal must be filed either before service or immediately thereafter in the same manner as the notice of appeal. The notice of cross-appeal must be accompanied by any required filing fee except as provided in rule 9.430 for proceedings by indigents.

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

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

(j) Exception; Appeal Proceedings from District Courts of Appeal. If the appeal is from an order of a district court of appeal, the clerk of the district court of appeal must



electronically transmit the record to the court within 60 days of filing the notice. The appellant's initial brief must be served within 20 days of filing the notice. Additional briefs must be served as prescribed by rule 9.210.

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

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

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



Committee Notes

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

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

This rule is intended to clarify the procedure for review of orders granting a new trial. Rules 9.130(a)(4) and 9.140(c)(1)(C) authorize the appeal of orders granting a motion for new trial. Those rules supersede *Clement v. Aztec Sales, Inc.*, 297 So. 2d 1 (Fla. 1974), and are consistent with the decision there. Under subdivision (h) of this rule the scope of review of the court is not necessarily limited to the order granting a new trial. The supreme court has held that “appeals taken from new trial orders shall be treated as appeals from final judgments to the extent possible.” *Bowen v. Willard*, 340 So. 2d 110, 112 (Fla. 1976). This rule implements that decision.

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

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

This rule works significant changes in the review of final administrative action. The former rules required that a traditional petition for the writ of certiorari be filed if supreme court review was appropriate, and the practice under the Administrative Procedure Act, section 120.68, Florida Statutes (Supp. 1976), has been for the “petition for review” to be substantially similar to a petition



for the writ of certiorari. See *Yamaha Int'l Corp. v. Ehrman*, 318 So. 2d 196 (Fla. 1st DCA 1975). This rule eliminates the need for true petitions in such cases. Instead, a simple notice is filed, to be followed later by briefs. It is intended that the notice constitute the petition required in section 120.68(2), Florida Statutes (Supp. 1976). There is no conflict with the statute because the substance of the review proceeding remains controlled by the statute, and the legislature directed that review be under the procedures set forth in these rules. Because it is a requirement of rendition that an order be written and filed, this rule supersedes *Shevin ex rel. State v. Public Service Comm'n*, 333 So. 2d 9 (Fla. 1976), and *School Bd. v. Malbon*, 341 So. 2d 523 (Fla. 2d DCA 1977), to the extent that those decisions assume that reduction of an order to writing is unnecessary for judicial review.

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

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

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

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

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

1980 Amendment. The rule has been amended to incorporate changes in rule 9.030 and to reflect the abolition of supreme court jurisdiction to review, if provided by general law, final orders of trial courts imposing sentences of life imprisonment.

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

1984 Amendment. Subdivision (k) was added to remedy a pitfall in the application of case law under *Mendez v. West Flagler Family Association*, 303 So. 2d 1 (Fla. 1974). Appeals may



now be taken immediately or delayed until the end of the entire case, under the rationale of Mendez.

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

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

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

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

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

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

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

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



2018 Amendment. Subdivision (k) was amended to clarify that subdivision (h) does not expand the scope of review of partial final judgments to include rulings that are not directly related to and an aspect of the final order under review. E.g., *Cygler v. Presjack*, 667 So. 2d 458, 461 (Fla. 4th DCA 1996).

2020 Amendment. The requirement to notify the court of a motion postponing rendition is not meant to encourage the filing of a notice of appeal before rendition.

Court Commentary

2003 Amendment. Subdivision (l) was deleted to reflect the holding in *North Florida Women's Health & Counseling Services, Inc. v. State*, 28 Fla. L. Weekly S549 [866 So. 2d 612] (Fla. July 10, 2003).

