

**IN THE SUPREME COURT OF FLORIDA  
IN RE: AMENDMENTS TO FLORIDA  
RULES OF APPELLATE PROCEDURE**

**Case No.: SC08-147**

**AMENDED TRIENNIAL CYCLE REPORT OF THE  
APPELLATE COURT RULES COMMITTEE**

Steven L. Brannock, Chair, Florida Appellate Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, submit this amended Triennial Cycle Report of the Appellate Court Rules Committee (the “Committee”) under Rule 2.140(b)(1), Florida Rules of Judicial Administration. (The resubmission is to correct formatting problems only.) Attached is a two-column chart setting forth the proposed rule amendments contained in this Report and a brief explanation of each change, as well as a copy of the rules being amended in full-page legislative format.

As required by Rule 2.140(b)(2), the proposed rule amendments were advertised in the Florida Bar News and on the internet website of The Florida Bar. *See* App. A. One comment was received relating to the proposal to amend Rule 9.050, *see* App. B, to which the Committee responded by revising the rule (the revised rule was subsequently republished and approved by the Board of Governors of The Florida Bar). Four comments were received relating to the proposal to amend Rule 9.310(b)(2), *see* App.

C. The Committee considered these comments and continues to support the proposed amendment to Rule 9.310(b)(2).

As required by Rule of Judicial Administration 2.140(b)(3), the proposed rule amendments were reviewed by the Board of Governors, which voted unanimously to approve all proposed amendments at its variously scheduled meetings. The Committee's final numerical voting records on the proposals are listed below and in the attached table of contents.

A list of the proposed changes, together with (1) a detailed explanation of each proposal; (2) the name and address of the proponent of the proposal if other than the Committee; (3) the Committee's final numerical voting records on each proposal; (4) any significant dissenting views of the Committee; and (5) the Committee's responses to the comments, are set forth below. Unless otherwise stated, the amendments arose through a Committee member's request. Copies of the Committee's meeting minutes pertinent to these proposals are included in Appendix D. (However, the minutes for the January 18, 2008 meeting relevant to this filing will be filed at a later date.)

### **Proposed New Rule 9.050**

On April 2, 2007, in response to an administrative order of the Florida Supreme Court, AO SC06-20, regarding the implementation of the

recommendations set forth in the Report on Privacy and Court Records, the Committee filed its proposed new Rule 9.050, which addressed the protection of personal data in the appellate process. Subsequently the Committee published its proposal in the Bar News. While the Committee recognizes that this new rule is not technically part of its Triennial Report, because there was a comment to publication and the Committee in response to the comment modified this proposal, it is included here, and the Committee on Access to Court Records will be furnished a copy of this report. The rule as modified is identical to the one previously filed with the Court with the exception that it eliminates the word “redaction.”

The rule prohibits counsel from including personal data in briefs, petitions, replies, motions, notices, and responses and attachments filed with the court unless the inclusion of that data is required by another rule or permitted by leave of court. Thus, information such as the names of minor children or personal identifying data such as dates of birth, home addresses, social security numbers, driver’s license numbers, passport numbers, and other similar data may not be included in court filings being drafted by counsel.

The rule contains a significant limitation, however. The rule does not require the redaction of personal data from the record or appendices. Thus,

while counsel must not include personal or private data in briefs, motions or other submissions drafted by counsel, counsel is not required to alter or redact original documents included in the record. Such information appearing in the original record would be protected by existing procedures concerning the sealing of court records under the limited circumstances permitted by law. The Committee also proposes a comment to explain the new rule.

The Committee received one comment to the proposed rule by Carol Jean LoCicero representing various media interests (*see* App. B-1-3). The comment expressed concern about the language in the original proposed rule that required counsel to “redact” personal information from briefs, motions, and other filings being drafted by counsel. The comment expressed concern that the use of the word “redaction” seemed to imply that counsel were being instructed to remove information already in the public record.

In response to this comment, the Committee subsequently revised the proposed rule to eliminate the word “redaction” in connection with documents being drafted by counsel to make clear that the rule instructs counsel to draft motions, briefs, and other submissions so that personal data is not included in the first place (*see* App. B-4-6). Thus, the proposed rule instructs that this information not be included in briefs, motions and other

submissions instead of instructing counsel to “redact” the information from these submissions.

By letter of September 25, 2007 to Steven L. Brannock, Ms. LoCicero acknowledged that the revisions “go a long way toward clarifying that the purpose of the rule is not to create exceptions to access or to direct the clerks to withhold or redact records, but to encourage litigants not to include such information in their pleadings in the first instance.” *See* App. B-7-8. In that letter, Ms. LoCicero suggests one addition to the rule: “If personal identifying data must be referred to, only so much information as is necessary shall be included.” *Id.* The proposed rule already contains a similar statement at the end of subdivision (a)(2) and in the comment.

The Committee’s minutes relating to this rule can be found at Appendix D-24, 28-35, 47-49.

Original Committee vote: 35-2. Committee vote on revised Rule: 41-8.

**Proposed Changes to Rule 9.130(a)(3)(C)(ii)**

By letter dated January 21, 2004, a member of The Florida Bar, Gregory Grossman, requested the Committee to consider whether Rule 9.130(a)(3)(C)(ii) should be amended to resolve a conflict among the district courts as to whether an order dissolving or refusing to dissolve a writ of

garnishment should be immediately appealable. *See* App.E-1-4. The Committee's Civil Rules Subcommittee researched the issue (*see* App. E-5-7, and memorandum from Mr. Grossman, App. E-8-18), and recommended the full Committee propose an amendment to Rule 9.130(a)(3)(C)(ii) to comport with the practice of the majority of Florida's district courts of appeal. The Committee found that there was considerable case law on the issue going back many years. Yet, many cases had permitted appeals of garnishment orders without discussion.

Two cases, however, were in direct conflict. In *Ramseyer v. Williamson*, 639 So. 2d 205 (Fla. 5th DCA 1994), the Fifth District Court of Appeal held that an order denying a motion to dissolve a writ of garnishment was a non-appealable, non-final order under Rule 9.130. A year later, the Fourth District Court of Appeal came to the opposite conclusion in *5361 N. Dixie Highway v. Capital Bank*, 658 So. 2d 1037 (Fla. 4th DCA 1995). There, the court held that an order denying a motion to dissolve a writ of garnishment was appealable under Rule 9.130(a)(3)(C)(ii) as an order determining the immediate possession of property.

The proposed amendment clarifies that orders involving garnishments are directly appealable, which codifies the prior practice of the courts and resolves the above noted conflict. Furthermore, the amendment codifies that

orders involving attachments and replevins are also appealable. While there is no current dispute that these orders are appealable, the Committee wanted to avoid any confusion that might result in the absence of a direct reference to attachment and replevin. *See* 2004 Committee Minutes, App. D-1-3. The proposal adds language to subdivision 9.130(a)(3)(C)(ii) to provide that appeals to the district courts of appeal of non-final orders, which determine the right to immediate possession of property, include orders that “grant, modify, dissolve, or refuse to grant, modify, or dissolve writs of replevin, garnishment, or attachment.” The Committee also proposed a comment to explain the reason for the amendment.

This proposal was submitted to this Court along with the Committee’s 2006 regular cycle report together with two other suggested changes to Rule 9.130:an amendment to subdivision(a)(C)(iii), which authorizes appeals in dependency and termination of parental rights cases of a nonfinal order determining the right to child custody, and a clarification to subdivision(a)(5). This Court declined to adopt any of the proposed changes to Rule 9.130 pending the results of a study being performed by the Commission on DCA Performance and Accountability.

Once this study was completed, Thomas D. Hall, Clerk of the Florida Supreme Court, informed the committee that it was appropriate to resubmit

the three proposed amendments. Accordingly, the proposed amendment to Rule 9.130(a)(3)(C)(ii) (along with the proposed amendment to Rule 9.130(a)(5) which is discussed below) was republished and resubmitted to the Board of Governors, which approved the rule unanimously.<sup>1</sup>

Committee vote: 39-0.

The name and address of the proponent of the rule amendment is:

Gregory Grossman  
Astigarraga Davis Mullins & Grossman, P.A.  
701 Brickell Ave., 16th Fl  
Miami, FL 33131

**Proposed Change to Rule 9.130(a)(3)(C)(iv)**

The Committee proposes an amendment to Rule 9.130(a)(3)(C)(iv) clarifying that an order determining a party's entitlement to an appraisal pursuant to an insurance policy is an immediately appealable non-final order. The referral was initiated by a decision of the Second District Court of Appeal. *Burnett v. Carendon Select Ins. Co.*, 920 So. 2d 188, 189 n.1 (Fla. 2d DCA 2006).

Prior to 2002, Florida's district courts of appeal had concluded that a trial court's decision to grant or deny an appraisal was immediately appealable pursuant to Rule 9.130(a)(3)(C)(iv). However, in 2002, this Court

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<sup>1</sup> The proposed amendment to Rule 9.130(a)(3)(C)(iii) is still under consideration and will be submitted by May 1, 2008, in a joint out-of-cycle report with the Juvenile Court Rules Committee.

decided *Allstate Ins. Co. v. Suarez*, 833 So. 2d 762 (Fla. 2002), finding that an appraisal is not conducted pursuant to the formal procedures of the Florida Arbitration Code. Subsequent appellate decisions have interpreted *Suarez* to mean that orders determining a party's right to an appraisal under an insurance policy are no longer appealable under subdivision (iv).

The Second District Court of Appeal, while following this trend, specifically inquired in *Burnett* whether the Committee should amend Rule 9.130 to permit the immediate appeal of appraisal orders.

The Committee recommends such a change. Many insurance policies in Florida contain a provision that requires the insured and the insurer to undergo an "appraisal proceeding" when they are unable to agree to a value for the particular claim after suit has been filed. The appraisal proceeding is similar to an arbitration proceeding without the more formal arbitration procedure.

Occasionally, however, a dispute will develop over whether a particular dispute is subject to the appraisal provision in the policy. For the same reasons that orders concerning arbitrability are immediately appealable, the Committee thinks that orders regarding the availability of an appraisal proceeding should be immediately appealable as well. For example, if a court erroneously denies an appraisal, it would be too late to

vindicate the more expeditious appraisal right on final appeal after the matter has been litigated. The Committee thinks that it is important to resolve the correct forum for these disputes before the matter is litigated. The Committee also recommends a comment explaining the rule. Background materials on the proposal can be found at Appendix F-4-6 and the Committee's minutes can be found at Appendix D-11-16.

Committee Vote: 36-2.

### **Proposed Change to Rule 9.130(a)(5)**

By referral from this Court, the Committee considered and now recommends an amendment to Rule 9.130(a)(5).<sup>2</sup> The amendment makes clear that motions for rehearing directed to motions for relief from judgment do not toll the time for filing a notice of appeal. The amendment also simplifies the language of the rule by referring to motions for relief from judgment generally instead of specifically enumerating various motions for relief filed under the civil rules, small claims rules, juvenile rules, and family law rules.

The referral from this Court expressed concern that there was a conflict among the district courts on the issue, citing to *Khem-Troll, Inc. v.*

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<sup>2</sup> As discussed above in connection with Rule 9.130(a)(3)(C)(ii), this rule was previously submitted in the Committee's regular 2006 cycle report and is being resubmitted at the request of the Court.

*Edelman*, 351 So. 2d 1040 (Fla. 4th DCA 1976). The Committee commissioned a research memorandum that determined that all five district courts of appeal now consistently rule that a motion for rehearing does not toll the time of rendition of an order granting or denying relief pursuant to Fla. R. Civ. P. 1.540. *See* App. F-7-8. The Fourth District subsequently retreated from its prior *Khem-Troll* decision, thus eliminating any conflict.

Nonetheless, the Committee thinks that a clarification of the rules is appropriate. First, the *Khem-Troll* decision at least creates the appearance of a conflict. More importantly, clarifying the rule eliminates a potential procedural trap for pro se parties or counsel unfamiliar with appellate procedures.

The Committee also thinks that the rule should be simplified by referring to motions for relief in general instead of specifically enumerating individual motions for relief under various rules. This simplification will eliminate the need to update cross-references if there are future amendments to any of the rules relating to relief from judgment (or other additions or subtractions to the list of these authorized motions). The committee also recommends a comment explaining the rule.

Those voting against the amendment thought that it was unnecessary because there is no existing conflict among the districts to be eliminated.

Materials relating to the proposal can be found at Appendix D-4-6, 9-11, 50-52 and Appendix F-1-3, 7-17.

Committee vote: 29-12.

### **Proposed Change to Rule 9.210(a)(5)**

This issue was referred to the subcommittee by Louis Rosenbloum, a board-certified appellate attorney. Mr. Rosenbloum inquired whether Rule 9.210 should be amended to clarify that certificates of service and compliance are not included in the page limitation. The Committee now recommends an amendment clarifying the rules.

Rule 9.210(a)(5) currently excludes tables of contents and citations of authority from the computation of page limitations. The rule, however, does not specifically refer to certificates of service and compliance. Although it was the consensus among the General Rules Subcommittee considering the issue that courts and practitioners have not been counting these certificates in their page limits, there was agreement that the rule should be amended to make this clear. Based on the recommendation of the subcommittee, the Committee recommends that Rule 9.210(a)(5) be amended to exclude certificates of service and compliance from the page limitation. Materials concerning the proposal can be found at Appendix D-21-22 and Appendix G-1-4. Committee vote: 40-0.

Name and Address of the Proponent:

Louis K. Rosenbloum  
4300 Bayou Blvd Suite 36  
Pensacola, FL 32503-2671

**Proposed Change to Rule 9.310(b)(2)**

This proposal results from a referral from Larry Sellers, a member of the Board of Governors. Because this proposed rule attracted significant comments, we offer a more expansive discussion and summary for the Court.

**Effect of requested amendment.** Rule 9.310(b)(2) provides that when the state, public officers in an official capacity, board, commission, or other public body timely files a notice of appeal, the notice automatically operates to stay the lower tribunal order pending review, except in criminal cases. The Committee recommends amending the rule to add an exception for “administrative actions pursuant to the Administrative Procedure Act.” The purpose for this amendment is to conform the rule to provisions in the Administrative Procedure Act (APA), sections 120.68(3) and 120.56(4), Florida Statutes (2007), which require that final administrative orders be given effect during judicial review, without exception for appeals by governmental parties.

**Detailed statement of reasons for amendment.** Section 120.68(3), Florida Statutes (2007) governs review of administrative orders and provides that: “The filing of the petition does not itself stay enforcement of the agency decision . . . .”<sup>3</sup> This language negates any automatic stay, but the statute allows the lower tribunal or the reviewing court to stay the order on an appropriate showing.

Section 120.56(4)(d), Florida Statutes (2007) applies in review of DOAH final administrative orders holding an unadopted rule invalid. The statute provides that there is no stay of the holding that the rule is invalid:

When an administrative law judge enters a final order that all or part of an agency statement violates s. 120.54(1)(a), the agency shall immediately discontinue all reliance upon the statement or any substantially similar statement as a basis for agency action.

Rule 9.310(b)(2) conflicts with these statutes by granting an automatic stay pending review to the state and other public officers and bodies. *See City of Jacksonville v. PERC*, 359 So. 2d 578 (Fla.1st DCA 1978) (holding that because the stay pending review is a procedural issue, the rule is controlling, implying the statute is an unconstitutional interference with this

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<sup>3</sup> The original 1976 version of section 120.68(2), Florida Statutes provided that “all proceedings for review shall be instituted by filing a petition.” Cases applied § 120.68(3) to deny an automatic stay to the government when former Rule 5.12 was in effect. *Lewis v. Career Service Comm’n*, 332 So. 2d 371, 372 (Fla. 1st DCA 1976); *City of Panama City v. PERC*, 333 So. 2d 470 (Fla. 1st DCA 1976); *Duval Cty. School Bd. v. PERC*, 346 So. 2d 1087 (Fla. 1st DCA 1977).

Court’s rulemaking power). The Legislature has not amended the statute; thus, it remains the Legislature’s policy that, in administrative cases when the government as a litigating party seeks review of an administrative order, it is the administrative order that is presumed correct and given effect during review. In other words, when the choice is between the government entity challenging an administrative order and the action of the administrative agency, the actions of the governmental agency rather than the governmental challenger are given effect during the appeal, unless the litigating government party shows that a stay is appropriate.

Lower courts have interpreted the purpose for Rule 9.310(b)(2)’s automatic stay as deference to government “planning level decisions.” *See St. Lucie County v. North Palm Dev. Corp.*, 444 So. 2d 1133, 1135 (Fla. 4th DCA 1984). *St. Lucie County* held that the automatic stay can only be overturned on a showing of “compelling circumstances.” *Id.*<sup>4</sup>

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<sup>4</sup> *Mitchell v. State*, 911 So. 2d 1211 (Fla. 2005), held that on a motion to lift the automatic stay, the factors to be considered include the government’s likelihood of irreparable harm and its likelihood of success on the merits. Thus, a party moving to lift the automatic stay must prove two negatives, that the government will not suffer irreparable harm and is unlikely to succeed on the merits of the appeal, by a “compelling” showing, *see St. Lucie County*, above. This is a much greater burden than the showing required to prevail in the administrative action (normally a preponderance of evidence suffices in administrative actions). *Mitchell* and *St. Lucie Cty.* did not consider the effect of a contrary statutory policy, like that in sections 120.68(3) and 120.56(4), Florida Statutes.

This reasoning makes sense in cases when the government is litigating against a private party and the government appeals a trial court order, as in *St. Lucie County*. In these cases, the parties defer to the government in deference to the assumption that its decisions are in the public interest. This reasoning, however, makes less sense where the government appeals an administrative tribunal's order. In these cases, a government entity is on both sides of the dispute and a government agency is making the final administrative decision. To apply the automatic stay in this context elevates the litigating party's rejected "free-form" action over the administrative tribunal's order, when the latter exercises the state's sovereign delegated authority by law to decide the "planning level" issue. To grant the litigating party the benefit of an automatic stay defeats the very purpose that the automatic stay serves in other contexts, to defer to government "planning level" decisions pending review.

There are substantial policy reasons for the Court rule to defer to these statutes. These statutes give presumptive effect to the administrative tribunal's ruling pending review and are, in themselves, a sovereign policy decision to which some deference is presumably due. The Florida Constitution provides for legislative control over administrative adjudicative

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procedures. Art. V, § 1 provides “Commissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices”; and Art. V, § 4(b)(2) provides “District Courts of Appeal shall have the power of direct review of administrative action, as prescribed by general law.” Thus, there appears to be a constitutional basis for the statutes governing administrative practice, and like all statutes, they are presumptively valid.

Second, the legislature has the constitutional power to make policy that governs the rights of the state and local governments in litigation. State agencies created by statute have no common law powers but can only exercise powers conferred by statute.<sup>5</sup> Local government powers may be limited by statute. Art. VIII, § 1 (f) and (g), Fla. Const. (county powers); Art. VIII, § 2(b), Fla. Const. (municipal powers). Indeed, the Legislature can waive constitutional sovereign immunity by general law, to subject state and local entities to court action. Art. X, § 13, Fla. Const. Public entities cannot claim immunity from suit if a statute waives immunity. The APA statutes

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<sup>5</sup> For example, the State’s right of appeal is governed by statute. *State v. Creighton*, 469 So. 2d 735, 740 (Fla. 1985) (criminal case, but citing section 120.68(3), Florida Statutes as an example). *See generally Ocampo v. Dept. of Health*, 806 So. 2d 633 (Fla. 1st DCA 2002); *S.T. v. School Board*, 791 So. 2d 1231 (Fla. 5th DCA 2001) (state agencies have only powers conferred by statutes).

can similarly be given effect as a waiver of the government’s procedural rights conferred by Rule 9.310(b)(2).

The Legislature has balanced the relative burdens and benefits of this issue, and found that the public is better protected by giving presumptive effect to administrative orders pending appeal, subject to the right to seek a discretionary stay, and to treat government officers and bodies like all other litigants. This avoids unfair hardship to opposing parties that may suffer irreparable injury if forced to endure a lengthy appeal process to realize the benefit of a favorable administrative order. These statutes are an integral part of the purpose to provide a fair and effective administrative remedy in lieu of trial court jurisdiction.

On many occasions, this Court and the District Courts of Appeal have deferred to statutory “procedural” or hybrid substantive-procedural policies that are intimately related to and intertwined with a statutory remedy.<sup>6</sup> This statute would seem to merit similar deference.

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<sup>6</sup> See *Capla v. Tuttle Design-Build, Inc.*, 753 So. 2d 49 (Fla. 2000) (upholding section 702.10(2), Florida Statutes); *St. Mary’s Hospital, Inc. v. Phillipe*, 769 So. 2d 961 (Fla. 2000) (upholding section 766.212, Florida Statutes); *Anderson v. State Dept. of HSMV*, 751 So. 2d 749 (Fla. 5th DCA 2000) (upholding section 322.28(5), Florida Statutes), *State Dept. of HSMV v. Begley*, 776 So. 2d 278 (Fla. 1st DCA 2000) (same); *Peninsular Properties Braden River LC v. City of Bradenton*, 965 So. 2d 160 (Fla. 2d DCA 2007) (upholding section 70.51(10), Florida Statutes); *Cartwright v.*

In *Wait v. Florida Power and Light Co.*, 372 So. 2d 420 (Fla. 1979), the Court held that a statute directing prompt compliance with a court order to disclose public records intruded on Rule 9.310(b)(2). However, this was a close question, *see* decision below, 353 So. 2d 1265, and dissent of Justices Sundberg, England, and Adkins, stating that although the court’s exercise of discretion as to whether a stay should be imposed is a matter of practice and procedure, that statute fell in a “twilight zone” between substantive and procedural matters, and the general policy in the rule should yield to the specific policy of the statute, 372 So. 2d at 425–26. The Court later did defer to the statute, amending Rule 9.310(b)(2). *The Florida Bar Re: Rules of Appellate Procedure*, 463 So. 2d 1114 (Fla. 1985). The Committee sees no countervailing policy reason for the Court to impose an unequal advantage for the government in all administrative cases, when the Legislature has directed by law that government should not have this advantage and that the playing field should be level.<sup>7</sup> The Committee therefore recommends the amendment of Rule 9.310(b)(2) to defer to the APA.<sup>8</sup>

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*State*, 870 So. 2d 152 (Fla. 2d DCA 2004), rev. den., 914 So. 2d 952 (Fla. 2005) (upholding section 394.9155(5), Florida Statutes).

<sup>7</sup> The Court adopted current Rule 9.310 in 1977. It is not clear what policy reasons were perceived to justify displacing section 120.68(3), Florida Statutes if that was the intent. On the contrary, subdivision (a) of the rule provides “Except as provided by general law and in subdivision (b) of this rule, a party seeking to stay a final or non-final order pending review shall

**Proponents, opponents and Committee history.** This issue arose on referral by Board of Governors member Lawrence Sellers. The Administrative Practice Subcommittee referred the issue to the Florida Bar Administrative Law Section, which includes both government and private lawyers and has expertise in the APA. However, the Section took no position. The Subcommittee considered legal memoranda by David K. Miller, recommending the amendment, discussing case law and policy reasons, and proposing language (App. C-20-29); and by former Committee member Charles Stampelos, describing the rule’s history (App. C-13-19).

*See also* App. D-7-8.

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file a motion in the lower tribunal....” It is unclear why the rule would defer to general law in all circumstances except when general law waives a government advantage. The Committee Note states that the rule “implements the Administrative Procedure Act, section 120.68(3), Florida Statutes (Supp. 1976).” Taken alone, this statement indicates an intent to conform to section 120.68(3), Florida Statutes. But the Committee Note states that “Subdivision (b)(2) . . . supersedes *Lewis v. Career Service Commission*, 332 So. 2d 371 (Fla. 1st DCA 1976),” a case applying the statute to negate the stay, see n. 1 above. The Committee Note failed to recognize that *Lewis* implemented the plain language of the statute, so superceding *Lewis* supersedes the statute. These inconsistent statements provide no policy explanation for why Rule 9.310(b)(2) should supersede sections 120.68(3), and 120.56(4), Florida Statutes.

<sup>8</sup> These policy concerns — the Legislature’s authority over administrative procedure and government rights in litigation, and the interrelatedness of these provisions with the remedy in the APA, — were not present in *Amendment to Florida Rule of Appellate Procedure 9.310*, No. SC07-299 (rejecting out-of-cycle amendment to conform to section 45.045 Florida Statutes (2006)).

On the unanimous recommendation of the Administrative Practice Subcommittee, the full Committee unanimously approved the proposed change on September 15, 2006. *See App. D-23-24.*

The proposed amendment was advertised in the Florida Bar News on June 15, 2007. Thereafter, the Committee received requests to reconsider its approval of the rule amendment from the Florida Bar City, County and Local Government Law Section, the Florida League of Cities, the Florida Association of Counties, the Florida Association of County Attorneys, and Florida Bar members Edward de la Parte and David Caldevilla. These parties submitted memoranda stating their objection. (App. C-1-52).

The Florida Bar Board of Governors considered the memoranda supporting and opposing the amendment, and an additional memorandum by David K. Miller opposing the objections, at its meeting on August 17, 2007. (App. C-20-29; App. H-2-5). The Board of Governors unanimously approved the proposed amendment.

Because of the extensive comments received, the Committee entertained a motion for reconsideration of its earlier recommendation at its meeting on September 7, 2007. It considered the written materials and oral presentations by the persons seeking and opposing reconsideration. On the unanimous recommendation by the Administrative Practice Subcommittee to

deny reconsideration, the Committee voted to deny the motion for reconsideration. *See* App. D-46. Committee vote: 46- 3 against reconsideration.

Mr. Caldevilla suggested the amendment would conflict with Rule 9.190(e)(1). The Committee referred this issue to the Administrative Practice Subcommittee, which considered memoranda by Assistant Attorney General Cathy Lannon (App. H-7-8) and by David K. Miller (App. H-9-10) addressing this issue. At the January 18, 2008 meeting of the Committee, the Subcommittee unanimously recommended that no amendment to Rule 9.190(e)(1) is needed, and the full Committee took no further action. The comments received on the rule can be found in Appendix C-1-52. Committee minutes concerning this amendment can be found in Appendix D-7-8, 23-24, 38-46.

Committee vote: 48-0. Committee Reconsideration by the Committee: denied 46-3.

Proponent:

Lawrence Sellers, Esq.,  
Holland and Knight LLP  
P.O. Box 810  
Tallahassee FL 32302-0810

### **Proposed Change to Rule 9.330(d)**

Based on a July 14, 2006 letter from Thomas D. Hall, Clerk of the Florida Supreme Court, written at the request of the Court, the Committee has considered and now recommends an amendment to Rule 9.330(d). The amendment makes clear that no motions for rehearing or clarification may be filed from the dismissal of an appeal seeking to invoke the court's mandatory jurisdiction, when the appeal seeks to review a *per curiam* affirmance.

The proposed amendment brings the rule into conformance with *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006), in which this Court held that the Court has no jurisdiction over unelaborated *per curiam* decisions issued by a district court of appeal and stated that no motions for rehearing or clarification will be entertained from such dismissals. The Committee also suggests a brief comment explaining the rule. Materials relating to the proposal can be found at Appendix D-26-27 and Appendix I-1-3.

Committee vote 39-0.

### **Proposed Change to Rule 9.370**

In response to an article by Sylvia Walbolt and Joe Lang, this Court asked the Committee to consider whether a new rule should be adopted to allow potential amici to file a notice of their intent to file an amicus brief on

the merits in a case in which a party seeks to invoke the discretionary jurisdiction of the Florida Supreme Court. The Committee recommends an amendment by proposing a new subdivision (d) to the rule.

Unlike the United States Supreme Court, which has long permitted amicus briefs to be filed at the jurisdictional briefing stage of the case, this Court has not permitted the filing of these amicus briefs. However, a consideration in determining whether to accept jurisdiction is the importance of the case and its statewide impact. The interest of an amicus may be relevant to that determination.

Accordingly, the Committee thinks that it would be useful to permit potential amici to file a short notice with the court indicating the intent to seek leave to file an amicus brief on the merits should the Court accept jurisdiction. The proposed rule would permit amici to state briefly why the case is of interest to the amicus curiae, but forbids argument. The body of the notice cannot exceed one page. The Committee also recommends a comment explaining the purpose and operation of the rule. The Committee's records relating to this rule can be found at Appendix D-36-37 and Appendix J-1-5.

Committee vote 40-1.

### **Proposed Change to Rule 9.430**

Nancy Isenberg, a staff attorney at the Second Judicial Circuit in Tallahassee, inquired of the Committee in a February 10, 2006 letter whether Rule 9.430, which governs proceedings by indigents, should be amended in light of recent statutory changes. The Committee now recommends amendments to Rule 9.430 to conform the rule to recent statutory changes and to the Supreme Court of Florida's creation of a new form application for determination of indigency status.

In addition to suggesting technical changes necessary in light of the new form, the Committee also noted that there were different roles and obligations of trial court clerks and appellate clerks in appellate and original proceedings. Therefore, the Committee proposes amendments limiting subdivision (a) to the procedure for appeals and creates a new subdivision (b) to address original proceedings. The Committee's record relating to this amendment can be found at Appendix D-16-21 and Appendix K-1-6.

Committee Vote 40-0.

Name and Address of Proponent:

Nancy S. Isenberg  
Senior Trial Court Staff Attorney  
Second Judicial Circuit  
Room 342, Leon County Courthouse  
301 South Monroe Street  
Tallahassee, FL 32301

## Correction of Scrivener's Errors

In addition to the amendments outlined above, the Committee proposes the correction of the following Scrivener's Errors:

- Rule 9.010**            Cross-reference changed from Fla. R. Jud. Admin. 2.135 to Fla. R. Jud. Admin. 2.130
  
- Rule 9.140(c)(3)**    Cross-reference changed from Rule 9.140(c)(1)(J) to Rule 9.140(c)(1)(K)
  
- Rule 9.200(a)(3)**    Cross-reference changed from Rule 9.900(f) to Rule 9.900(g)
  
- Rule 9.430(c)(2)**    Cross-reference changed from Rule 9.900(i) to Rule 9.900(j)
  
- Rule 9.600(d)**        Cross-reference changed from Rule 9.140(g) to Rule 9.140(h)
  
- Rule 9.800**            Cross-reference changed from Fla. R. Jud. Admin. 2.035 to Fla. R. Jud. Admin. 2.110

WHEREFORE, the Appellate Court Rules Committee respectfully requests the Court to amend the Florida Rules of Appellate Procedure as proposed in this report.

Dated: February 14, 2008

Respectfully submitted

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#### Compliance Statement

I certify that this report was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*, and that these rules were read against *West's Florida Rules of Court – State (2007)*.

/s/Joanna A. Mauer  
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## **CERTIFICATE OF SERVICE**

I certify that a copy of the Amended Triennial Report of the Appellate Court Rules Committee was furnished on February 15, 2008, by United States mail to:

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## **FLORIDA RULES OF APPELLATE PROCEDURE**

- 9.010. EFFECTIVE DATE AND SCOPE [AMENDED]  
Scrivener's correction
- 9.020. DEFINITIONS [NO CHANGE]
- 9.030. JURISDICTION OF COURTS [NO CHANGE]
- 9.040. GENERAL PROVISIONS [NO CHANGE]
- 9.050 MAINTAINING PRIVACY OF PERSONAL DATA  
[NEW RULE]  
Committee vote: 41-8  
Board of Governors' vote: 32-0
- 9.100. ORIGINAL PROCEEDINGS [NO CHANGE]
- 9.110. APPEAL PROCEEDINGS TO REVIEW FINAL ORDERS  
OF LOWER TRIBUNALS AND ORDERS GRANTING  
NEW TRIAL IN JURY AND NON-JURY CASES  
[NO CHANGE]
- 9.120. DISCRETIONARY PROCEEDINGS TO REVIEW  
DECISIONS OF DISTRICT COURTS OF APPEAL  
[NO CHANGE]
- 9.125. REVIEW OF TRIAL COURT ORDERS AND  
JUDGMENTS CERTIFIED BY THE DISTRICT COURTS  
OF APPEAL AS REQUIRING IMMEDIATE  
RESOLUTION BY THE SUPREME COURT  
[NO CHANGE]
- 9.130. PROCEEDINGS TO REVIEW NON-FINAL ORDERS  
AND SPECIFIED FINAL ORDERS [AMENDED]  
Committee vote: subd. (a)(3)(C)(ii) 39-0; subd. (a)(3)(C)(iv)  
36-2; subd. (a)(5) 29-12, 48-0  
Board of Governors' vote: subd. (a)(3)(C)(ii) 34-0;  
(a)(3)(C)(iv) 35-0; (a)(5) 35-0, 34-0

- 9.140. APPEAL PROCEEDINGS IN CRIMINAL CASES  
[AMENDED]  
Scrivener's correction
- 9.141. REVIEW PROCEEDINGS IN COLLATERAL OR POST-  
CONVICTION CRIMINAL CASES [NO CHANGE]
- 9.142. PROCEDURES FOR REVIEW IN DEATH PENALTY  
CASES [NO CHANGE]
- 9.145. APPEAL PROCEEDINGS IN JUVENILE  
DELINQUENCY CASES [NO CHANGE]
- 9.146. APPEAL PROCEEDINGS IN JUVENILE DEPENDENCY  
AND TERMINATION OF PARENTAL RIGHTS CASES  
AND CASES INVOLVING FAMILIES AND CHILDREN  
IN NEED OF SERVICES [NO CHANGE]
- 9.150. DISCRETIONARY PROCEEDINGS TO REVIEW  
CERTIFIED QUESTIONS FROM FEDERAL COURTS  
[NO CHANGE]
- 9.160. DISCRETIONARY PROCEEDINGS TO REVIEW  
DECISIONS OF COUNTY COURTS [NO CHANGE]
- 9.180. APPEAL PROCEEDINGS TO REVIEW WORKERS'  
COMPENSATION CASES [NO CHANGE]
- 9.190. JUDICIAL REVIEW OF ADMINISTRATIVE ACTION  
[NO CHANGE]
- 9.200. THE RECORD [AMENDED]  
Scrivener's correction
- 9.210. BRIEFS [AMENDED]  
Committee's vote: subd. (a)(5) 40-0  
Board of Governors' vote: 35-0
- 9.220. APPENDIX [NO CHANGE]

9.225.	NOTICE OF SUPPLEMENTAL AUTHORITY	[NO CHANGE]
9.300.	MOTIONS	[NO CHANGE]
9.310.	STAY PENDING REVIEW Committee vote: subd. (b)(2) 48-0 Board of Governors' vote: 35-0	[AMENDED]
9.315.	SUMMARY DISPOSITION	[NO CHANGE]
9.320.	ORAL ARGUMENT	[NO CHANGE]
9.330.	REHEARING; CLARIFICATION; CERTIFICATION  Committee's vote: subd. (d) 39-0 Board of Governors' vote: 35-0	[AMENDED]
9.331.	DETERMINATION OF CAUSES IN A DISTRICT COURT OF APPEAL EN BANC	[NO CHANGE]
9.340.	MANDATE	[NO CHANGE]
9.350.	DISMISSAL OF CAUSES	[NO CHANGE]
9.360.	PARTIES	[NO CHANGE]
9.370.	AMICUS CURIAE Committee's vote: 40-1 Board of Governors' vote: 34-0	[AMENDED]
9.400.	COSTS AND ATTORNEYS' FEES	[NO CHANGE]
9.410.	SANCTIONS	[NO CHANGE]
9.420.	FILING; SERVICE OF COPIES; COMPUTATION OF TIME	[NO CHANGE]

- 9.430. PROCEEDINGS BY INDIGENTS [AMENDED]  
Committee's vote: subds. (a), (b), (c) 40-0  
Board of Governors' vote: 35-0
- 9.440. ATTORNEYS [NO CHANGE]
- 9.500. ADVISORY OPINIONS TO GOVERNOR  
[NO CHANGE]
- 9.510. ADVISORY OPINIONS TO ATTORNEY GENERAL  
[NO CHANGE]
- 9.600. JURISDICTION OF LOWER TRIBUNAL PENDING  
REVIEW [AMENDED]  
Scrivener's correction
- 9.800. UNIFORM CITATION SYSTEM [AMENDED]  
Scrivener's correction
- 9.900. FORMS [AMENDED]  
Committee vote: subd. (j) 40-0  
Board of Governors' vote: 35-0

## **RULE 9.010. EFFECTIVE DATE AND SCOPE**

These rules, cited as “Florida Rules of Appellate Procedure,” and abbreviated “Fla. R. App. P.,” shall take effect at 12:01 a.m. on March 1, 1978. They shall govern all proceedings commenced on or after that date in the supreme court, the district courts of appeal, and the circuit courts in the exercise of the jurisdiction described by rule 9.030(c); provided that any appellate proceeding commenced before March 1, 1978, shall continue to its conclusion in the court in which it is then pending in accordance with the Florida Appellate Rules, 1962 Amendment. These rules shall supersede all conflicting statutes and, as provided in Florida Rule of Judicial Administration 2.135~~130~~130, all conflicting rules of procedure.

### **Committee Notes**

**1977 Amendment.** The rules have been re-numbered to conform with the numbering system adopted by the Florida Supreme Court for all of its rules of practice and procedure, and to avoid confusion with the former rules, which have been extensively revised. The abbreviated citation form to be used for these rules appears in this rule and in rule 9.800.

This rule sets an effective date and retains the substance of former rules 1.1, 1.2, and 1.4. A transition provision has been incorporated to make clear that proceedings already in the appellate stage before the effective date will continue to be governed by the former rules until the completion of appellate review in the court in which it is pending on the effective date. If review is sought after March 1, 1978, of an appellate determination made in a proceeding filed in the appellate court before that date, the higher court may allow review to proceed under the former rules if an injustice would result from required adherence to the new rules. Unnecessary language has been deleted and the wording has been simplified. Specific reference has been made to rule 9.030(c) to clarify those aspects of the jurisdiction of the circuit courts governed by these rules.

**1992 Amendment.** This rule was amended to eliminate the statement that the Florida Rules of Appellate Procedure supersede all conflicting rules. Other sets of Florida rules contain provisions applicable to certain appellate proceedings, and, in certain instances, those rules conflict with the procedures set forth for other appeals under these rules. In the absence of a clear mandate from the supreme court that only the Florida Rules of

Appellate Procedure are to address appellate concerns, the committee felt that these rules should not automatically supersede other rules. See, e.g., *In the Interest of E.P. v. Department of Health and Rehabilitative Services*, 544 So.2d 1000 (Fla. 1989).

**1996 Amendment.** Rule of Judicial Administration 2.135 now mandates that the Rules of Appellate Procedure control in all appellate proceedings.

## **RULE 9.050. MAINTAINING PRIVACY OF PERSONAL DATA**

**(a) Application.** Unless otherwise required by another rule or permitted by leave of court, the following personal data shall not be included in briefs, petitions, replies, motions, notices, responses, and attachments filed with the court:

**(1) Names of Minor Children.** If a minor child must be referred to, either a generic reference or the initials of that child shall be used. For purposes of this rule, a minor child is any person under the age of 18 years, unless otherwise provided by statute or court order.

**(2) Personal Identifying Data.** Personal identifying data include data used to identify a specific person for governmental or business purposes, including but not limited to, dates of birth, home addresses, social security numbers, driver's license numbers, passport numbers, telephone numbers, email addresses, computer user names, passwords, and financial, bank, brokerage, and credit card account numbers. If personal identifying data must be referred to, it shall be redacted to the extent possible to protect the privacy of the referenced person.

**(b) Limitation.** This rule does not require redaction of personal data from the record or appendices.

### **Committee Note**

**2009 Adoption.** This rule was added to protect personal privacy and other legitimate interests, such as the prevention of identity theft, with the advent of appellate court records being made electronically available on a wide scale. The amendment recognizes that the listed information must sometimes be referenced, but provides that the information shall be limited to the extent feasible to protect the privacy of the referenced person. For example, if a particular credit card account number must be disclosed to distinguish among multiple accounts, the last four digits of the account number may be sufficient to uniquely identify the account at issue. In some contexts, no redaction would be possible, such as the identifying information of an attorney or pro se litigant, required to be provided by Florida Rule of Judicial Administration 2.515(a) and (b).

**RULE 9.130. PROCEEDINGS TO REVIEW NON-FINAL ORDERS  
AND SPECIFIED FINAL ORDERS**

**(a) Applicability.**

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

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

(3) Appeals to the district courts of appeal of non-final 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) the right to immediate monetary relief or child custody in family law matters;

(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) that a class should be certified;

(vii) that, as a matter of law, a party is not entitled to absolute or qualified immunity in a civil rights claim arising under federal law; or

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

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

(4) Non-final orders entered after final order on motions that suspend rendition are not reviewable; provided that orders granting motions for new trial in jury and non-jury cases are reviewable by the method prescribed in rule 9.110. Other non-final orders entered after final order on authorized motions are reviewable by the method prescribed by this rule.

(5) Orders entered on an authorized and timely motion for relief from judgment ~~motions filed under Florida Rule of Civil Procedure 1.540, Small Claims Rule 7.190, Rule of Juvenile Procedure 8.270, and Florida Family Law Rule of Procedure 12.540~~ are reviewable by the method prescribed by this rule. Motions for rehearing directed to these orders will not toll the time for filing a notice of appeal.

(6) Orders that deny motions to certify a class may be reviewed by the method prescribed by this rule.

**(b) Commencement.** The jurisdiction to seek review of orders described in subdivisions (a)(3)–(a)(6) shall be invoked by filing 2 copies of a notice, accompanied by the filing fees prescribed by law, 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 non-final 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.

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

**(e) Briefs.** Appellant’s initial brief, accompanied by an appendix as prescribed by rule 9.220, shall be served within 15 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 non-final order, the lower tribunal may proceed with all

matters, including trial or final hearing; provided that the lower tribunal may not render a final order disposing of the cause pending such review.

**(g) Review on Full Appeal.** This rule shall not preclude initial review of a non-final order on appeal from the final order in the cause.

**(h) Scope of Review.** Multiple non-final 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.

**2009 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 versions 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.

## **RULE 9.140. APPEAL PROCEEDINGS IN CRIMINAL CASES**

**(a) Applicability.** Appeal proceedings in criminal cases shall be as in civil cases except as modified by this rule.

### **(b) Appeals by Defendant.**

**(1) Appeals Permitted.** A defendant may appeal

(A) a final judgment adjudicating guilt;

(B) a final order withholding adjudication after a finding of guilt;

(C) an order granting probation or community control, or both, whether or not guilt has been adjudicated;

(D) orders entered after final judgment or finding of guilt, including orders revoking or modifying probation or community control, or both, or orders denying relief under Florida Rule of Criminal Procedure 3.800(a), 3.850, or 3.853;

(E) an unlawful or illegal sentence;

(F) a sentence, if the appeal is required or permitted by general law; or

(G) as otherwise provided by general law.

**(2) Guilty or Nolo Contendere Pleas.**

**(A) Pleas.** A defendant may not appeal from a guilty or nolo contendere plea except as follows:

**(i) Reservation of Right to Appeal.** A defendant who pleads guilty or nolo contendere may expressly reserve the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved.

**(ii) Appeals Otherwise Allowed.** A defendant who pleads guilty or nolo contendere may otherwise directly appeal only

a. the lower tribunal's lack of subject matter jurisdiction;

b. a violation of the plea agreement, if preserved by a motion to withdraw plea;

c. an involuntary plea, if preserved by a motion to withdraw plea;

d. a sentencing error, if preserved; or

e. as otherwise provided by law.

**(B) Record.**

(i) Except for appeals under subdivision (b)(2)(A)(i) of this rule, the record for appeals involving a plea of guilty or nolo contendere shall be limited to:

a. all indictments, informations, affidavits of violation of probation or community control, and other charging documents;

b. the plea and sentencing hearing transcripts;

c. any written plea agreements;

d. any judgments, sentences, scoresheets, motions, and orders to correct or modify sentences, orders imposing, modifying, or revoking probation or community control, orders assessing costs, fees, fines, or restitution against the defendant, and any other documents relating to sentencing;

e. any motion to withdraw plea and order thereon;

f. notice of appeal, statement of judicial acts to be reviewed, directions to the clerk, and designation to the court reporter.

(ii) Upon good cause shown, the court, or the lower tribunal before the record is transmitted, may expand the record.

**(3) Commencement.** The defendant shall file the notice prescribed by rule 9.110(d) with the clerk of the lower tribunal at any time between rendition of a final judgment and 30 days following rendition of a written order imposing sentence. Copies shall be served on the state attorney and attorney general.

**(4) Cross-Appeal.** A defendant may cross-appeal by serving a notice within 10 days of service of the state's notice or service of an order on a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). Review of cross-appeals before trial is limited to related issues resolved in the same order being appealed.

**(c) Appeals by the State.**

**(1) Appeals Permitted.** The state may appeal an order

(A) dismissing an indictment or information or any count thereof or dismissing an affidavit charging the commission of a criminal offense, the violation of probation, the violation of community control, or the violation of any supervised correctional release;

(B) suppressing before trial confessions, admissions, or evidence obtained by search and seizure;

(C) granting a new trial;

(D) arresting judgment;

(E) granting a motion for judgment of acquittal after a jury verdict;

(F) discharging a defendant under Florida Rule of Criminal Procedure 3.191;

(G) discharging a prisoner on habeas corpus;

(H) finding a defendant incompetent or insane;

(I) finding a defendant mentally retarded under Florida Rule of Criminal Procedure 3.203;

(J) granting relief under Florida Rule of Criminal Procedure 3.853;

(K) ruling on a question of law if a convicted defendant appeals the judgment of conviction;

(L) withholding adjudication of guilt in violation of general law;

(M) imposing an unlawful or illegal sentence or imposing a sentence outside the range permitted by the sentencing guidelines;

(N) imposing a sentence outside the range recommended by the sentencing guidelines;

(O) denying restitution; or

(P) as otherwise provided by general law for final orders.

**(2) Non-Final Orders.** The state as provided by general law may appeal to the circuit court non-final orders rendered in the county court.

**(3) Commencement.** The state shall file the notice prescribed by rule 9.110(d) with the clerk of the lower tribunal within 15 days of rendition of the order to be reviewed; provided that in an appeal by the state under rule

9.140(c)(1)(~~JK~~), the state's notice of cross-appeal shall be filed within 10 days of service of defendant's notice or service of an order on a motion pursuant to rule 3.800(b)(2). Copies shall be served on the defendant and the attorney of record. An appeal by the state shall stay further proceedings in the lower tribunal only by order of the lower tribunal.

**(d) Withdrawal of Defense Counsel after Judgment and Sentence or after Appeal by State.**

(1) The attorney of record for a defendant in a criminal proceeding shall not be relieved of any professional duties, or be permitted to withdraw as defense counsel of record, except with approval of the lower tribunal on good cause shown on written motion, until either the time has expired for filing an authorized notice of appeal and no such notice has been filed by the defendant or the state, or after the following have been completed:

(A) a notice of appeal or cross-appeal has been filed on behalf of the defendant or the state;

(B) a statement of judicial acts to be reviewed has been filed if a transcript will require the expenditure of public funds;

(C) the defendant's directions to the clerk have been filed, if necessary;

(D) designations to the court reporter have been filed for transcripts of those portions of the proceedings necessary to support the issues on appeal or, if transcripts will require the expenditure of public funds for the defendant, of those portions of the proceedings necessary to support the statement of judicial acts to be reviewed; and

(E) in publicly funded defense and state appeals, the lower tribunal has appointed the public defender for the local circuit court, who shall initially remain counsel for the appeal until the record is transmitted to the appellate court. In publicly funded state appeals, defense counsel shall additionally file in the appellate court a copy of the order appointing the local public defender. In non-publicly funded defense and state appeals, retained appellate counsel shall file a notice of appearance in the appellate court, or defense counsel of record shall file a motion to withdraw in the appellate court, with service on the defendant, that states what the defendant's legal representation on appeal, if any, is expected to be. Documents filed in the appellate court shall be served on the attorney general (or state attorney in appeals to the circuit court).

(2) Orders allowing withdrawal of counsel are conditional and counsel shall remain of record for the limited purpose of representing the defendant in the lower tribunal regarding any sentencing error the lower tribunal is authorized to address during the pendency of the direct appeal pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).

**(e) Sentencing Errors.** A sentencing error may not be raised on appeal unless the alleged error has first been brought to the attention of the lower tribunal:

(1) at the time of sentencing; or

(2) by motion pursuant to Florida Rule of Criminal Procedure 3.800(b).

**(f) Record.**

**(1) Service.** The clerk of the lower tribunal shall prepare and serve the record prescribed by rule 9.200 within 50 days of the filing of the notice of appeal.

**(2) Transcripts.**

(A) If a defendant's designation of a transcript of proceedings requires expenditure of public funds, trial counsel for the defendant (in conjunction with appellate counsel, if possible) shall serve, within 10 days of filing the notice, a statement of judicial acts to be reviewed, and a designation to the court reporter requiring preparation of only so much of the proceedings as fairly supports the issue raised.

(B) Either party may file motions in the lower tribunal to reduce or expand the transcripts.

(C) Except as permitted in subdivision (f)(2)(D) of this rule, the parties shall designate the court reporter to file with the clerk of the lower tribunal the original transcripts for the court and sufficient copies for the state and all indigent defendants.

(D) Non-indigent defendants represented by counsel may designate the court reporter to prepare only original transcripts. Counsel adopting this procedure shall, within 5 days of receipt of the original transcripts from the court reporter, file the original transcripts along with securely bound copies

for the state and all defendants. Counsel shall serve notice of the use of this procedure on the attorney general (or the state attorney in appeals to circuit court) and the clerk of the lower tribunal. Counsel shall attach a certificate to each copy certifying that it is an accurate and complete copy of the original transcript. When this procedure is used, the clerk of the lower tribunal upon conclusion of the appeal shall retain the original transcript for use as needed by the state in any collateral proceedings and shall not destroy the transcripts without the consent of the Office of the Attorney General.

(E) In state appeals, the state shall designate the court reporter to prepare and file with the clerk of the lower tribunal the original transcripts and sufficient copies for all separately represented defendants. Alternatively, the state may elect to use the procedure specified in subdivision (f)(2)(D) of this rule.

(F) The lower tribunal may by administrative order in publicly-funded cases direct the clerk of the lower tribunal rather than the court reporter to prepare the necessary copies of the original transcripts.

**(3) Retention of Documents.** Unless otherwise ordered by the court, the clerk of the lower tribunal shall retain all original documents except the original transcripts designated for appeal which shall be included in the record transmitted to the court.

**(4) Service of Copies.** The clerk of the lower tribunal shall serve copies of the record to the court, attorney general (or state attorney in appeals to circuit court), and all counsel appointed to represent indigent defendants on appeal. The clerk of the lower tribunal shall simultaneously serve copies of the index to all non-indigent defendants and, upon their request, copies of the record or portions thereof at the cost prescribed by law.

**(5) Return of Record.** Except in death penalty cases, the court shall return the record to the lower tribunal after final disposition of the appeal.

**(6) Supplemental Record for Motion to Correct Sentencing Error Pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).**

(A) The clerk of circuit court shall automatically supplement the appellate record with any motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), any response, any resulting order, and any amended

sentence. The clerk shall transmit the supplement to the appellate court within 5 days of the filing of the order ruling on the motion. If an order is not filed within 60 days from the filing of the motion, this time shall run from the expiration of the 60 day period, and the clerk shall supplement the record with the motion and a statement that no order was timely filed.

(B) If any appellate counsel determines that a transcript of a proceeding relating to such a motion is required to review the sentencing issue, appellate counsel shall, within 5 days from the transmittal of the supplement described in subdivision (A), designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record. A copy of the designation shall be filed with the appellate court. The procedure for this supplementation shall be in accordance with this subdivision, except that counsel is not required to file a revised statement of judicial acts to be reviewed, the court reporter shall deliver the transcript within 15 days, and the clerk shall supplement the record with the transcript within 5 days of its receipt.

(g) **Briefs.** Initial briefs shall be served within 30 days of service of the record or designation of appointed counsel, whichever is later. Additional briefs shall be served as prescribed by rule 9.210.

**(h) Post-Trial Release.**

(1) **Appeal by Defendant.** The lower tribunal may hear a motion for post-trial release pending appeal before or after a notice is filed; provided that the defendant may not be released from custody until the notice is filed.

(2) **Appeal by State.** An incarcerated defendant charged with a bailable offense shall on motion be released on the defendant's own recognizance pending an appeal by the state, unless the lower tribunal for good cause stated in an order determines otherwise.

(3) **Denial of Post-Trial Release.** All orders denying post-trial release shall set forth the factual basis on which the decision was made and the reasons therefor.

(4) **Review.** Review of an order relating to post-trial release shall be by the court on motion.

(i) **Scope of Review.** The court shall review all rulings and orders appearing in the record necessary to pass upon the grounds of an appeal. In

the interest of justice, the court may grant any relief to which any party is entitled.

### Committee Notes

**1977 Amendment.** This rule represents a substantial revision of the procedure in criminal appeals.

Subdivision (a) makes clear the policy of these rules that procedures be standardized to the maximum extent possible. Criminal appeals are to be governed by the same rules as other cases, except for those matters unique to criminal law that are identified and controlled by this rule.

Subdivision (b)(1) lists the only matters that may be appealed by a criminal defendant, and it is intended to supersede all other rules of practice and procedure. This rule has no effect on either the availability of extraordinary writs otherwise within the jurisdiction of the court to grant, or the supreme court's jurisdiction to entertain petitions for the constitutional writ of certiorari to review interlocutory orders. This rule also incorporates the holding in *State v. Ashby*, 245 So.2d 225 (Fla. 1971), and is intended to make clear that the reservation of the right to appeal a judgment based on the plea of no contest must be express and must identify the particular point of law being reserved; any issues not expressly reserved are waived. No direct appeal of a judgment based on a guilty plea is allowed. It was not intended that this rule affect the substantive law governing collateral review.

Subdivision (b)(2) replaces former rule 6.2. Specific reference is made to rule 9.110(d) to emphasize that criminal appeals are to be prosecuted in substantially the same manner as other cases. Copies of the notice, however, must be served on both the state attorney and the attorney general. The time for taking an appeal has been made to run from the date judgment is rendered to 30 days after an order imposing sentence is rendered or otherwise reduced to writing. The former rule provided for appeal within 30 days of rendition of judgment or within 30 days of entry of sentence. The advisory committee debated the intent of the literal language of the former rule. Arguably, under the former rule an appeal could not be taken by a defendant during the "gap period" that occurs when sentencing is postponed more than 30 days after entry of judgment. The advisory committee concluded that no purpose was served by such an interpretation because the full case would be reviewable when the "gap" closed. This modification of the former rule promotes the policies underlying *Williams v. State*, 324 So.2d 74 (Fla. 1975), in which it was held that a notice of appeal

prematurely filed should not be dismissed, but held in abeyance until it becomes effective. This rule does not specifically address the issue of whether full review is available if re-sentencing occurs on order of a court in a collateral proceeding. Such cases should be resolved in accordance with the underlying policies of these rules. Compare *Wade v. State*, 222 So.2d 434 (Fla. 2d DCA 1969), with *Neary v. State*, 285 So.2d 47 (Fla. 4th DCA 1973). If a defendant appeals a judgment of conviction of a capital offense before sentencing and sentencing is anticipated, the district court of appeal (as the court then with jurisdiction) should hold the case in abeyance until the sentence has been imposed. If the death penalty is imposed, the district court of appeal should transfer the case to the supreme court for review. See § 921.141(4), Fla. Stat. (1975); Fla. R. App. P. 9.040(b).

Subdivision (b)(3) governs the service of briefs. Filing should be made in accordance with rule 9.420.

Subdivision (c)(1) lists the only matters that may be appealed by the state, but it is not intended to affect the jurisdiction of the supreme court to entertain by certiorari interlocutory appeals governed by rule 9.100, or the jurisdiction of circuit courts to entertain interlocutory appeals of pretrial orders from the county courts. See *State v. Smith*, 260 So.2d 489 (Fla. 1972). No provision of this rule is intended to conflict with a defendant's constitutional right not to be placed twice in jeopardy, and it should be interpreted accordingly. If there is an appeal under item (A), a motion for a stay of the lower tribunal proceeding should be liberally granted in cases in which there appears to be a substantial possibility that trial of any non-dismissed charges would bar prosecution of the dismissed charges if the dismissal were reversed, such as in cases involving the so-called "single transaction rule." Item (E) refers to the popularly known "speedy trial rule," and items (F), (G), and (H) track the balance of state appellate rights in section 924.07, Florida Statutes (1975).

Subdivision (c)(2) parallels subdivision (b)(2) regarding appeals by defendants except that a maximum of 15 days is allowed for filing the notice. An appeal by the state stays further proceedings in the lower tribunal only if an order has been entered by the trial court.

Subdivision (c)(3) governs the service of briefs.

Subdivision (d) applies rule 9.200 to criminal appeals and sets forth the time for preparation and service of the record, and additional matters

peculiar to criminal cases. It has been made mandatory that the original record be held by the lower tribunal to avoid loss and destruction of original papers while in transit. To meet the needs of appellate counsel for indigents, provision has been made for automatic transmittal of a copy of the record to the public defender appointed to represent an indigent defendant on appeal, which in any particular case may be the public defender either in the judicial circuit where the trial took place or in the judicial circuit wherein the appellate court is located. See § 27.51(4), Fla. Stat. (1975). Counsel for a non-indigent defendant may obtain a copy of the record at the cost prescribed by law. At the present time, section 28.24(13), Florida Statutes (1975), as amended by chapter 77-284, § 1, Laws of Florida, prescribes a cost of \$1 per page.

To conserve the public treasury, appeals by indigent defendants, and other criminal defendants in cases in which a free transcript is provided, have been specially treated. Only the essential portions of the transcript are to be prepared. The appellant must file a statement of the judicial acts to be reviewed on appeal and the parties are to file and serve designations of the relevant portions of the record. (This procedure emphasizes the obligation of trial counsel to cooperate with appellate counsel, if the two are different, in identifying alleged trial errors.) The statement is necessary to afford the appellee an opportunity to make a reasonable determination of the portions of the record required. The statement should be sufficiently definite to enable the opposing party to make that determination, but greater specificity is unnecessary. The statement of judicial acts contemplated by this rule is not intended to be the equivalent of assignments of error under former rule 3.5. Therefore, an error or inadequacy in the statement should not be relevant to the disposition of any case. In such circumstances, the appropriate procedure would be to supplement the record under rule 9.200(f) to cure any potential or actual prejudice. Either party may move in the lower tribunal to strike unnecessary portions before they are prepared or to expand the transcript. The ruling of the lower tribunal on such motions is reviewable by motion to the court under rule 9.200(f) if a party asserts additional portions are required.

Subdivision (e) replaces former rule 6.15. Subdivision (e)(1) governs if an appeal is taken by a defendant and permits a motion to grant post-trial release pending appeal to be heard although a notice of appeal has not yet been filed. The lower tribunal may then grant the motion effective on the notice being filed. This rule is intended to eliminate practical difficulties that on occasion have frustrated the cause of justice, as in cases in which a

defendant's attorney has not prepared a notice of appeal in advance of judgment. Consideration of such motions shall be in accordance with section 903.132, Florida Statutes (Supp. 1976), and Florida Rule of Criminal Procedure 3.691. This rule does not apply if the judgment is based on a guilty plea because no right to appeal such a conviction is recognized by these rules.

Subdivision (e)(2) governs if the state takes an appeal and authorizes release of the defendant without bond, if charged with a bailable offense, unless the lower tribunal for good cause orders otherwise. The "good cause" standard was adopted to ensure that bond be required only in rare circumstances. The advisory committee was of the view that because the state generally will not be able to gain a conviction unless it prevails, the presumed innocent defendant should not be required to undergo incarceration without strong reasons, especially if a pre-trial appeal is involved. "Good cause" therefore includes such factors as the likelihood of success on appeal and the likelihood the defendant will leave the jurisdiction in light of the current status of the charges against the defendant.

Subdivision (e)(3) retains the substance of former rules 6.15(b) and (c). The lower tribunal's order must contain a statement of facts as well as the reasons for the action taken, in accordance with *Younghans v. State*, 90 So.2d 308 (Fla. 1956).

Subdivision (e)(4) allows review only by motion so that no order regarding post-trial relief is reviewable unless jurisdiction has been vested in the court by the filing of a notice of appeal. It is intended that the amount of bail be reviewable for excessiveness.

Subdivision (f) interacts with rule 9.110(h) to allow review of multiple judgments and sentences in 1 proceeding.

Subdivision (g) sets forth the procedure to be followed if there is a summary denial without hearing of a motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850. This rule does not limit the right to appeal a denial of such a motion after hearing under rule 9.140(b)(1)(C).

**1980 Amendment.** Although the substance of this rule has not been changed, the practitioner should note that references in the 1977 committee notes to supreme court jurisdiction to review non-final orders that would have been appealable if they had been final orders are obsolete because jurisdiction to review those orders no longer reposes in the supreme court.

**1984 Amendment.** Subdivision (b)(4) was added to give effect to the administrative order entered by the supreme court on May 6, 1981 (6 Fla. L. Weekly 336), which recognized that the procedures set forth in the rules for criminal appeals were inappropriate for capital cases.

**1992 Amendment.** Subdivision (b)(3) was amended to provide that, in cases in which public funds would be used to prepare the record on appeal, the attorney of record would not be allowed to withdraw until substitute counsel has been obtained or appointed.

Subdivision (g) was amended to provide a specific procedure to be followed by the courts in considering appeals from summary denial of Florida Rule of Criminal Procedure 3.800(a) motions. Because such motions are in many respects comparable to Florida Rule of Criminal Procedure 3.850 motions, it was decided to use the available format already created by existing subdivision (g) of this rule. Because a Florida Rule of Criminal Procedure 3.800(a) motion does not have the same detailed requirements as does a Florida Rule of Criminal Procedure 3.850 motion, this subdivision also was amended to require the transmittal of any attachments to the motions in the lower court.

**1996 Amendment.** The 1996 amendments are intended to consolidate and clarify the rules to reflect current law unless otherwise specified.

Rule 9.140(b)(2)(B) was added to accurately reflect the limited right of direct appeal after a plea of guilty or nolo contendere. See *Robinson v. State*, 373 So.2d 898 (Fla. 1979), and *Counts v. State*, 376 So.2d 59 (Fla. 2d DCA 1979).

New subdivision (b)(4) reflects *Lopez v. State*, 638 So.2d 931 (Fla. 1994). A defendant may cross-appeal as provided, but if the defendant chooses not to do so, the defendant retains the right to raise any properly preserved issue on plenary appeal. It is the committee's intention that the 10-day period for filing notice of the cross-appeal should be interpreted in the same manner as in civil cases under rule 9.110(g).

Rule 9.140(b)(6)(E) adopts Florida Rule of Criminal Procedure 3.851(b)(2) and is intended to supersede that rule. See Fla. R. Jud. Admin. 2.135. The rule also makes clear that the time periods in rule 9.140(j) do not apply to death penalty cases.

The revised rules 9.140(e)(2)(D) and 9.140(e)(2)(E) are intended to supersede *Brown v. State*, 639 So.2d 634 (Fla. 5th DCA 1994), and allow non-indigent defendants represented by counsel, and the state, to order just the original transcript from the court reporter and to make copies. However, the original and copies for all other parties must then be served on the clerk of the lower tribunal for inclusion in the record. The revised rule 9.140(e)(2)(F) also allows chief judges for each circuit to promulgate an administrative order requiring the lower tribunal clerk's office to make copies of the transcript when the defendant is indigent. In the absence of such an administrative order, the court reporter will furnish an original and copies for all parties in indigent appeals.

Rule 9.140(j)(3) imposes a two-year time limit on proceedings to obtain delayed appellate review based on either the ineffectiveness of counsel on a prior appeal or the failure to timely initiate an appeal by appointed counsel. The former was previously applied for by a petition for writ of habeas corpus in the appellate court and the latter by motion pursuant to Florida Rule of Criminal Procedure 3.850 in the trial court. Because both of these remedies did not require a filing fee, it is contemplated that no fee will be required for the filing of petitions under this rule. Subdivision (j)(3)(B) allows two years "after the conviction becomes final." For purposes of the subdivision a conviction becomes final after issuance of the mandate or other final process of the highest court to which direct review is taken, including review in the Florida Supreme Court and United States Supreme Court. Any collateral review shall not stay the time period under this subdivision. Subdivision (j)(3)(C) under this rule makes clear that defendants who were convicted before the effective date of the rule will not have their rights retroactively extinguished but will be subject to the time limits as calculated from the effective date of the rule unless the time has already commenced to run under rule 3.850.

Rule 9.140(j)(5) was added to provide a uniform procedure for requesting belated appeal and to supersede *State v. District Court of Appeal of Florida, First District*, 569 So.2d 439 (Fla. 1990). This decision resulted in there being two procedures for requesting belated appeal: Florida Rule of Criminal Procedure 3.850 when the criminal appeal was frustrated by ineffective assistance of trial counsel, *id.*; and habeas corpus for everything else. See *Scalf v. Singletary*, 589 So.2d 986 (Fla. 2d DCA 1991). Experience showed that filing in the appellate court was more efficient. This rule is

intended to reinstate the procedure as it existed prior to *State v. District Court of Appeal, First District*. See *Baggett v. Wainwright*, 229 So.2d 239 (Fla. 1969); *State v. Meyer*, 430 So.2d 440 (Fla. 1983).

In the rare case where entitlement to belated appeal depends on a determination of disputed facts, the appellate court may appoint a commissioner to make a report and recommendation.

**2000 Amendment.** Subdivision (b)(1)(B) was added to reflect the holding of *State v. Schultz*, 720 So.2d 247 (Fla. 1998). The amendment to renumber subdivision (b)(1)(D), regarding appeals from orders denying relief under Florida Rules of Criminal Procedure 3.800(a) or 3.850, reflects current practice.

The committee added language to subdivision (b)(6)(B) to require court reporters to file transcripts on computer disks in death penalty cases. Death penalty transcripts typically are lengthy, and many persons review and use them over the years. In these cases, filing lengthy transcripts on computer disks makes them easier to use for all parties and increases their longevity.

The committee deleted the last sentence of subdivision (b)(6)(E) because its substance is now included in rule 9.141(a). The committee also amended and transferred subdivisions (i) and (j) to rule 9.141 for the reasons specified in the committee note for that rule.

**2005 Amendment.** New subdivision (L) was added to (c)(1) in response to the Florida legislature's enactment of section 775.08435(3), Florida Statutes (2004), which provides that "[t]he withholding of adjudication in violation of this section is subject to appellate review under chapter 924."

### **Court Commentary**

**1996.** Rule 9.140 was substantially rewritten so as to harmonize with the Criminal Appeal Reform Act of 1996 (CS/HB 211). The reference to unlawful sentences in rule 9.140(b)(1)(D) and (c)(1)(J) means those sentences not meeting the definition of illegal under *Davis v. State*, 661 So.2d 1193 (Fla. 1995), but, nevertheless, subject to correction on direct appeal.

## **RULE 9.200. THE RECORD**

### **(a) Contents.**

(1) Except as otherwise designated by the parties, the record shall consist of the original documents, exhibits, and transcript(s) of proceedings, if any, filed in the lower tribunal, except summonses, praecipes, subpoenas, returns, notices of hearing or of taking deposition, depositions, other discovery, and physical evidence. The record shall also include a progress docket.

(2) In family law, juvenile dependency, and termination of parental rights cases, and cases involving families and children in need of services, the record shall include those items designated in subdivision (a)(1) except that the clerk of the lower tribunal shall retain the original orders, reports and recommendations of magistrates or hearing officers, and judgments within the file of the lower tribunal and shall include copies thereof within the record.

(3) Within 10 days of filing the notice of appeal, an appellant may direct the clerk to include or exclude other documents or exhibits filed in the lower tribunal. The directions shall be substantially in the form prescribed by rule 9.900(fg). If the clerk is directed to transmit less than the entire record or a transcript of trial with less than all of the testimony, the appellant shall serve with such direction a statement of the judicial acts to be reviewed. Within 20 days of filing the notice, an appellee may direct the clerk to include additional documents and exhibits.

(4) The parties may prepare a stipulated statement showing how the issues to be presented arose and were decided in the lower tribunal, attaching a copy of the order to be reviewed and as much of the record in the lower tribunal as is necessary to a determination of the issues to be presented. The parties shall advise the clerk of their intention to rely on a stipulated statement in lieu of the record as early in advance of filing as possible. The stipulated statement shall be filed by the parties and transmitted to the court by the clerk of the lower tribunal within the time prescribed for transmittal of the record.

### **(b) Transcript(s) of Proceedings.**

(1) Within 10 days of filing the notice, the appellant shall designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record. Within 20 days of filing the notice, an appellee

may designate additional portions of the proceedings. Copies of designations shall be served on the court reporter. Costs of the original and all copies of the transcript(s) so designated shall be borne initially by the designating party, subject to appropriate taxation of costs as prescribed by rule 9.400. At the time of the designation, unless other satisfactory arrangements have been made, the designating party must make a deposit of 1/2 of the estimated transcript costs, and must pay the full balance of the fee on delivery of the completed transcript(s).

(2) Within 30 days of service of a designation, or within the additional time provided for under subdivision (b)(3) of this rule, the court reporter shall transcribe and file with the clerk of the lower tribunal the designated proceedings and shall serve copies as requested in the designation. In addition to the paper copies, the court reporter shall file with the clerk of the lower tribunal and serve on the designated parties an electronic copy of the designated proceedings in a format approved by the supreme court. If a designating party directs the court reporter to furnish the transcript(s) to fewer than all parties, that designating party shall serve a copy of the designated transcript(s), in both electronic and paper form, on the parties within 5 days of receipt from the court reporter. The transcript of the trial shall be securely bound in consecutively numbered volumes not to exceed 200 pages each, and each page shall be numbered consecutively. Each volume shall be prefaced by an index containing the names of the witnesses, a list of all exhibits offered and introduced in evidence, and the pages where each may be found.

(3) On service of a designation, the reporter shall acknowledge at the foot of the designation the fact that it has been received and the date on which the reporter expects to have the transcript(s) completed and shall transmit the designation, so endorsed, to the parties and to the clerk of the appellate court within 5 days of service. If the transcript(s) cannot be completed within 30 days of service of the designation, the reporter shall request such additional time as is reasonably necessary and shall state the reasons therefor. If the reporter requests an extension of time, the court shall allow the parties 5 days in which to object or agree. The appellate court shall approve the request or take other appropriate action and shall notify the reporter and the parties of the due date of the transcript(s).

(4) If no report of the proceedings was made, or if the transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's

recollection. The statement shall be served on the appellee, who may serve objections or proposed amendments to it within 10 days of service.

Thereafter, the statement and any objections or proposed amendments shall be submitted to the lower tribunal for settlement and approval. As settled and approved, the statement shall be included by the clerk of the lower tribunal in the record.

**(c) Cross-Appeals.** Within 20 days of filing the notice, a cross-appellant may direct that additional documents, exhibits, or transcript(s) be included in the record. If less than the entire record is designated, the cross-appellant shall serve, with the directions, a statement of the judicial acts to be reviewed. The cross-appellee shall have 10 days after such service to direct further additions. The time for preparation and transmittal of the record shall be extended by 10 days.

**(d) Duties of Clerk; Preparation and Transmittal of Record.**

(1) The clerk of the lower tribunal shall prepare the record as follows:

(A) The clerk of the lower tribunal shall not be required to verify and shall not charge for the incorporation of any transcript(s) into the record. The transcript of the trial shall be incorporated at the end of the record, and shall not be renumbered by the clerk. The progress docket shall be incorporated into the record immediately after the index.

(B) The remainder of the record, including all supplements and any transcripts other than the transcript of the trial, shall be consecutively numbered. The record shall be securely bound in consecutively numbered volumes not to exceed 200 pages each. The cover sheet of each volume shall contain the name of the lower tribunal and the style and number of the case.

(2) The clerk of the lower tribunal shall prepare a complete index to the record and shall attach a copy of the progress docket to the index.

(3) The clerk of the lower tribunal shall certify and transmit the record to the court as prescribed by these rules; provided that if the parties stipulate or the lower tribunal orders that the original record be retained, the clerk shall prepare and transmit a certified copy.

**(e) Duties of Appellant or Petitioner.** The burden to ensure that the record is prepared and transmitted in accordance with these rules shall be on

the petitioner or appellant. Any party may enforce the provisions of this rule by motion.

**(f) Correcting and Supplementing Record.**

(1) If there is an error or omission in the record, the parties by stipulation, the lower tribunal before the record is transmitted, or the court may correct the record.

(2) If the court finds the record is incomplete, it shall direct a party to supply the omitted parts of the record. No proceeding shall be determined, because of an incomplete record, until an opportunity to supplement the record has been given.

**(g) Return of Record.** In civil cases, the record shall be returned to the lower tribunal after final disposition by the court.

**Committee Notes**

**1977 Amendment.** This rule replaces former rule 3.6 and represents a complete revision of the matters pertaining to the record for an appellate proceeding. References in this rule to “appellant” and “appellee” should be treated as equivalent to “petitioner” and “respondent,” respectively. See Commentary, Fla. R. App. P. 9.020. This rule is based in part on Federal Rule of Appellate Procedure 10(b).

Subdivision (a)(1) establishes the content of the record unless an appellant within 10 days of filing the notice directs the clerk to exclude portions of the record or to include additional portions, or the appellee within 20 days of the notice being filed directs inclusion of additional portions. In lieu of a record, the parties may prepare a stipulated statement, attaching a copy of the order that is sought to be reviewed and essential portions of the record. If a stipulated statement is prepared, the parties must advise the clerk not to prepare the record. The stipulated statement is to be filed and transmitted within the time prescribed for transmittal of the record. If less than a full record is to be used, the initiating party must serve a statement of the judicial acts to be reviewed so that the opposing party may determine whether additional portions of the record are required. Such a statement is not intended to be the equivalent of assignments of error under former rule 3.5. Any inadequacy in the statement may be cured by motion to supplement the record under subdivision (f) of this rule.

Subdivision (a) interacts with subdivision (b) so that as soon as the notice is filed the clerk of the lower tribunal will prepare and transmit the complete record of the case as described by the rule. To include in the record any of the items automatically omitted, a party must designate the items desired. A transcript of the proceedings in the lower tribunal will not be prepared or transmitted unless already filed, or the parties designate the portions of the transcript desired to be transmitted. Subdivision (b)(2) imposes on the reporter an affirmative duty to prepare the transcript of the proceedings as soon as designated. It is intended that to complete the preparation of all official papers to be filed with the court, the appellant need only file the notice, designate omitted portions of the record that are desired, and designate the desired portions of the transcript. It therefore will be unnecessary to file directions with the clerk of the lower tribunal in most cases.

Subdivision (b)(1) replaces former rule 3.6(d)(2), and specifically requires service of the designation on the court reporter. This is intended to avoid delays that sometimes occur when a party files the designation, but fails to notify the court reporter that a transcript is needed. The rule also establishes the responsibility of the designating party to initially bear the cost of the transcript.

Subdivision (b)(2) replaces former rule 3.6(e). This rule provides for the form of the transcript, and imposes on the reporter the affirmative duty of delivering copies of the transcript to the ordering parties on request. Such a request may be included in the designation. Under subdivision (e), however, the responsibility for ensuring performance remains with the parties. The requirement that pages be consecutively numbered is new and is deemed necessary to assure continuity and ease of reference for the convenience of the court. This requirement applies even if 2 or more parties designate portions of the proceedings for transcription. It is intended that the transcript portions transmitted to the court constitute a single consecutively numbered document in 1 or more volumes not exceeding 200 pages each. If there is more than 1 court reporter, the clerk will renumber the pages of the transcript copies so that they are sequential. The requirement of a complete index at the beginning of each volume is new, and is necessary to standardize the format and to guide those preparing transcripts.

Subdivision (b)(3) provides the procedures to be followed if no transcript is available.

Subdivision (c) provides the procedures to be followed if there is a cross-appeal or cross-petition.

Subdivision (c) provides the procedures to be followed if there is a cross-appeal or cross-petition.

Subdivision (d) sets forth the manner in which the clerk of the lower tribunal is to prepare the record. The original record is to be transmitted unless the parties stipulate or the lower court orders the original be retained, except that under rule 9.140(d) (governing criminal cases), the original is to be retained unless the court orders otherwise.

Subdivision (e) places the burden of enforcement of this rule on the appellant or petitioner, but any party may move for an order requiring adherence to the rule.

Subdivision (f) replaces former rule 3.6(l). The new rule is intended to ensure that appellate proceedings will be decided on their merits and that no showing of good cause, negligence, or accident is required before the lower tribunal or the court orders the completion of the record. This rule is intended to ensure that any portion of the record in the lower tribunal that is material to a decision by the court will be available to the court. It is specifically intended to avoid those situations that have occurred in the past when an order has been affirmed because appellate counsel failed to bring up the portions of the record necessary to determine whether there was an error. See *Pan American Metal Prods. Co. v. Healy*, 138 So.2d 96 (Fla. 3d DCA 1962). The rule is not intended to cure inadequacies in the record that result from the failure of a party to make a proper record during the proceedings in the lower tribunal. The purpose of the rule is to give the parties an opportunity to have the appellate proceedings decided on the record developed in the lower tribunal. This rule does not impose on the lower tribunal or the court a duty to review on their own the adequacy of the preparation of the record. A failure to supplement the record after notice by the court may be held against the party at fault.

Subdivision (g) requires that the record in civil cases be returned to the lower tribunal after final disposition by the court regardless of whether the original record or a copy was used. The court may retain or return the record in criminal cases according to its internal administration policies.

**1980 Amendment.** Subdivisions (b)(1) and (b)(2) were amended to specify that the party designating portions of the transcript for inclusion in

the record on appeal shall pay for the cost of transcription and shall pay for and furnish a copy of the portions designated for all opposing parties. See rule 9.420(b) and 1980 committee note thereto relating to limitations of number of copies.

**1987 Amendment.** Subdivision (b)(3) above is patterned after Federal Rule of Appellate Procedure 11(b).

**1992 Amendment.** Subdivisions (b)(2), (d)(1)(A), and (d)(1)(B) were amended to standardize the lower court clerk's procedure with respect to the placement and pagination of the transcript in the record on appeal. This amendment places the duty of paginating the transcript on the court reporter and requires the clerk to include the transcript at the end of the record, without repagination.

**1996 Amendment.** Subdivision (a)(2) was added because family law cases frequently have continuing activity at the lower tribunal level during the pendency of appellate proceedings and that continued activity may be hampered by the absence of orders being enforced during the pendency of the appeal.

Subdivision (b)(2) was amended to change the wording in the third sentence from "transcript of proceedings" to "transcript of the trial" to be consistent with and to clarify the requirement in subdivision (d)(1)(B) that it is only the transcript of trial that is not to be renumbered by the clerk. Pursuant to subdivision (d)(1)(B), it remains the duty of the clerk to consecutively number transcripts other than the transcript of the trial. Subdivision (b)(2) retains the requirement that the court reporter is to number each page of the transcript of the trial consecutively, but it is the committee's view that if the consecutive pagination requirement is impracticable or becomes a hardship for the court reporting entity, relief may be sought from the court.

**2006 Amendment.** Subdivision (a)(2) is amended to apply to juvenile dependency and termination of parental rights cases and cases involving families and children in need of services. The justification for retaining the original orders, reports, and recommendations of magistrate or hearing officers, and judgments within the file of the lower tribunal in family law cases applies with equal force in juvenile dependency and termination of parental rights cases, and cases involving families and children in need of services.

## **RULE 9.210. BRIEFS**

(a) **Generally.** In addition to briefs on jurisdiction under rule 9.120(d), the only briefs permitted to be filed by the parties in any one proceeding are the initial brief, the answer brief, a reply brief, and a cross-reply brief. All briefs required by these rules shall be prepared as follows:

(1) Briefs shall be printed, typewritten, or duplicated on opaque, white, unglossed 8 1/2-by-11 inch paper.

(2) The lettering in briefs shall be black and in distinct type, double-spaced, with margins no less than 1 inch. Lettering in script or type made in imitation of handwriting shall not be permitted. Footnotes and quotations may be single spaced and shall be in the same size type, with the same spacing between characters, as the text. Computer-generated briefs shall be submitted in either Times New Roman 14-point font or Courier New 12-point font. All computer-generated briefs shall contain a certificate of compliance signed by counsel, or the party if unrepresented, certifying that the brief complies with the font requirements of this rule. The certificate of compliance shall be contained in the brief immediately following the certificate of service.

(3) Briefs shall be securely bound in book form and fastened along the left side in a manner that will allow them to lie flat when opened or be securely stapled in the upper left corner. Headings and subheadings shall be at least as large as the brief text and may be single spaced.

(4) The cover sheet of each brief shall state the name of the court, the style of the cause, including the case number if assigned, the lower tribunal, the party on whose behalf the brief is filed, the type of brief, and the name and address of the attorney filing the brief.

(5) The initial and answer briefs shall not exceed 50 pages in length, provided that if a cross-appeal has been filed, the answer brief/initial brief on cross-appeal shall not exceed 85 pages. Reply briefs shall not exceed 15 pages in length; provided that if a cross-appeal has been filed, the reply brief shall not exceed 50 pages, not more than 15 of which shall be devoted to argument replying to the answer portion of the appellee/cross-appellant's brief. Cross-reply briefs shall not exceed 15 pages. Briefs on jurisdiction shall not exceed 10 pages. The tables of contents and the citations of

authorities, and certificates of service and compliance, shall be excluded from the computation. Longer briefs may be permitted by the court.

**(b) Contents of Initial Brief.** The initial brief shall contain the following, in order:

(1) A table of contents listing the issues presented for review, with references to pages.

(2) A table of citations with cases listed alphabetically, statutes and other authorities, and the pages of the brief on which each citation appears. See rule 9.800 for a uniform citation system.

(3) A statement of the case and of the facts, which shall include the nature of the case, the course of the proceedings, and the disposition in the lower tribunal. References to the appropriate volume and pages of the record or transcript shall be made.

(4) A summary of argument, suitably paragraphed, condensing succinctly, accurately, and clearly the argument actually made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged. It should seldom exceed 2 and never 5 pages.

(5) Argument with regard to each issue including the applicable appellate standard of review.

(6) A conclusion, of not more than 1 page, setting forth the precise relief sought.

**(c) Contents of Answer Brief.** The answer brief shall be prepared in the same manner as the initial brief; provided that the statement of the case and of the facts may be omitted. If a cross-appeal has been filed, the answer brief shall include the issues in the cross-appeal that are presented for review, and argument in support of those issues.

**(d) Contents of Reply Brief.** The reply brief shall contain argument in response and rebuttal to argument presented in the answer brief.

**(e) Contents of Cross-Reply Brief.** The cross-reply brief is limited to rebuttal of argument of the cross-appellee.

**(f) Times for Service of Briefs.** The times for serving jurisdiction and initial briefs are prescribed by rules 9.110, 9.120, 9.130, and 9.140. Unless

otherwise required, the answer brief shall be served within 20 days after service of the initial brief; the reply brief, if any, shall be served within 20 days after service of the answer brief; and the cross-reply brief, if any, shall be served within 20 days thereafter.

**(g) Filing with Courts.** The filing requirements of the courts are as follows:

(1) Circuit Courts. Original and 1 copy.

(2) District Courts of Appeal. Original and 3 copies.

(3) Supreme Court. Original and 7 copies; except that 5 copies only shall accompany the original jurisdictional briefs prescribed in rule 9.120(d).

**(h) Citations.** Counsel are requested to use the uniform citation system prescribed by rule 9.800.

### **Committee Notes**

**1977 Amendment.** This rule essentially retains the substance of former rule 3.7. Under subdivision (a) only 4 briefs on the merits are permitted to be filed in any 1 proceeding: an initial brief by the appellant or petitioner, an answer brief by the appellee or respondent, a reply brief by the appellant or petitioner, and a cross-reply brief by the appellee or respondent (if a cross-appeal or petition has been filed). A limit of 50 pages has been placed on the length of the initial and answer briefs, 15 pages for reply and cross-reply briefs (unless a cross-appeal or petition has been filed), and 20 pages for jurisdictional briefs, exclusive of the table of contents and citations of authorities. Although the court may by order permit briefs longer than allowed by this rule, the advisory committee contemplates that extensions in length will not be readily granted by the courts under these rules. General experience has been that even briefs within the limits of the rule are usually excessively long.

Subdivisions (b), (c), (d), and (e) set forth the format for briefs and retain the substance of former rules 3.7(f), (g), and (h). Particular note must be taken of the requirement that the statement of the case and facts include reference to the record. The abolition of assignments of error requires that counsel be vigilant in specifying for the court the errors committed; that greater attention be given the formulation of questions presented; and that

counsel comply with subdivision (b)(5) by setting forth the precise relief sought. The table of contents will contain the statement of issues presented. The pages of the brief on which argument on each issue begins must be given. It is optional to have a second, separate listing of the issues. Subdivision (c) affirmatively requires that no statement of the facts of the case be made by an appellee or respondent unless there is disagreement with the initial brief, and then only to the extent of disagreement. It is unacceptable in an answer brief to make a general statement that the facts in the initial brief are accepted, except as rejected in the argument section of the answer brief. Parties are encouraged to place every fact utilized in the argument section of the brief in the statement of facts.

Subdivision (f) sets forth the times for service of briefs after service of the initial brief. Times for service of the initial brief are governed by the relevant rule.

Subdivision (g) authorizes the filing of notices of supplemental authority at any time between the submission of briefs and rendition of a decision. Argument in such a notice is absolutely prohibited.

Subdivision (h) states the number of copies of each brief that must be filed with the clerk of the court involved—one copy for each judge or justice in addition to the original for the permanent court file. This rule is not intended to limit the power of the court to require additional briefs at any time.

The style and form for the citation of authorities should conform to the uniform citation system adopted by the Supreme Court of Florida, which is reproduced in rule 9.800.

The advisory committee urges counsel to minimize references in their briefs to the parties by such designations as “appellant,” “appellee,” “petitioner,” and “respondent.” It promotes clarity to use actual names or descriptive terms such as “the employee,” “the taxpayer,” “the agency,” etc. See Fed. R. App. P. 28(d).

**1980 Amendment.** Jurisdictional briefs, now limited to 10 pages by subdivision (a), are to be filed only in the 4 situations presented in rules 9.030(a)(2)(A)(i), (ii), (iii), and (iv).

A district court decision without opinion is not reviewable on discretionary conflict jurisdiction. See *Jenkins v. State*, 385 So.2d 1356 (Fla. 1980); *Dodi Publishing Co. v. Editorial Am., S.A.*, 385 So.2d 1369 (Fla. 1980). The discussion of jurisdictional brief requirements in such cases that is contained in the 1977 revision of the committee notes to rule 9.120 should be disregarded.

**1984 Amendment.** Subdivision (b)(4) is new; subdivision (b)(5) has been renumbered from former (b)(4); subdivision (b)(6) has been renumbered from former (b)(5). Subdivision (g) has been amended.

The summary of argument required by (b)(4) is designed to assist the court in studying briefs and preparing for argument; the rule is similar to rules of the various United States courts of appeals.

**1992 Amendment.** Subdivision (a)(2) was amended to bring into uniformity the type size and spacing on all briefs filed under these rules. Practice under the previous rule allowed briefs to be filed with footnotes and quotations in different, usually smaller, type sizes and spacing. Use of such smaller type allowed some overly long briefs to circumvent the reasonable length requirements established by subdivision (a)(5) of this rule. The small type size and spacing of briefs allowed under the old rule also resulted in briefs that were difficult to read. The amended rule requires that all textual material wherever found in the brief will be printed in the same size type with the same spacing.

Subdivision (g) was amended to provide that notices of supplemental authority may call the court's attention, not only to decisions, rules, or statutes, but also to other authorities that have been discovered since the last brief was served. The amendment further provides that the notice may identify briefly the points on appeal to which the supplemental authorities are pertinent. This amendment continues to prohibit argument in such notices, but should allow the court and opposing counsel to identify more quickly those issues on appeal to which these notices are relevant.

**1996 Amendment.** Former subdivision (g) concerning notices of supplemental authority was transferred to new rule 9.225.

## Court Commentary

**1987.** The commission expressed the view that the existing page limits for briefs, in cases other than those in the Supreme Court of Florida, are tailored to the “extraordinary” case rather than the “ordinary” case. In accordance with this view, the commission proposed that the page limits of briefs in appellate courts other than the supreme court be reduced. The appellate courts would, however, be given discretion to expand the reduced page limits in the “extraordinary” case.

**2000.** As to computer-generated briefs, strict font requirements were imposed in subdivision (a)(2) for at least three reasons:

First and foremost, appellate briefs are public records that the people have a right to inspect. The clear policy of the Florida Supreme Court is that advances in technology should benefit the people whenever possible by lowering financial and physical barriers to public record inspection. The Court’s eventual goal is to make all public records widely and readily available, especially via the Internet. Unlike paper documents, electronic documents on the Internet will not display properly on all computers if they are set in fonts that are unusual. In some instances, such electronic documents may even be unreadable. Thus, the Court adopted the policy that all computer-generated appellate briefs be filed in one of two fonts — either Times New Roman 14-point or Courier New 12-point—that are commonplace on computers with Internet connections. This step will help ensure that the right to inspect public records on the Internet will be genuinely available to the largest number of people.

Second, Florida’s court system as a whole is working toward the day when electronic filing of all court documents will be an everyday reality. Though the technology involved in electronic filing is changing rapidly, it is clear that the Internet is the single most significant factor influencing the development of this technology. Electronic filing must be compatible with Internet standards as they evolve over time. It is imperative for the legal profession to become accustomed to using electronic document formats that are most consistent with the Internet.

Third, the proliferation of vast new varieties of fonts in recent years poses a real threat that page-limitation rules can be circumvented through computerized typesetting. The only way to prevent this is to establish an enforceable rule on standards for font use. The subject font requirements are most consistent with this purpose and the other two purposes noted above.

Subdivision (a)(2) was also amended to require that immediately after the certificate of service in computer-generated briefs, counsel (or the party if unrepresented) shall sign a certificate of compliance with the font standards set forth in this rule for computer-generated briefs.

## **RULE 9.310. STAY PENDING REVIEW**

**(a) Application.** Except as provided by general law and in subdivision (b) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have 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.

### **(b) Exceptions.**

**(1) Money Judgments.** If the order is a judgment solely for the payment of money, a party may obtain an automatic stay of execution pending review, without the necessity of a motion or order, by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest. Multiple parties having common liability may file a single bond satisfying the above criteria.

**(2) Public Bodies; Public Officers.** The timely filing of a notice shall automatically operate as a stay pending review, except in criminal cases, or in administrative actions under the Administrative Procedure Act, when the state, any public officer in an official capacity, board, commission, or other public body seeks review; provided that an automatic stay shall exist for 48 hours after the filing of the notice of appeal for public records and public meeting cases. On motion, the lower tribunal or the court may extend a stay, impose any lawful conditions, or vacate the stay.

### **(c) Bond.**

**(1) Defined.** A good and sufficient bond is a bond with a principal and a surety company authorized to do business in the State of Florida, or cash deposited in the circuit court clerk's office. The lower tribunal shall have continuing jurisdiction to determine the actual sufficiency of any such bond.

**(2) Conditions.** The conditions of a bond shall include a condition to pay or comply with the order in full, including costs; interest; fees; and damages for delay, use, detention, and depreciation of property, if the review is dismissed or order affirmed; and may include such other conditions as may be required by the lower tribunal.

**(d) Judgment Against a Surety.** A surety on a bond conditioning a stay submits to the jurisdiction of the lower tribunal and the court. The liability of the surety on such bond may be enforced by the lower tribunal or the court, after motion and notice, without the necessity of an independent action.

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

**(f) Review.** Review of orders entered by lower tribunals under this rule shall be by the court on motion.

### **Committee Notes**

**1977 Amendment.** This rule replaces former rules 5.1 through 5.12. It implements the Administrative Procedure Act, section 120.68(3), Florida Statutes (Supp. 1976).

Subdivision (a) provides for obtaining a stay pending review by filing a motion in the lower tribunal, and clarifies the authority of the lower tribunal to increase or decrease the bond or deal with other conditions of the stay, even though the case is pending before the court. Exceptions are provided in subdivision (b). The rule preserves any statutory right to a stay. The court has plenary power to alter any requirements imposed by the lower tribunal. A party desiring exercise of the court's power may seek review by motion under subdivision (f) of this rule.

Subdivision (b)(1) replaces former rule 5.7. It establishes a fixed formula for determining the amount of the bond if there is a judgment solely for money. This formula shall be automatically accepted by the clerk. If an insurance company is a party to an action with its insured, and the judgment exceeds the insurance company's limits of liability, the rule permits the insurance company to supersede by posting a bond in the amount of its limits of liability, plus 15 percent. For the insured co-defendant to obtain a stay, bond must be posted for the portion of the judgment entered against the insured co-defendant plus 15 percent. The 15 percent figure was chosen as a reasonable estimate of 2 years' interest and costs, it being very likely that the stay would remain in effect for over 1 year.

Subdivision (b)(2) replaces former rule 5.12. It provides for an automatic stay without bond as soon as a notice invoking jurisdiction is filed by the

state or any other public body, other than in criminal cases, which are covered by rule 9.140(c)(3), but the lower tribunal may vacate the stay or require a bond. This rule supersedes *Lewis v. Career Service Commission*, 332 So.2d 371 (Fla. 1st DCA 1976).

Subdivision (c) retains the substance of former rule 5.6, and states the mandatory conditions of the bond.

Subdivision (d) retains the substance of former rule 5.11, with an additional provision for entry of judgment by the court so that if the lower tribunal is an agency, resort to an independent action is unnecessary.

Subdivision (e) is new and is intended to permit a stay for which a single bond premium has been paid to remain effective during all review proceedings. The stay is vacated by issuance of mandate or an order vacating it. There are no automatic stays of mandate under these rules, except for the state or a public body under subdivision (b)(2) of this rule, or if a stay as of right is guaranteed by statute. See, e.g., § 120.68(3), Fla. Stat. (Supp. 1976). This rule interacts with rule 9.340, however, so that a party has 15 days between rendition of the court's decision and issuance of mandate (unless issuance of mandate is expedited) to move for a stay of mandate pending review. If such motion is granted, any stay and bond previously in effect continues, except to the extent of any modifications, by operation of this rule. If circumstances arise requiring alteration of the terms of the stay, the party asserting the need for such change should apply by motion for the appropriate order.

Subdivision (f) provides for review of orders regarding stays pending appeal by motion in the court.

Although the normal and preferred procedure is for the parties to seek the stay in the lower court, this rule is not intended to limit the constitutional power of the court to issue stay orders after its jurisdiction has been invoked. It is intended that if review of the decision of a Florida court is sought in the United States Supreme Court, a party may move for a stay of mandate, but subdivision (e) does not apply in such cases.

**1984 Amendment.** Because of recent increases in the statutory rate of interest on judgments, subdivision (b)(1) was amended to provide that 2 years' interest on the judgment, rather than 15 percent of the judgment, be posted in addition to the principal amount of the judgment. In addition, the

subdivision was amended to cure a deficiency in the prior rule revealed by *Proprietors Insurance Co. v. Valsecchi*, 385 So.2d 749 (Fla. 3d DCA 1980). As under the former rule, if a party has an obligation to pay interest only on the judgment, the bond required for that party shall be equal to the principal amount of the judgment plus 2 years' interest on it. In some cases, however, an insurer may be liable under its policy to pay interest on the entire amount of the judgment against its insured, notwithstanding that the judgment against it may be limited to a lesser amount by its policy limits. See *Highway Casualty Co. v. Johnston*, 104 So.2d 734 (Fla. 1958). In that situation, the amended rule requires the insurance company to supersede the limited judgment against it by posting a bond in the amount of the judgment plus 2 years' interest on the judgment against its insured, so that the bond will more closely approximate the insurer's actual liability to the plaintiff at the end of the duration of the stay. If such a bond is posted by an insurer, the insured may obtain a stay by posting a bond in the amount of the judgment against it in excess of that superseded by the insurer. The extent of coverage and obligation to pay interest may, in certain cases, require an evidentiary determination by the court.

**1992 Amendment.** Subdivision (c)(1) was amended to eliminate the ability of a party posting a bond to do so through the use of 2 personal sureties. The committee was of the opinion that a meaningful supersedeas could be obtained only through the use of either a surety company or the posting of cash. The committee also felt, however, that it was appropriate to note that the lower tribunal retained continuing jurisdiction over the actual sufficiency of any such bond.

**RULE 9.330. REHEARING; CLARIFICATION; CERTIFICATION**

**(a) Time for Filing; Contents; Response.** A motion for rehearing, clarification, or certification may be filed within 15 days of an order or within such other time set by the court. A motion for rehearing shall state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its decision, and shall not present issues not previously raised in the proceeding. A motion for clarification shall state with particularity the points of law or fact in the court’s decision that, in the opinion of the movant, are in need of clarification. A response may be served within 10 days of service of the motion. When a decision is entered without opinion, and a party believes that a written opinion would provide a legitimate basis for supreme court review, the motion may include a request that the court issue a written opinion. If such a request is made by an attorney, it shall include the following statement:

I express a belief, based upon a reasoned and studied professional judgment, that a written opinion will provide a legitimate basis for supreme court review because (state with specificity the reasons why the supreme court would be likely to grant review if an opinion were written).

s/\_\_\_\_\_

Attorney for \_\_\_\_\_  
(Name of party)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(address and phone number)

\_\_\_\_\_  
(Florida Bar number)

**(b) Limitation.** A party shall not file more than 1 motion for rehearing or for clarification of decision and 1 motion for certification with respect to a particular decision.

**(c) Exception; Bond Validation Proceedings.** A motion for rehearing or for clarification of a decision in proceedings for the validation of bonds or certificates of indebtedness as provided by rule 9.030(a)(1)(B)(ii) may be filed within 10 days of an order or within such other time set by the court. A

reply may be served within 5 days of service of the motion. The mandate shall issue forthwith if a timely motion has not been filed. A timely motion shall receive immediate consideration by the court and, if denied, the mandate shall issue forthwith.

**(d) Exception; Review of District Court Decisions.** No motion for rehearing or clarification may be filed in the supreme court addressed to theing:

(1) the dismissal of an appeal that attempts to invoke the court's mandatory jurisdiction under rule 9.030(a)(1)(A)(ii) when the appeal seeks to review a decision of a district court of appeal decision without opinion, or

(2) the grant or denial of a request for the court to exercise its discretion to review a decision described in rule 9.120030(a)(2)(A), or

(3) the dismissal of a petition for an extraordinary writ described in rule 9.100(a)030(a)(3) when such writ is used to seek review of a district court decision without opinion.

### **Committee Notes**

**1977 Amendment.** This rule replaces former rule 3.14. Rehearing now must be sought by motion, not by petition. The motion must be filed within 15 days of rendition and a response may be served within 10 days of service of the motion. Only 1 motion will be accepted by the clerk. Re-argument of the issues involved in the case is prohibited.

Subdivision (c) provides expedited procedures for issuing a mandate in bond validation cases, in lieu of those prescribed by rule 9.340.

Subdivision (d) makes clear that motions for rehearing or for clarification are not permitted as to any decision of the supreme court granting or denying discretionary review under rule 9.120.

**2000 Amendment.** The amendment has a dual purpose. By omitting the sentence "The motion shall not re-argue the merits of the court's order," the amendment is intended to clarify the permissible scope of motions for rehearing and clarification. Nevertheless, the essential purpose of a motion for rehearing remains the same. It should be utilized to bring to the attention of the court points of law or fact that it has overlooked or misapprehended in its decision, not to express mere disagreement with its resolution of the issues on appeal. The amendment also codifies the decisional law's

prohibition against issues in post-decision motions that have not previously been raised in the proceeding.

**2002 Amendment.** The addition of the language at the end of subdivision (a) allows a party to request the court to issue a written opinion that would allow review to the supreme court, if the initial decision is issued without opinion. This language is not intended to restrict the ability of parties to seek rehearing or clarification of such decisions on other grounds.

**2009 Amendment.** Subdivision (d) has been amended to reflect the holding in *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006).

## **RULE 9.370. AMICUS CURIAE**

**(a) When Permitted.** An amicus curiae may file a brief only by leave of court. A motion for leave to file must state the movant's interest, the particular issue to be addressed, how the movant can assist the court in the disposition of the case, and whether all parties consent to the filing of the brief.

**(b) Contents and Form.** An amicus brief must comply with Rule 9.210(b) but shall omit a statement of the case and facts and may not exceed 20 pages. The cover must identify the party or parties supported. An amicus brief must include a concise statement of the identity of the amicus curiae and its interest in the case.

**(c) Time for Service.** An amicus curiae must serve its brief no later than 5 days after the first brief, petition, or response of the party being supported is served. An amicus curiae that does not support either party must serve its brief no later than 5 days after the initial brief or petition is served. A court may grant leave for later service, specifying the time within which an opposing party may respond. The service of an amicus curiae brief does not alter or extend the briefing deadlines for the parties. An amicus curiae may not file a reply brief.

**(d) Notice of Intent to File Amicus Brief in Supreme Court.** When a party has invoked the discretionary jurisdiction of the supreme court, an amicus curiae may file a notice with the court indicating its intent to seek leave to file an amicus brief on the merits should the court accept jurisdiction. The notice shall state briefly why the case is of interest to the amicus curiae, but shall not contain argument. The body of the notice shall not exceed one page.

### **Committee Notes**

**1977 Amendment.** This rule replaces former rule 3.7(k) and expands the circumstances in which amicus curiae briefs may be filed to recognize the power of the court to request amicus curiae briefs.

**2009 Amendment.** Subdivision (d) was added to establish a procedure for an amicus curiae to expeditiously inform the supreme court of its intent to seek leave to file an amicus brief on the merits should the court accept jurisdiction. This rule imposes no obligation on the supreme court to delay

its determination of jurisdiction. Thus, an amicus curiae should file its notice as soon as possible after the filing of the notice to invoke discretionary jurisdiction of supreme court. The filing of a notice under subdivision (d) is optional and shall not relieve an amicus curiae from compliance with the provisions of subdivision (a) of this rule if the court accepts jurisdiction.

## **RULE 9.430. PROCEEDINGS BY INDIGENTS**

(a) ~~**Motion and Affidavit Appeals.**~~ A party who has the right to seek review by appeal without payment of costs shall, unless the court directs otherwise, file a signed application for determination of indigent status with the clerk of motion in the lower tribunal, using an application form approved by the Supreme Court as found in rule 9.900(j), with an affidavit showing the party's inability either to pay fees and costs or to give security therefor. For review by original proceedings under rule 9.100, unless the court directs otherwise, the party shall file the motion and affidavit with the court. If the motion is granted, the party may proceed without further application to the court and without either the prepayment of fees or costs in the lower tribunal or court or the giving of security therefor. The clerk of the lower tribunal's ~~Reasons for denying the motion~~ application shall be stated in writing and are reviewable by the lower tribunal. Review of decisions by the lower tribunal shall be by motion filed in the court.

(b) Original Proceedings. A party who seeks review by an original proceeding under rule 9.100 without the payment of costs shall, unless the court directs otherwise, file with the court an application for determination of indigent status. The application shall contain substantially the same information as required by rule 9.900(j). If the application is granted the party may proceed without further application to the court.

### **(bc) Incarcerated Parties.**

(1) **Presumptions.** In the absence of evidence to the contrary, an appellate court may, in its discretion, presume that

(A) assertions in an affidavit application of determination of indigent status filed by an incarcerated party under this rule are true, and

(B) in cases involving criminal or collateral criminal proceedings, an incarcerated party who has been declared indigent for purposes of proceedings in the lower tribunal remains indigent.

(2) **Non-Criminal Proceedings.** Except in cases involving criminal or collateral proceedings, a motion and affidavit an application for determination of indigent status filed under this rule by a person who has been convicted of a crime and is incarcerated for that crime or who is being held in custody pending extradition or sentencing shall contain substantially the same information as required by rule 9.900(ij). The determination of

whether the case involves an appeal from an original criminal or collateral proceeding depends on the substance of the issues raised and not on the form or title of the petition or complaint. In these non-criminal cases, the ~~court~~ may clerk of the lower tribunal shall require the party to make a partial prepayment of court costs or fees and to make continued partial payments until the full amount is paid.

### Committee Notes

**1977 Adoption.** This rule governs the manner in which an indigent may proceed with an appeal without payment of fees or costs and without bond. Adverse rulings by the lower tribunal must state in writing the reasons for denial. Provision is made for review by motion. Such motion may be made without the filing of fees as long as a notice has been filed, the filing of fees not being jurisdictional. This rule is not intended to expand the rights of indigents to proceed with an appeal without payment of fees or costs. The existence of such rights is a matter governed by substantive law.

**2009 Amendment.** Subdivision (b) was created to differentiate the treatment of original proceedings from appeals under this rule. Each subdivision was further amended to comply with statutory amendments to section 27.52, Florida Statutes, the legislature's enactment of section 57.082, Florida Statutes, and the Florida Supreme Court's opinion *In re Approval of Application for Determination of Indigent Status Forms for Use by Clerks*, 910 So. 2d 194 (Fla. 2005).

## **RULE 9.600. JURISDICTION OF LOWER TRIBUNAL PENDING REVIEW**

**(a) Concurrent Jurisdiction.** Only the court may grant an extension of time for any act required by these rules. Before the record is transmitted, the lower tribunal shall have concurrent jurisdiction with the court to render orders on any other procedural matter relating to the cause, subject to the control of the court.

**(b) Further Proceedings.** If the jurisdiction of the lower tribunal has been divested by an appeal from a final order, the court by order may permit the lower tribunal to proceed with specifically stated matters during the pendency of the appeal.

**(c) Family Law Matters.** In family law matters:

(1) The lower tribunal shall retain jurisdiction to enter and enforce orders awarding separate maintenance, child support, alimony, attorneys' fees and costs for services rendered in the lower tribunal, temporary attorneys' fees and costs reasonably necessary to prosecute or defend an appeal, or other awards necessary to protect the welfare and rights of any party pending appeal.

(2) The receipt, payment, or transfer of funds or property under an order in a family law matter shall not prejudice the rights of appeal of any party. The lower tribunal shall have the jurisdiction to impose, modify, or dissolve conditions upon the receipt or payment of such awards in order to protect the interests of the parties during the appeal.

(3) Review of orders entered pursuant to this subdivision shall be by motion filed in the court within 30 days of rendition.

**(d) Criminal Cases.** The lower tribunal shall retain jurisdiction to consider motions pursuant to Florida Rules of Criminal Procedure 3.800(b)(2) and in conjunction with post-trial release pursuant to rule 9.140(gh).

### **Committee Notes**

**1977 Amendment.** This rule governs the jurisdiction of the lower tribunal during the pendency of review proceedings, except for interlocutory

appeals. If an interlocutory appeal is taken, the lower tribunal's jurisdiction is governed by rule 9.130(f).

Subdivision (b) replaces former rule 3.8(a). It allows for continuation of various aspects of the proceeding in the lower tribunal, as may be allowed by the court, without a formal remand of the cause. This rule is intended to prevent unnecessary delays in the resolution of disputes.

Subdivision (c) is derived from former rule 3.8(b). It provides for jurisdiction in the lower tribunal to enter and enforce orders awarding separate maintenance, child support, alimony, temporary suit money, and attorneys' fees. Such orders may be reviewed by motion.

**1980 Amendment.** Subdivision (a) was amended to clarify the appellate court's paramount control over the lower tribunal in the exercise of its concurrent jurisdiction over procedural matters. This amendment would allow the appellate court to limit the number of extensions of time granted by a lower tribunal, for example.

**1994 Amendment.** Subdivision (c) was amended to conform to and implement section 61.16(1), Florida Statutes (1994 Supp.), authorizing the lower tribunal to award temporary appellate attorneys' fees, suit money, and costs.

**1996 Amendment.** New rule 9.600(d) recognizes the jurisdiction of the trial courts, while an appeal is pending, to rule on motions for post-trial release, as authorized by rule 9.140(g), and to decide motions pursuant to Florida Rule of Criminal Procedure 3.800(a), as authorized by case law such as *Barber v. State*, 590 So.2d 527 (Fla. 2d DCA 1991).

## **RULE 9.800. UNIFORM CITATION SYSTEM**

This rule applies to all legal documents, including court opinions. Except for citations to case reporters, all citation forms should be spelled out in full if used as an integral part of a sentence either in the text or in footnotes. Abbreviated forms as shown in this rule should be used if the citation is intended to stand alone either in the text or in footnotes.

### **(a) Florida Supreme Court.**

(1) 1846–1886: *Livingston v. L’Engle*, 22 Fla. 427 (1886).

(2) *Fenelon v. State*, 594 So. 2d 292 (Fla. 1992).

(3) For recent opinions not yet published in the Southern Reporter, cite to Florida Law Weekly: *Traylor v. State*, 17 Fla. L. Weekly S42 (Fla. Jan. 16, 1992). If not therein, cite to the slip opinion: *Medina v. State*, No. SC00-280 (Fla. Mar. 14, 2002).

### **(b) Florida District Courts of Appeal.**

(1) *Sotolongo v. State*, 530 So. 2d 514 (Fla. 2d DCA 1988); *Buncayo v. Dribin*, 533 So. 2d 935 (Fla. 3d DCA 1988).

(2) For recent opinions not yet published in Southern Reporter, cite to Florida Law Weekly: *Myers v. State*, 16 Fla. L. Weekly D1507 (Fla. 4th DCA June 5, 1991). If not therein, cite to the slip opinion: *Fleming v. State*, No. 1D01-2734 (Fla. 1st DCA Mar. 6, 2002).

### **(c) Florida Circuit Courts and County Courts.**

(1) *Whidden v. Francis*, 27 Fla. Supp. 80 (Fla. 11th Cir. Ct. 1966).

(2) *State v. Alvarez*, 42 Fla. Supp. 83 (Fla. Dade Cty. Ct. 1975).

(3) For opinions not published in Florida Supplement, cite to Florida Law Weekly: *State v. Campeau*, 16 Fla. L. Weekly C65 (Fla. 9th Cir. Ct. Nov. 7, 1990). If not therein, cite to the slip opinion: *State v. Campeau*, No. 90-4363 (Fla. 9th Cir. Ct. Nov. 7, 1990).

**(d) Florida Administrative Agencies.** (Cite if not in Southern Reporter.)

(1) For decisions of the Public Employees Relations Commission: *Indian River Educ. Ass'n v. School Bd.*, 4 F.P.E.R. ¶ 4262 (1978).

(2) For decisions of the Florida Public Service Commission: *In re Application of Tampa Elec. Co.*, 81 F.P.S.C. 2:120 (1981).

(3) For decisions of all other agencies: *Insurance Co. v. Department of Ins.*, 2 F.A.L.R. 648-A (Fla. Dept. of Insurance 1980).

(e) Florida Constitution. (Year of adoption should be given if necessary to avoid confusion.)

Art. V, §3(b)(3), Fla. Const.

**(f) Florida Statutes (Official).**

§350.34, Fla. Stat. (1973).

§120.53, Fla. Stat. (Supp. 1974).

**(g) Florida Statutes Annotated.** (To be used only for court-adopted rules, or references to other nonstatutory materials that do not appear in an official publication.)

32 Fla. Stat. Ann. 116 (Supp. 1975).

**(h) Florida Laws.** (Cite if not in Fla. Stat. or if desired for clarity or adoption reference.)

(1) After 1956: Ch. 74-177, § 5, at 473, Laws of Fla.

(2) Before 1957: Ch. 22000, Laws of Fla. (1943).

**(i) Florida Rules.**

Fla. R. Civ. P. 1.180.

Fla. R. Jud. Admin. 2.035110.

Fla. R. Crim. P. 3.850.

Fla. R. Work. Comp. P. 4.113.

Fla. Prob. R. 5.120.

Fla. R. Traf. Ct. 6.165.

Fla. Sm. Cl. R. 7.070.

Fla. R. Juv. P. 8.070.

Fla. R. App. P. 9.100.

Fla. R. Med. 10.100.

Fla. R. Arb. 11.010.

Fla. Fam. L. R. P. 12.010.

Fla. Admin. Code R. 62D-2.014.

R. Regulating Fla. Bar 4-1.10.

Fla. Bar Found. By-Laws, art. 2.19(b).

Fla. Bar Found. Charter, art. III, §3.4.

Fla. Bar Integr. R., art. XI, §11.09.

Fla. Jud. Qual. Comm'n R. 9.

Fla. Std. Jury Instr. (Civ.) 6.4(c).

Fla. Std. Jury Instr. (Crim.) 2.03.

Fla. Std. Jury Instr. (Crim.) Robbery.

Fla. Stds. Imposing Law. Sanctions. 9.32(a).

Fla. Bar Admiss. R. 3-23.1.

**(j) Florida Attorney General Opinions.**

Op. Att’y Gen. Fla. 73-178 (1973).

**(k) United States Supreme Court.**

*Sansone v. United States*, 380 U.S. 343 (1965).

(Cite to United States Reports, if published therein; otherwise cite to Supreme Court Reporter, Lawyer’s Edition, or United States Law Week, in that order of preference. For opinions not published in these reporters, cite to Florida Law Weekly Federal: *California v. Hodari D.*, 13 Fla. L. Weekly Fed. S249 (U.S. Apr. 23, 1991).

**(l) Federal Courts of Appeals.**

*Gulf Oil Corp. v. Bivins*, 276 F.2d 753 (5th Cir. 1960).

For opinions not published in the Federal Reporter, cite to Florida Law Weekly Federal: *Cunningham v. Zant*, 13 Fla. L. Weekly Fed. C591 (11th Cir. March 27, 1991).

**(m) Federal District Courts.**

*Pugh v. Rainwater*, 332 F. Supp. 1107 (S.D. Fla. 1971).

For opinions not published in the Federal Supplement, cite to Florida Law Weekly Federal: *Wasko v. Dugger*, 13 Fla. L. Weekly Fed. D183 (S.D. Fla. Apr. 2, 1991).

**(n) United States Constitution.** Art. IV, § 2, cl. 2, U.S. Const. Amend. V, U.S. Const.

**(o) Other Citations.** When referring to specific material within a Florida court’s opinion, pinpoint citation to the page of the Southern Reporter where that material occurs is optional, although preferred. All other citations shall be in the form prescribed by the latest edition of *The Bluebook: A Uniform*

System of Citation, The Harvard Law Review Association, Gannett House, Cambridge, MA 02138. Citations not covered in this rule or in The Bluebook shall be in the form prescribed by the Florida Style Manual published by the Florida State University Law Review, Tallahassee, FL 32306.

**(p) Case Names.** Case names shall be underscored (or italicized) in text and in footnotes.

### **Committee Notes**

1977 Adoption. This rule is new and is included to standardize appellate practice and ease the burdens on the courts. It is the duty of each litigant and counsel to assist the judicial system by use of these standard forms of citation. Use of these citation forms, however, has not been made mandatory.

1992 Amendment. Rule 9.800 was updated to reflect changes in the available reporters. Additionally, the citations to new rules have been added and citations to rules no longer in use have been deleted.

**RULE 9.900. FORMS**

**(a) Notice of Appeal.**

IN THE .....(NAME OF LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. \_\_\_\_\_

\_\_\_\_\_, )  
Defendant/Appellant, )  
v. ) NOTICE OF APPEAL  
\_\_\_\_\_, )  
Plaintiff/Appellee. )  
\_\_\_\_\_ )

NOTICE IS GIVEN that \_\_\_\_\_, Defendant/Appellant, appeals to the .....(name of court that has appellate jurisdiction)....., the order of this court rendered [see rule 9.020(h)] .....(date)..... [Conformed copies of orders designated in the notice of appeal shall be attached in accordance with rules 9.110(d), and 9.160(c).] The nature of the order is a final order .....(state nature of the order).....

\_\_\_\_\_  
Attorney for .....(name of party).....  
.....(address and phone number).....  
Florida Bar No. ....

**(b) Notice of Cross-Appeal.**

IN THE .....(NAME OF LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. \_\_\_\_\_

\_\_\_\_\_, )  
Defendant/Appellant, )  
Cross-Appellee, )  
v. ) NOTICE OF  
 ) CROSS-APPEAL  
\_\_\_\_\_, )  
Plaintiff/Appellee, )  
Cross-Appellant. )  
\_\_\_\_\_ )

NOTICE IS GIVEN that \_\_\_\_\_, Plaintiff/Cross-Appellant, appeals to the .....(name of court that has appellate jurisdiction)....., the order of this court rendered [see rule 9.020(h)] .....(date)..... The nature of the order is a final order .....(state nature of the order).....

\_\_\_\_\_  
Attorney for .....(name of party).....  
.....(address and phone number).....

Florida Bar No. ....

**(c) Notice of Appeal of Non-Final Order.**

IN THE .....(NAME OF LOWER TRIBUNAL WHOSE NON-FINAL ORDER IS TO BE REVIEWED).....

Case No. \_\_\_\_\_

_____	)	
Defendant/Appellant,	)	
	)	
v.	)	NOTICE OF APPEAL
	)	OF A NON-FINAL
_____	)	ORDER
Plaintiff/Appellee.	)	
_____	)	

NOTICE IS GIVEN that \_\_\_\_\_, Defendant/Appellant, appeals to the .....(name of court that has appellate jurisdiction)....., the order of this court rendered [see rule 9.020(h)] .....(date)..... [Conformed copies of orders designated in the notice of appeal shall be attached in accordance with rules 9.110(d), 9.130(c), and 9.160(c).] The nature of the order is a non-final order .....(state nature of the order).....

\_\_\_\_\_  
Attorney for .....(name of party).....  
.....(address and phone number).....  
Florida Bar No. ....

**(d) Notice to Invoke Discretionary Jurisdiction of Supreme Court.**

IN THE DISTRICT COURT OF  
APPEAL OF FLORIDA,  
\_\_\_\_\_ DISTRICT

Case No. \_\_\_\_\_

_____	)	
Defendant/Petitioner,	)	
	)	
v.	)	NOTICE TO INVOKE
	)	DISCRETIONARY
_____	)	JURISDICTION
Plaintiff/Respondent.	)	
_____	)	

NOTICE IS GIVEN that \_\_\_\_\_, Defendant/Petitioner, invokes the discretionary jurisdiction of the supreme court to review the decision of this court rendered [see rule 9.020(h)] .....(date)..... The decision .....(state why the decision is within the supreme court’s jurisdiction).....<sup>1</sup>

\_\_\_\_\_  
Attorney for .....(name of party).....  
.....(address and phone number).....  
Florida Bar No. ....

1. The choices are:
  - a. expressly declares valid a state statute.
  - b. expressly construes a provision of the state or federal constitution.
  - c. expressly affects a class of constitutional or state officers.
  - d. expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.
  - e. passes on a question certified to be of great public importance.
  - f. is certified to be in direct conflict with decisions of other district courts of appeal.

See rule 9.030(a)(2)(A).

**(e) Notice of Administrative Appeal.**

IN THE .....(NAME OF AGENCY, OFFICER, BOARD, COMMISSION, OR BODY  
 WHOSE ORDER IS TO BE REVIEWED).....  
 Case No. \_\_\_\_\_

_____ )	
Defendant*/Appellant, )	
)	
v. )	NOTICE OF
)	ADMINISTRATIVE
_____ )	APPEAL
Plaintiff*/Appellee. )	
_____ )	

NOTICE IS GIVEN that \_\_\_\_\_, Appellant, appeals to the .....(name of court that has appellate jurisdiction)....., the order of this .....(name of agency, officer, board, commission, or body whose order is to be reviewed)..... rendered [see rule 9.020(h)] .....(date)..... [Conformed copies of orders designated in the notice of appeal shall be attached in accordance with rules 9.110(d) and 9.130(c).] The nature of the order is .....(state nature of the order).....

\_\_\_\_\_  
 Attorney for .....(name of party).....  
 .....(address and phone number).....  
 Florida Bar No. ....

\*or other appropriate designation.

**(f) Notice of Appeal of an Order Dismissing a Petition for a Judicial Waiver of Parental Notice of Termination of Pregnancy and Advisory Notice to Minor.**

IN THE CIRCUIT COURT FOR THE  
 \_\_\_\_\_ JUDICIAL CIRCUIT  
 (NUMERICAL DESIGNATION OF THE CIRCUIT)  
 IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Case No. \_\_\_\_\_

In re: Petition for a Judicial Waiver )
of Parental Notice of Termination of )
Pregnancy. )
)
)
_____ )

(Your pseudonym or initials) )  
 )  
 Appellant. )  
 \_\_\_\_\_ )

NOTICE IS GIVEN that \_\_\_\_\_ (your pseudonym or initials), appeals to the \_\_\_\_\_ (District Court with appellate jurisdiction), the order of this court rendered \_\_\_\_\_ (enter the date that the order was filed on the clerk's docket) [See rule 9.020(h)]. The nature of the order is a final order dismissing a petition for a judicial waiver of parental notice of termination of pregnancy.

Signature: \_\_\_\_\_  
(As signed on your petition for judicial waiver if you are representing yourself)

Date: \_\_\_\_\_

OR

Attorney for \_\_\_\_\_ (pseudonym or initials of appellant)  
(address and phone number of attorney)  
Florida Bar No. \_\_\_\_\_

ADVISORY NOTICE TO THE MINOR

YOU ARE NOTIFIED AS FOLLOWS:

1. You are entitled to appeal the order dismissing your petition for a judicial waiver of parental notice of termination of pregnancy. You do not have to pay a filing fee for the appeal.
2. If you wish to appeal, you must file a notice of appeal. A form for the notice of appeal (Fla. R. App. P. 9.900(f)) will be provided to you with the order dismissing your petition. You must fill in every blank on the form with the information requested. If you need assistance with the form, the clerk of the circuit court will help you complete it.
3. You must file the notice of appeal with the clerk of the circuit court where your case was heard. The notice of appeal must be filed within thirty (30) days of the date when the judge's written order dismissing your petition was filed with the clerk of the circuit court. If you do not file your notice of appeal within this time period your appeal will not be heard.
4. The notice of appeal is the only document you need to file in connection with your appeal. You may file a motion to seek permission to file a brief in your case, or to request oral argument of your case. These motions or any other motions or documents you file concerning your appeal, except the notice of appeal, must be mailed or delivered to the appellate court for filing. The appellate court that will be reviewing your case is:

The \_\_\_\_\_ District Court of Appeal

\_\_\_\_\_

(address of the District Court)

Telephone number: \_\_\_\_\_

(Note: The clerk of the circuit court will fill in the blanks above with the appropriate court information).

5. You may request a lawyer to represent you in your appeal. You must tell the judge who heard your petition for a judicial waiver of parental notification of termination of pregnancy that you wish to have a lawyer appointed.

**(g) Directions to Clerk.**

IN THE .....(NAME OF LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. \_\_\_\_\_

\_\_\_\_\_, )  
 Plaintiff/Appellant, )  
 )  
 v. ) DIRECTIONS  
 ) TO CLERK  
 )  
 \_\_\_\_\_, )  
 Defendant/Appellee. )  
 \_\_\_\_\_ )

Plaintiff/Appellant, \_\_\_\_\_, directs the clerk to .....(include/exclude)..... the following items .....(in/from)..... the original record described in rule 9.200(a)(1):

ITEM	DATE FILED
1.	
	[List of Desired Items]

2.

Note: This form is necessary only if a party does not wish to rely on the record that will be automatically prepared by the clerk under rule 9.200(a)(1).

**(h) Designation to Reporter.**

IN THE .....(NAME OF LOWER TRIBUNAL WHOSE ORDER IS TO BE REVIEWED).....

Case No. \_\_\_\_\_

\_\_\_\_\_, )  
 Plaintiff/Appellant, )  
 )  
 v. ) DESIGNATION  
 ) TO REPORTER  
 ) AND REPORTER'S  
 ) ACKNOWLEDGMENT  
 \_\_\_\_\_, )  
 Defendant/Appellee. )  
 \_\_\_\_\_ )

I. DESIGNATION

Plaintiff/Appellant, \_\_\_\_\_, files this Designation to Reporter and directs .....(name of court reporter)..... to transcribe an original and \_\_\_\_\_ copies of the following portions of the trial proceedings to be used in this appeal:

1. The entire trial proceedings recorded by the reporter on .....(date)....., before the Honorable .....(judge)....., except \_\_\_\_\_.
2. [Indicate all other portions of reported proceedings.]
3. The court reporter is directed to file the original with the clerk of the lower tribunal and to serve one copy on each of the following:
  - 1.
  - 2.
  - 3.

I, counsel for Appellant, certify that satisfactory financial arrangements have been made with the court reporter for preparation of the transcript.

\_\_\_\_\_  
Attorney for .....(name of party).....  
.....(address and phone number).....  
Florida Bar No. ....

## II. REPORTER'S ACKNOWLEDGMENT

1. The foregoing designation was served on .....(date)....., and received on .....(date).....
2. Satisfactory arrangements have ( ) have not ( ) been made for payment of the transcript cost. These financial arrangements were completed on .....(date).....
3. Number of trial or hearing days \_\_\_\_.
4. Estimated number of transcript pages \_\_\_\_.
- 5a. The transcript will be available within 30 days of service of the foregoing designation and will be filed on or before .....(date).....  
OR
- 5b. For the following reason(s) the court reporter requests an extension of time of \_\_\_\_ days for preparation of the transcript that will be filed on or before .....(date).....
6. Completion and filing of this acknowledgment by the court reporter constitutes submission to the jurisdiction of the court for all purposes in connection with these appellate proceedings.
7. The undersigned court reporter certifies that the foregoing is true and correct and that a copy has been furnished by mail ( ) hand delivery ( ) on .....(date)....., to each of the parties or their counsel.

\_\_\_\_\_  
Court Reporter  
.....(address).....

Note: The foregoing court reporter's acknowledgment to be placed "at the foot of" or attached to a copy of the designation, shall be properly completed, signed by the court reporter, and filed with the clerk of the appellate court within 5 days of service of the designation on the court reporter. A copy shall be served on all parties or their counsel, who shall have 5 days to object to any requested extension of time. See Fla. R. App. P. 9.200(b)(1), (2), & (3).

**(i) Civil Supersedeas Bond.**

.....(Title of Court).....

Case No. \_\_\_\_\_

\_\_\_\_\_, )  
 Plaintiff, )  
 )  
 v. ) CIVIL SUPERSEDEAS  
 ) BOND  
 \_\_\_\_\_ )  
 Defendant. )  
 \_\_\_\_\_ )

We, \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto \_\_\_\_\_ in the principal sum of \$\_\_\_\_\_, for the payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

The condition of this obligation is: the above-named Principal has entered an appeal to the .....(court)..... to review the .....(judgment or order)..... entered in the above case on .....(date)....., and filed in the records of said court in book \_\_\_\_\_ at page\_\_\_\_\_.

NOW THEREFORE, if the Principal shall satisfy any money judgment contained in the judgment in full, including, if allowed by law, costs, interest, and attorneys' fees, and damages for delay in the event said appeal is dismissed or said judgment is affirmed, then this obligation shall be null and void; otherwise to remain in full force and effect.

Signed on .....(date)....., at .....(place).....

/s/  
 Principal

Signed on .....(date)....., at .....(place).....

/s/  
 Surety

**(j) Prisoner's Motion and Affidavit to Proceed Without Prepayment of Court Costs and Fees. Applications for Determination of Indigent Status in Criminal and Civil Cases.**

IN THE (name of court)  
 \_\_\_\_\_

Case No. \_\_\_\_\_

\_\_\_\_\_, ) PRISONER'S  
 Appellant(s)/ \_\_\_\_\_ ) MOTION AND



5. Do you own any real estate, stocks, bonds, notes, automobiles, or other tangible or intangible thing of value worth more than \$100? Yes ( ) No ( )

If yes, describe each item of property and state its approximate value.

\_\_\_\_\_

6. List the persons who are dependent upon you for support, state their ages and their relationship to you, and indicate how much you contribute toward their support.

7. State the nature and amount of any significant monthly expenses that you must pay, such as mortgage payments or rent.

8. List all of your significant debts, including the name of each person or entity to whom you owe the debt, the total amount owed, and monthly payment, if any. \_\_\_\_\_

9. During the past three years, have you been permitted two or more times to proceed without prepayment of court costs or fees in Florida or federal courts or adjudicatory forums, or to intervene in actions in these courts or adjudicatory forums without prepayment of court costs or fees, pursuant to Sections 57.081 or 57.085, Florida Statutes, or 28 U.S.C. § 1915? Yes ( ) No ( )

If yes, list below all suits, actions, claims, proceedings, or appeals that you have brought or intervened in during the past five years in any court or adjudicatory forum.

Name of Court \_\_\_\_\_ Case Number \_\_\_\_\_ Nature of  
Disposition \_\_\_\_\_ the Action

If necessary, attach additional pages that reflect the required information.

\_\_\_\_\_  
Signature of Appellant/Plaintiff/  
Petitioner

State of Florida  
County of \_\_\_\_\_

Sworn to and subscribed before me on .....(date)..... by .....(name).....

\_\_\_\_\_  
Notary Public — State of Florida  
(Print, Type, or Stamp Commissioned Name Of Notary Public)

Personally known \_\_\_\_\_  
OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

**FINANCIAL CERTIFICATE**

(To be completed by authorized official of institution where prisoner is confined)

The prisoner must attach computer printout(s) reflecting all transactions in the prisoner's inmate trust account(s) for the preceding six months or for the period of incarceration, whichever is shorter. The prisoner has the responsibility to obtain the required printout(s) from each institution where the prisoner was or is confined and to provide the printout(s) to the official completing this certificate.

1. Name of prisoner \_\_\_\_\_

2. Current available account balance \_\_\_\_\_

3. Average highest available \_\_\_\_\_ monthly balance for the preceding six months or for the period of incarceration, whichever is shorter.

4. Average available monthly \_\_\_\_\_ deposits for preceding six months or for the period of incarceration, whichever is shorter.

If printout(s) or the above calculations do not represent the preceding six month period in its entirety, the official completing this certificate should explain here:

I hereby certify that, as of this date, the above information for the inmate trust account of the prisoner named above is correct.

Date: \_\_\_\_\_

Authorized official of institution

#### ORDER REQUIRING FURTHER INFORMATION FOR DETERMINATION OF PRISONER'S INDIGENCY

Based on a claim of indigency, Petitioner (Plaintiff) seeks a waiver of the filing fee in this matter of \$ \_\_\_\_\_. Petitioner (Plaintiff) appears to be incarcerated for conviction of a crime or pending extradition or sentencing. The documents filed by Petitioner (Plaintiff) are insufficient to determine whether the Petitioner (Plaintiff) is indigent under Section 57.085, Florida Statutes. Petitioner (Plaintiff) must either pay the filing fee stated above or file the following items (as marked) with this tribunal within 45 days of the date of this order:

\_\_\_\_ 1. Affidavit of indigency containing Petitioner's (Plaintiff's) identity and the financial information required by Section 57.085(2), Florida Statutes.

\_\_\_\_ 2. Statement in the affidavit regarding whether the Petitioner (Plaintiff) has been determined to be indigent under Sections 57.081 or 57.085, Florida Statutes, or 28 U.S.C. § 1915 two or more times during the past three years and, if yes, a listing of all suits, actions, claims, proceedings, or appeals brought by the prisoner or intervened in by the prisoner in any court or adjudicatory forum during the past five years.

\_\_\_\_ 3. Statement in the affidavit that "I am unable to pay court costs and fees. Under penalty of perjury, I swear or affirm that all statements in this affidavit are true and complete."

\_\_\_\_ 4. Acknowledgment that funds will be withdrawn from the Petitioner's (Plaintiff's) inmate trust account.

\_\_\_\_ 5. A copy of the Petitioner's (Plaintiff's) inmate trust account records for the past 6 months or the length of the Petitioner's (Plaintiff's) incarceration, whichever period is shorter. If Petitioner (Plaintiff) has not had an inmate trust account during this time period, the Petitioner (Plaintiff) must submit signed documentation from prison or jail officials for each institution confirming that the Petitioner (Plaintiff) did not have a trust account.

\_\_\_\_ 6. A financial certificate, signed by an authorized official of the Petitioner's (Plaintiff's) place of confinement, reflecting the current available account balance of the Petitioner's (Plaintiff's) inmate trust account and the average highest available monthly balance and average available monthly deposits in the trust account for the past 6 months or the length of the Petitioner's (Plaintiff's) incarceration, whichever period is shorter.

Completion of the enclosed or attached form will satisfy all of these requirements. Failure either to pay the filing fee in full or to comply with this order within 45 days from the date of this order may result in dismissal of this case. If the Petitioner (Plaintiff) has filed or intervened in more than one action, separate documents must be supplied for each action and the case number must appear on each submission.

**ORDER ON PRISONER'S INDIGENCY**

Based on a claim of indigency, Petitioner (Plaintiff) seeks waiver of prepayment of court costs and fees, pursuant to Section 57.085, Florida Statutes. Having reviewed the documents filed by Petitioner (Plaintiff), this tribunal finds that Petitioner (Plaintiff) is a prisoner as defined by Section 57.085(1), Florida Statutes, and orders as follows:

**I. DETERMINATION OF INDIGENCY (check one)**

       A. NOT INDIGENT. The Petitioner (Plaintiff) is found not indigent because \_\_\_\_\_ . The filing fee of \$ \_\_\_\_\_ must be paid in full or this case will be dismissed. (skip Section II) (Note that Fla. R. App. P. 9.430 requires a statement of reasons for denying a request for indigency status.)

       B. FULL WAIVER. Petitioner (Plaintiff) is indigent and unable to prepay court costs and fees. Petitioner (Plaintiff) is obligated to pay court costs and fees as specified in Section II below.

       C. PARTIAL WAIVER. Petitioner (Plaintiff) is indigent but able to prepay part of the court costs and fees. Petitioner (Plaintiff) shall make, prior to any further proceedings, an initial partial payment of the greater of either (1) 80% of the current available balance of the Petitioner's (Plaintiff's) inmate trust account or (2) the greater of 20% of the average highest available monthly balance or the average available monthly deposits of the Petitioner's (Plaintiff's) inmate trust account for the preceding 6 months or the period of incarceration, whichever period is shorter. This tribunal determines this amount to be \$ \_\_\_\_\_. Payment must be made within 45 days of the date of this order, or this case may be dismissed. Petitioner (Plaintiff) shall make monthly payments of the remaining court costs and fees as specified in Section II below.

**II. PAYMENT OF COURT COSTS AND FILING FEES**

The initial filing fee in this case is \$ \_\_\_\_\_. The Department of Corrections or the local detention facility shall place a lien on the inmate's trust account for the full amount owed, withdraw money maintained in the trust account, and transmit the money to the clerk of the court until the Petitioner's (Plaintiff's) court costs and fees are paid in full. When the balance in the inmate's account is less than \$10, the Department of Corrections or local detention facility shall accumulate the funds and not transmit them to the clerk until the balance exceeds \$10. Any dismissal of this case, transfer of the Petitioner (Plaintiff) to a different detention facility, or release of the Petitioner (Plaintiff) from custody shall not extinguish the lien or the Petitioner's (Plaintiff's) responsibility to pay the full amount owed.

**IN THE CIRCUIT/COUNTY COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT**  
**IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA**

**STATE OF FLORIDA vs. \_\_\_\_\_ CASE NO. \_\_\_\_\_**

**Defendant/Minor Child**

**APPLICATION FOR CRIMINAL INDIGENT STATUS**

**I AM SEEKING THE APPOINTMENT OF THE PUBLIC DEFENDER**

OR

I HAVE A PRIVATE ATTORNEY OR AM SELF-REPRESENTED AND SEEK DETERMINATION OF INDIGENCE STATUS FOR COSTS

Notice to Applicant: The provision of a public defender/court appointed lawyer and costs/due process services are not free. A judgment and lien may be imposed against all real or personal property you own to pay for legal and other services provided on your behalf or on behalf of the person for whom you are making this application. There is a \$40.00 fee for each application filed. If the application fee is not paid to the Clerk of the Court within 7 days, it will be added to any costs that may be assessed against you at the conclusion of this case. If you are a parent/guardian making this affidavit on behalf of a minor or tax-dependent adult, the information contained in this application must include your income and assets.

1. I have dependents. (Do not include children not living at home and do not include a working spouse or yourself.)

2. I have a take home income of \$ paid weekly bi-weekly semi-monthly monthly yearly (Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court ordered support payments)

3. I have other income paid weekly bi-weekly semi-monthly monthly yearly: (Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No") Social Security benefits, Unemployment compensation, Union Funds, Workers compensation, Retirement/pensions, Trusts or gifts, Veterans' benefit, Child support or other regular support from family members/ spouse, Rental income, Dividends or interest, Other kinds of income not on the list

4. I have other assets: (Circle "yes" and fill in the value of the property, otherwise circle "No") Cash, Bank account(s), Certificates of deposit or money market accounts, Equity in Motor vehicles/Boats/, Other tangible property, Savings, Stocks/bonds, Equity in Real estate (excluding homestead), include expectancy of an interest in such property

5. I have a total amount of liabilities and debts in the amount of \$

6. I receive: (Circle "Yes" or "No") Temporary Assistance for Needy Families-Cash Assistance, Poverty-related veterans' benefits, Supplemental Security Income (SSI)

7. I have been released on bail in the amount of \$ . Cash Surety Posted by: Self Family Other

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 27.52, F.S. commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S. I attest that the information I have provided on this Application is true and accurate to the best of my knowledge.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Applicant for Indigent Status  
Date of Birth \_\_\_\_\_ **Print Full Name**

\_\_\_\_\_  
Drivers License or ID Number \_\_\_\_\_ Address, P O Address, Street, City, State,  
\_\_\_\_\_  
Zip Code  
\_\_\_\_\_  
Phone number: \_\_\_\_\_

**NOTICE: If the applicant is determined by the clerk to be Not Indigent, you may seek judicial review at your next scheduled court appearance.**

**CLERK'S DETERMINATION**

\_\_\_\_\_  
Based on the information in this Application, I have determined the applicant to be  
( ) Indigent ( ) Not Indigent pursuant to s. 27.52, F.S.

\_\_\_\_\_  
The Public Defender is hereby appointed to the case listed above until relieved by the  
Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Clerk of the Circuit Court

\_\_\_\_\_  
This form was completed with the assistance of  
\_\_\_\_\_  
Clerk/Deputy Clerk/Other authorized person.

**IN THE CIRCUIT/COUNTY COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT IN AND  
FOR \_\_\_\_\_ COUNTY, FLORIDA**

\_\_\_\_\_  
**CASE NO.**

**Plaintiff/Petitioner or In the Interest Of**  
**vs.**

\_\_\_\_\_  
**Defendant//Respondent**

**APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS**

**Notice to Applicant:** If you qualify for civil indigence you must enroll in the Clerk's Office payment plan and pay a one-time administrative fee of \$25.00.

**1. I have \_\_\_\_\_ dependents.** *(Do not include children not living at home and do not include a working spouse or yourself.)*

**2. I have a take home income of \$ \_\_\_\_\_** paid ( ) weekly ( ) bi-weekly ( ) semi-monthly  
( ) monthly ( ) yearly

(Take home income equals salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court ordered support payments)

**3. I have other income paid** ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly ( ) yearly:  
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Social Security benefits .....	Yes \$	No	Veterans' benefit .....	Yes \$	No
Unemployment compensation .....	Yes \$	No	Child support or other regular support from family members/ spouse .....	Yes \$	No
Union Funds .....	Yes \$	No	Rental income .....	Yes \$	No
Workers compensation .....	Yes \$	No	Dividends or interest .....	Yes \$	No
Retirement/pensions .....	Yes \$	No	Other kinds of income not on the list .....	Yes \$	No
Trusts or gifts .....	Yes \$	No			

**4. I have other assets:** (Circle "yes" and fill in the value of the property, otherwise circle "No")

Cash .....	Yes \$	No	Savings .....	Yes \$	No
Bank account(s) .....	Yes \$	No	Stocks/bonds .....	Yes \$	No
Certificates of deposit or money market accounts .....	Yes \$	No	*Equity in Real estate (excluding homestead) ..	Yes \$	No
*Equity in Motor vehicles/Boats/ ..	Yes \$	No			

**5. I have a total amount of liabilities and debts in the amount of \$ \_\_\_\_\_,**

**6. I have a private lawyer in this case** ..... Yes No

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s.775.082, F.S. or s. 775.083, F.S. I attest that the information I have provided on this application is true and accurate to the best of my knowledge.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
 Signature of Applicant for Indigent Status  
 Date of Birth \_\_\_\_\_  
 Print Full Name

\_\_\_\_\_  
 Drivers License or ID Number  
 Address, P O Address, Street, City, State, Zip Code  
 Phone number: \_\_\_\_\_

**NOTICE: If the applicant is determined by the clerk to be Not Indigent, you may seek judicial review by filing a petition with the court.**

**CLERK'S DETERMINATION**

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ Clerk of the Circuit Court

\_\_\_\_\_  
 This form was completed with the assistance of \_\_\_\_\_

### Committee Notes

**1980 Amendment.** Forms 9.900(a) and (b) under the 1977 rules are modified, and additional forms are provided.

**1992 Amendment.** Forms 9.900(a), (c), and (e) were revised to remind the practitioner that conformed copies of the order or orders designated in the notice of appeal should be attached to the notice of appeal as provided in rules 9.110(d), 9.130(c), and 9.160(c).

**2009 Amendment.** The current forms are replaced with forms approved by the Florida Supreme Court in *In re Approval of Application for Determination of Indigent Status Forms for Use by Clerks*, 910 So. 2d 194 (Fla. 2005).