

RULE 9.142 | PROCEDURES FOR REVIEW IN DEATH PENALTY CASES**(a) Procedure in Death Penalty Appeals.**

(1) Record.

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

(B) The complete record in a death penalty appeal must include all items required by rule 9.200 and by any order issued by the supreme court. In any appeal following the initial direct appeal, the record must exclude any materials already transmitted to the supreme court as the record in any prior appeal. The clerk of the circuit court must retain a copy of the complete record when it transmits the record to the supreme court.

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

(2) Briefs; Transcripts. After the record is filed, the clerk of the supreme court will promptly establish a briefing schedule allowing the defendant 60 days from the date the record is filed, the state 50 days from the date the defendant's brief is served, and the defendant 40 days from the date the state's brief is served to serve their respective briefs. On appeals from orders ruling on applications for relief under Florida Rules of Criminal Procedure 3.851 or 3.853, and on resentencing matters, the schedules set forth in rule 9.140(g) will control.

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



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

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

(b) Petitions for Extraordinary Relief.

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

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

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

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

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

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

(E) the nature of the relief sought.

(3) Petitions Seeking Belated Appeal.

(A) Contents. A petition for belated appeal must include a detailed allegation of the specific acts sworn to by the petitioner or petitioner's counsel that constitute the basis for entitlement to belated appeal, including whether the petitioner requested counsel to proceed with the appeal and the date of any such request, whether counsel misadvised the petitioner as to the availability of appellate review or the filing of the notice of appeal, or whether there were circumstances unrelated to counsel's action or inaction,



including names of individuals involved and date(s) of the occurrence(s), that were beyond the petitioner's control and otherwise interfered with the petitioner's ability to file a timely appeal.

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

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

(ii) could not have ascertained such facts by the exercise of due diligence. In no case may a petition for belated appeal be filed more than 2 years after the expiration of time for filing the notice of appeal.

(4) Petitions Alleging Ineffective Assistance of Appellate Counsel.

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

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

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

(1) Applicability. This rule applies to proceedings that invoke the jurisdiction of the supreme court for review



of nonfinal orders issued in postconviction proceedings following the imposition of the death penalty.

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

(3) Commencement; Parties.

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

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

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

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

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

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

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

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

(F) argument in support of the petition, including an explanation of why the order departs from the essential requirements of law and how the order may cause material injury for which there is no



adequate remedy on appeal, and appropriate citations of authority; and

(G) the nature of the relief sought.

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

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

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

(8) Reply. Within 30 days after service of the response or such other time set by the court, the petitioner may serve a reply and supplemental appendix.

(9) Stay.

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

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

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

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



(d) Review of Dismissal of Postconviction Proceedings in Florida Rule of Criminal Procedure 3.851(i) Cases.

(1) Applicability. This rule applies when the circuit court enters an order dismissing postconviction proceedings under Florida Rule of Criminal Procedure 3.851(i), unless the appeal was waived by the defendant before the circuit court.

(2) Procedure Following Rendition of Order of Dismissal.

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

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

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

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

Committee Notes

2009 Amendment. Subdivision (a)(1) has been amended to clarify what is meant by the phrase "complete record" in any death penalty appeal. A complete record in a death penalty appeal includes all items required by rule 9.200 and by any order issued by the supreme court, including any administrative orders such as *In Re: Record in Capital Cases* (Fla. July 6, 1995). It is necessary for transcripts of all hearings to be prepared and designated for inclusion in the record in all death penalty cases under rules 9.200(b), 9.140(f)(2), and 9.142(a)(2), to ensure completeness for both present and future review. The supreme court permanently retains the records in all death penalty appeals and writ proceedings arising from a death penalty case. See rule 9.140(f)(5); Florida Rule



of Judicial Administration 2.430(e)(2). These records are available to the supreme court when reviewing any subsequent proceeding involving the same defendant without the need for inclusion of copies of these records in the record for the appeal under review. Subdivision (a)(1) does not limit the ability of the parties to rely on prior appellate records involving the same defendant and the same judgment of conviction and sentence of death. Subdivision (a)(1)(B) is intended to ensure, among other things, that all documents filed in the lower tribunal under Florida Rule of Criminal Procedure 3.852 are included in the records for all appeals from final orders disposing of motions for postconviction relief filed under rule 3.851. This rule does not limit the authority to file directions under rule 9.200(a)(3), or to correct or supplement the record under rule 9.200(f).

Criminal Court Steering Committee

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

