

**RULE 9.190 | JUDICIAL REVIEW OF ADMINISTRATIVE ACTION**

**(a) Applicability.** Judicial review of administrative action will be as in civil cases except as specifically modified by this rule.

**(b) Commencement.**

(1) An appeal from final agency action as defined in the Administrative Procedure Act, chapter 120, Florida Statutes, including immediate final orders entered under section 120.569(2)(n), Florida Statutes, or other administrative action for which judicial review is provided by general law must be commenced in accordance with rule 9.110(c).

(2) Review of nonfinal agency action under the Administrative Procedure Act, including nonfinal action by an administrative law judge, and agency orders entered under section 120.60(6), Florida Statutes, must be commenced by filing a petition for review in accordance with rules 9.100(b) and (c).

(3) Review of quasi-judicial decisions of any administrative body, agency, board, or commission not subject to the Administrative Procedure Act must be commenced by filing a petition for certiorari in accordance with rules 9.100(b) and (c), unless judicial review by appeal is provided by general law.

**(c) The Record.**

(1) Generally. As further described in this rule, the record must include only materials furnished to and reviewed by the lower tribunal in advance of the administrative action to be reviewed by the court.

(2) Review of Final Action Under the Administrative Procedure Act.

(A) Proceedings Involving Disputed Issues of Material Fact. In an appeal from any proceeding under sections 120.569 and 120.57(1), Florida Statutes, the record will consist of all notices, pleadings, motions, and intermediate rulings; evidence admitted; those matters officially recognized; proffers of proof and objections and rulings thereon; proposed findings and exceptions;



any decision, opinion, order, or report by the presiding officer; all staff memoranda or data submitted to the presiding officer during the hearing or before its disposition, after notice of submission to all parties, except communications by advisory staff as permitted under section 120.66(1), Florida Statutes, if such communications are public records; all matters placed on the record after an ex parte communication; and the official transcript.

(B) Proceedings Not Involving Disputed Issues of Material Fact. In an appeal from any proceeding under sections 120.569 and 120.57(2), Florida Statutes, the record will consist of the notice and summary of grounds; evidence received; all written statements submitted; any decisions overruling objections; all matters placed on the record after an ex parte communication; the official transcript; and any decision, opinion, order, or report by the presiding officer.

(C) Declaratory Statements. In an appeal from any proceeding under section 120.565, Florida Statutes, the record will consist of the petition seeking a declaratory statement and any pleadings filed with the agency; all notices relating to the petition published in the Florida Administrative Register; the declaratory statement issued by the agency or the agency's denial of the petition; and all matters listed in subdivision (c)(2)(A) or (c)(2)(B) of this rule, whichever is appropriate, if a hearing is held on the declaratory statement petition.

(D) Summary Hearings. In an appeal from any proceeding under section 120.574, Florida Statutes, the record will consist of all notices, pleadings, motions, and intermediate rulings; evidence received; a statement of matters officially recognized; proffers of proof and objections and rulings thereon; matters placed on the record after an ex parte communication; the written decision of the administrative law judge presiding at the final



hearing; and the official transcript of the final hearing.

(E) Challenges to Rules.

(i) In an appeal from any proceeding conducted under section 120.56, Florida Statutes, the record will consist of all notices, pleadings, motions, and intermediate rulings; evidence admitted; those matters officially recognized; proffers of proof and objections and rulings thereon; proposed findings and exceptions; any decision, opinion, order, or report by the presiding officer; all staff memoranda or data submitted to the presiding officer during the hearing or before its disposition, after notice of submission to all parties, except communications by advisory staff as permitted under section 120.66(1), Florida Statutes, if such communications are public records; all matters placed on the record after an ex parte communication; and the official transcript.

(ii) In an appeal from a rule adoption under sections 120.54 or 120.68(9), Florida Statutes, in which the sole issue presented by the petition is the constitutionality of a rule and there are no disputed issues of fact, the record will consist only of those documents from the rulemaking record compiled by the agency that materially address the constitutional issue. The agency's rulemaking record consists of all notices given for the proposed rule; any statement of estimated regulatory costs for the rule; a written summary of hearings on the proposed rule; the written comments and responses to written comments as required by sections 120.54 and 120.541, Florida Statutes; all notices and findings made under section 120.54(4), Florida Statutes; all materials filed by the agency with the Administrative Procedures Committee under section 120.54(3), Florida Statutes; all materials filed with the Department of State



under section 120.54(3), Florida Statutes; and all written inquiries from standing committees of the legislature concerning the rule.

(F) Immediate Final Orders. In an appeal from an immediate final order entered under section 120.569(2)(n), Florida Statutes, the record must be compiled in an appendix pursuant to rule 9.220 and served with the briefs.

(3) Review of Nonfinal Action Pursuant to the Administrative Procedure Act. The provisions of rules 9.100 and 9.220 govern the record in proceedings seeking review of nonfinal administrative action.

(4) Review of Administrative Action Not Subject to the Administrative Procedure Act. In proceedings seeking review of administrative action not governed by the Administrative Procedure Act, the clerk of the lower tribunal is not be required to prepare a record or record index. The petitioner or the appellant must submit an appendix in accordance with rule 9.220. Supplemental appendices may be submitted by any party. Appendices must not contain any matter not made part of the record in the lower tribunal.

(5) Videotaped Testimony. In any circumstance in which hearing testimony is preserved through the use of videotape rather than through an official transcript, the testimony from the videotape must be transcribed and the transcript must be made a part of the record before the record is transmitted to the court.

(6) Modified Record. The contents of the record may be modified as provided in rule 9.200(a)(3).

**(d) Attorneys' Fees.**

(1) Attorneys' Fees. A motion for attorneys' fees must be served under rule 9.400(b).

(2) Disputes As To Amount. If the court decides to award attorneys' fees, the court may either remand the matter to the lower tribunal or to the administrative law judge for determination of the amount, or refer the matter to a special magistrate.



(3) Review. Review of orders entered by the lower tribunal or the administrative law judge will be conducted under 9.400(c). Objections to reports of special magistrates must be filed with the court within 30 days after the special magistrate's report is filed with the court.

**(e) Stays Pending Review.**

(1) Effect of Initiating Review. The filing of a notice of administrative appeal or a petition seeking review of administrative action will not operate as a stay, except that such filing will give rise to an automatic stay under rule 9.310(b)(2) or chapter 120, Florida Statutes, or when timely review is sought of an award by an administrative law judge on a claim for birth-related neurological injuries.

(2) Application for Stay Under the Administrative Procedure Act.

(A) A party seeking to stay administrative action may file a motion either with the lower tribunal or, for good cause shown, with the court in which the notice or petition has been filed. The filing of the motion will not operate as a stay. The lower tribunal or court may grant a stay on appropriate terms. Review of orders entered by lower tribunals will be by the court on motion.

(B) When an agency has ordered emergency suspension, restriction, or limitations of a license under section 120.60(6), Florida Statutes, or issued an immediate final order under section 120.569(2)(n), Florida Statutes, the affected party may file with the reviewing court a motion for stay on an expedited basis. The court may issue an order to show cause and, after considering the agency's response, if timely filed, grant a stay on appropriate terms.

(C) When an agency has suspended or revoked a license other than on an emergency basis, a licensee may file with the court a motion for stay on an expedited basis. The agency may file a response within 10 days of the filing of the motion,



or within a shorter time period set by the court. Unless the agency files a timely response demonstrating that a stay would constitute a probable danger to the health, safety, or welfare of the state, the court must grant the motion and issue a stay.

(D) When an order suspending or revoking a license has been stayed under subdivision (e)(2)(C), an agency may apply to the court for dissolution or modification of the stay on grounds that subsequently acquired information demonstrates that failure to dissolve or modify the stay would constitute a probable danger to the public health, safety, or welfare of the state.

(3) Application for Stay or Supersedeas of Other Administrative Action. A party seeking to stay administrative action, not governed by the Administrative Procedure Act, must file a motion in the lower tribunal, which has continuing jurisdiction, in its discretion, to grant, modify, or deny such relief. A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both. Review of orders entered by lower tribunals will be by the court on motion.

(4) Duration. A stay entered by a lower tribunal or a court will remain in effect during the pendency of all review proceedings in Florida courts until a mandate issues, unless otherwise modified or vacated.

### Committee Notes

**1996 Amendment.** Appeals which fall within the exception included in subdivision (b)(3) are commenced in accordance with subdivision (b)(1). Therefore, administrative action by appeal in a circuit court, if prescribed by general law, is commenced pursuant to subdivision (b)(1). Unless review of administrative action in circuit court is prescribed by general law to be by appeal, review in circuit court is by petition for an extraordinary writ commenced pursuant to subdivision (b)(3). See *Board of County Commissioners v. Snyder*, 627 So. 2d 469 (Fla. 1993); *Grace v. Town of Palm Beach*, 656 So. 2d 945 (Fla. 4th DCA 1995). Subdivision (b)(3) supersedes all local government charters, ordinances, rules and regulations which purport to provide a method of review in conflict herewith.

Subdivision (c) was adopted to identify more clearly what constitutes the record in appeals from administrative proceedings. Several sections of the Florida Administrative Procedure Act, as revised in 1996, specifically state what shall constitute the record in certain types of proceedings,



and this rule incorporates that statutory language. The rule makes clear that the record shall include only materials that were furnished to and reviewed by the lower tribunal in advance of the administrative action to be reviewed. The intent of this statement is to avoid the inclusion of extraneous materials in the record that were never reviewed by the lower tribunal.

Subdivision (c)(2)(A) is based on provisions of section 120.57(1)(f), Florida Statutes. This subdivision of the rule governs the record from proceedings conducted pursuant to section 120.56 and sections 120.569 and 120.57(1), Florida Statutes. This is because section 120.56(1)(e), Florida Statutes, states that hearings under section 120.56, Florida Statutes, shall be conducted in the same manner as provided by sections 120.569 and 120.57, Florida Statutes.

Subdivision (c)(2)(B) lists the provisions of section 120.57(2)(b), Florida Statutes. Subdivision (c)(2)(B)(vii), which refers to “any decision, opinion, order, or report by the presiding officer,” was added by the committee to the list of statutory requirements.

Subdivision (c)(2)(C) addresses the record on appeal from declaratory statement requests pursuant to section 120.565, while subdivision (c)(2)(D) lists the provisions of section 120.574(2)(d), Florida Statutes. Subdivision (c)(2)(E) of the rule addresses proceedings governed by sections 120.54 and 120.68(9), Florida Statutes. The definition of the rulemaking record tracks language in section 120.54(8), Florida Statutes.

Subdivision (c)(3) makes clear that rules 9.100 and 9.220 govern the record in proceedings seeking review of non-final administrative action, while subdivision (c)(4) governs the record in administrative proceedings not subject to the Administrative Procedure Act.

Subdivision (c)(5) states that if videotape is used to preserve hearing testimony, the videotape shall be transcribed before the record is transmitted to the court.

Subdivision (d) was adopted to conform to the 1996 revisions to the Administrative Procedure Act. Recoupment of costs is still governed by rule 9.400.

**2000 Amendment.** Subdivision (e) was added to address stays pending judicial review of administrative action. Ordinarily, application for a stay must first be made to the lower tribunal, but some agencies have collegial heads who meet only occasionally. If a party can show good cause for applying initially to the court for a stay, it may do so. When an appeal has been taken from a license suspension or revocation under the Administrative Procedure Act, good cause for not applying first to the lower tribunal is presumed.

Subdivision (e)(2)(B) deals with stays of orders which suspend licenses on an emergency basis. Before entering an emergency suspension order, the agency must make a finding that immediate suspension is necessary to protect the public health, safety, or welfare. § 120.60(6), Fla. Stat. (1999). In effect, the agency makes a finding that would be sufficient to defeat issuance of the “stay as a matter of right” contemplated by section 120.68(3), Florida Statutes. The agency’s finding is subject to judicial review, however, on application for a stay under subdivision (e)(2)(B).

Absent an emergency suspension order, the court grants a stay as of right in Administrative Procedure Act license suspension and revocation cases unless the licensing agency makes a timely showing that a stay “would constitute a probable danger to the health, safety, or welfare of the state.” § 120.68(3), Fla. Stat. (1999). The court can shorten the 10 day period specified in subdivision (e)(2)(c). If the court stays a nonemergency suspension or revocation, the licensing agency can move to modify or dissolve the stay on the basis of material information that comes to light after the stay is issued.

Nothing in subdivision (e) precludes licensing agencies from making suspension or revocation orders effective 30 days after entry, granting stays pending judicial review, or taking other steps to implement section 120.68(3), Florida Statutes.

**2004 Amendment.** Subdivision (e)(2)(C) was amended to clarify that the ten days (or shorter period set by the court) within which the agency has to respond runs from the filing of the motion for stay. See *Ludwig v. Dept. of Health*, 778 So. 2d 531 (Fla. 1st DCA 2001).

**2011 Amendment.** Subdivisions (b)(1) and (b)(2) were amended to clarify the procedures for seeking judicial review of immediate final orders and emergency orders suspending, restricting, or limiting a license. Subdivision (c)(2)(F) was added and subdivision (c)(2) was amended to clarify the record for purposes of judicial review of immediate final orders.

