RULE 9.130 | PROCEEDINGS TO REVIEW NONFINAL ORDERS AND SPECIFIED FINAL ORDERS

(a) Applicability.

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

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

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

(A) concern venue;

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

(C) determine:

(i) the jurisdiction of the person;

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

(iii) in family law matters:

a. the right to immediate monetary relief;

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

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

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

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

(vi) whether to certify a class;

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

(viii) the issue of forum non conveniens;

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

(x) that a permanent guardianship shall be established for a dependent child pursuant to section 39.6221, Florida Statutes;

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

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

(F) deny a motion that:

(i) asserts entitlement to absolute or qualified immunity in a civil rights claim arising under federal law;

(ii) asserts entitlement to immunity under section 768.28(9), Florida Statutes; or

(iii) asserts entitlement to sovereign immunity; or

(G) grant or deny a motion for leave to amend to assert a claim for punitive damages; or

(H) deny a motion to dismiss on the basis of the qualifications of a corroborating expert witness under subsections 766.102(5)–(9), and (12), Florida Statutes.

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

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

(b) Commencement. Jurisdiction of the court under subdivisions (a)(3)–(a)(5) of this rule shall be invoked by filing a notice 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 nonfinal order, shall be substantially in the form prescribed by rule 9.900(c). Except in criminal cases, a conformed copy of the order or orders designated in the notice of appeal shall be attached to the notice. The notice must be accompanied by any required filing fee except as provided in rule 9.430 for proceedings by indigents.

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

(e) Briefs. The appellant's initial brief, accompanied by an appendix as prescribed by rule 9.220, shall be served within 20 days of filing the notice. Additional briefs shall be served as prescribed by rule 9.210.

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

(g) Cross-Appeal. An appellee may cross-appeal the order or orders designated by the appellant, to review any ruling described in subdivisions (a)(3)–(a)(5), by serving a notice within 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. A notice of cross-appeal shall 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) Review on Full Appeal. This rule shall not preclude initial review of a nonfinal order on appeal from the final order in the cause.

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

Committee Notes

1977 Amendment. This rule replaces former rule 4.2 and substantially alters current practice. This rule applies to review of all non-final orders, except those entered in criminal cases, and those specifically governed by rules 9.100 and 9.110.

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

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

Subdivision (a)(4) grants a right of review if the lower tribunal grants a motion for new trial whether in a jury or non-jury case. The procedures set forth in rule 9.110, and not those set forth in this rule, apply in such cases. This rule has been phrased so that the granting of rehearing in a non-jury case under Florida Rule of Civil Procedure 1.530 may not be the subject of an interlocutory appeal unless the trial judge orders the taking of evidence. Other non-final orders that postpone rendition are not reviewable in an independent proceeding. Other non-final orders

entered by a lower tribunal after final order are reviewable and are to be governed by this rule. Such orders include, for example, an order granting a motion to vacate default.

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

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

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

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

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

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

Subdivision (g) was embodied in former rule 4.2(a) and is intended to make clear that the failure to take an interlocutory appeal does not constitute a waiver of any sort on appeal of a final judgment, although an improper ruling might not then constitute prejudicial error warranting reversal.

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

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

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

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

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

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

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

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

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

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

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

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

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

2014 Amendment. Subdivision (a)(4) has been amended to clarify that an order disposing of a motion that suspends rendition is reviewable, but only in conjunction with, and as a part of, the review of the final order. Additionally, the following sentence has been deleted from subdivision (a)(4):

> "Other non-final orders entered after final order on authorized motions are reviewable by the method prescribed by this rule."

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