

RULE 9.180 | APPEAL PROCEEDINGS TO REVIEW WORKERS' COMPENSATION CASES

(a) Applicability. Appellate review of proceedings in workers' compensation cases will be as in civil cases except as specifically modified in this rule.

(b) Jurisdiction.

(1) Appeal. The First District Court of Appeal (the court) must 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) Waiver of Review; Abbreviated Final Orders. Unless a request for findings of fact and conclusions of law is timely filed, review by appeal of an abbreviated final order will be deemed waived. The filing of a timely request tolls the time within which an abbreviated final order becomes final or an appeal may be filed.

(3) Commencement. Jurisdiction of the court under this rule must be invoked by filing a notice of appeal with the clerk of the lower tribunal within 30 days of the date the lower tribunal sends to the parties the order to be reviewed either by mail or by electronic means approved by the deputy chief judge, which date will be the date of rendition.

(4) Notice of Appeal. The notice must be substantially in the form prescribed by rule 9.900(a) or (c), and must contain a brief summary of the type of benefits affected, including a statement setting forth the time periods involved which must 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).....

(c) Jurisdiction of Lower Tribunal.

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

(2) Settlement. At any time before the record on appeal is transmitted to the court, the lower tribunal will 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 transmitted, settlement is reached, the parties must file a joint motion stating that a settlement has been reached and requesting relinquishment of jurisdiction to the lower tribunal for any necessary approval of the settlement. The court may relinquish jurisdiction for a specified period for entry of an appropriate order. In the event the Division of Workers' Compensation has advanced the costs of preparing the record on appeal or the filing fee, a copy of the joint motion must be furnished to the Division of Workers' Compensation by the appellant.

(A) Notice. On or before the date specified in the order relinquishing jurisdiction, the parties must 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 must provide where appropriate for the assessment and recovery of appellate costs, including any costs incurred by the Division of Workers' Compensation 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 must 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 will be deemed abandoned. If there is a dispute as to whether a challenge to certain benefits has been abandoned, the court upon motion will 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 must 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 must be paid within 30 days of the court's mandate.

(e) Intervention by Division of Workers' Compensation.

(1) District Court of Appeal. Within 30 days of the date of filing a notice or petition invoking the jurisdiction of the court the Division of Workers' Compensation 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 of Florida. If review of an order of the court is sought in the supreme court, the Division of Workers' Compensation may intervene in accordance with these rules. The clerk of the supreme court must provide a copy of the pertinent documents to the Division of Workers' Compensation.

(3) Division of Workers' Compensation Not a Party Until Notice to Intervene Is Filed. Until the notice of intervention is filed, the Division of Workers' Compensation will not be considered a party.

(f) Record Contents; Final Orders.

(1) Transcript; Order; Other Documents. The record must contain the claim(s) or petition(s) for benefits, notice(s) of denial, pretrial stipulation, pretrial order, trial memoranda, depositions or exhibits admitted into evidence, any motion for rehearing and response, order on motion for rehearing, 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 will 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; Transmission. The lower tribunal must 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 will consist of the stipulated statement and the order appealed which the lower tribunal must 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 must notify the appellant of the estimated cost of preparing



the record. The lower tribunal also must notify the Division of Workers' Compensation of the estimated record costs if the appellant files a verified petition to be relieved of costs and a sworn financial affidavit.

(B) Deposit of Estimated Costs. Within 15 days after the notice of estimated costs is served, the appellant must 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 must notify the court, which may dismiss the appeal.

(D) State Agencies; Waiver of Costs. Any selfinsured 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 must assess such costs against the appropriate party. If the Division of Workers' Compensation is obligated to pay the costs of the appeal due to the 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 must promptly notify the court if costs are not deposited as required.

(6) Transcript(s) of Proceedings.

(A) Selection of Court Reporter by Lower Tribunal. The deputy chief judge of compensation claims will select a court reporter or a transcriptionist to transcribe any hearing(s). The deputy chief judge who makes the selection must give the parties notice of the selection.

(B) Objection to Court Reporter or Transcriptionist Selected. Any party may object to the court reporter or transcriptionist selected by filing



written objections with the judge who made the selection within 15 days after service of notice of the selection. Within 5 days after filing the objection, the judge must hold a hearing on the issue. In such a case, the time limits mandated by these rules will be appropriately extended.

(C) Certification of Transcript by Court Reporter or Transcriptionist. The court reporter or transcriptionist selected by the deputy chief judge of compensation claims must certify and deliver an electronic version of the transcript(s) to the clerk of the office of the judges of compensation claims. The transcript(s) must be delivered in sufficient time for the clerk of the office of the judges of compensation claims to incorporate transcript(s) in the record. The court reporter or transcriptionist must promptly notify all parties in writing when the transcript(s) is delivered to the clerk of the office of the judges of compensation claims.

(7) Preparation; Certification; Transmission of the Record. The deputy chief judge of compensation claims must designate the person to prepare the record. The clerk of the office of the judges of compensation claims must supervise the preparation of the record. The record must be transmitted to the lower tribunal in sufficient time for the lower tribunal to review the record and transmit it to the court. The lower tribunal must 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. The lower tribunal must provide Portable Document Format ("PDF") file of the record to all counsel of record and all unrepresented parties.

(8) 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.

(9) Applicability of Rule 9.200. Rules 9.200(a)(3), (c), (d), and (f) apply to preparation of the record in appeals under this rule.



(g) Relief From Filing Fee and Cost; 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 must contain a statement by the appellant to be relieved of paying filing fees due to indigency and the appellant's inability to pay the charges. The petition must request that the lower tribunal enter an order or certificate of indigency. One of the following must 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 must certify that counsel has investigated:

a. the appellant's financial condition and finds the appellant indigent; and

b. the nature of appellant's position and believes it to be meritorious as a matter of law. Counsel must 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. The appellant must serve a copy of the verified petition or motion of indigency, including the appellant's financial affidavit or counsel's certificate, whichever is applicable, on all interested parties and the clerk of the court.

(E) Order or Certificate of Indigency. The lower tribunal must 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 the 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, the appellant must 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 must contain a sworn financial affidavit as described in subdivision (g) (3) (D).

(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 before the date of service of the notice of estimated costs will be deemed not timely.

(C) Verified Petition; Contents. The verified petition must contain a request by the appellant to be relieved of costs due to insolvency. The petition also must 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 must 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 must file a sworn financial affidavit listing income and assets, including marital income and assets, and expenses and liabilities.

(E) Verified Petition and Sworn Financial Affidavit; Service. The appellant must serve a copy of the verified petition to be relieved of costs, including the sworn financial affidavit, on all interested parties, including the Division of Workers' Compensation, the office of general counsel of the Department of Financial Services, and the clerk of the court.

(F) Hearing on Petition to Be Relieved of Costs. After giving 15 days' notice to the Division of Workers' Compensation and all parties, the lower tribunal must 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. 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 will begin to run from the date of the order granting the petition. If the petition to be relieved of the cost of the record is denied or only granted in part, the petitioner must deposit the estimated costs with the lower tribunal, or file a motion requesting a determination of indigency, 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 will begin from the date the estimated cost is deposited with the lower tribunal. If the petition to be relieved of the cost of the record is withdrawn before ruling, then



the petitioner must deposit the estimated costs with the lower tribunal at the time the petition is withdrawn and the 60-day period for preparation of the record will begin to run from the date the petition is withdrawn.

(H) 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. The lower tribunal must provide a copy of such order to all interested parties, including the division, general counsel of the Department of Financial Services, and the clerk of the court.

(I) 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 must 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 must serve the initial brief. Additional briefs must be served as prescribed by rule 9.210.

(2) Briefs; Nonfinal Appeals. The appellant's initial brief, accompanied by an appendix as prescribed by rule 9.220, must be served within 15 days of filing the notice. Additional briefs must 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 will be disregarded and may constitute cause for imposition of sanctions.

(i) Attorneys' Fees and Appellate Costs.

(1) Costs. Appellate costs must be taxed as provided by law. Taxable costs will 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 must 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 will have jurisdiction to conduct hearings and consider evidence regarding the amount of the attorneys' fee and costs due at any time after the mandate, if applicable, or the final order or opinion disposing of the case is issued, whichever is later. (4) Review. Review will 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.

2011 Amendments. Subdivision (b)(4) was amended to provide for the use of form 9.900(c) in appeal of non-final orders.

Subdivisions (f)(6) and (f)(7) were amended to conform to section 440.29(2), Florida Statutes, providing that the deputy chief judge, not the lower tribunal, is authorized to designate the manner in which hearings are recorded and arrange for the preparation of records on appeal. Moreover, it provides statewide uniformity and consistency in the preparation of records on appeal by incorporating electronic and other technological means to promote efficiency and cost

reduction. Currently the electronic version of the transcript is the Portable Document Format (PDF).

