

CHAPTER 17: WORKERS' COMPENSATION APPEALS

A. Introduction

The purpose of this Chapter is to provide some information about how to proceed in an appeal from a “final order” in a workers’ compensation case. This is a very basic explanation, and the pro se/self represented litigant should review the rules and statutes cited in this Chapter. This Chapter does not address appeals from “non-final” orders in workers’ compensation cases.

A claimant who loses a workers’ compensation case may appeal a compensation order, entered by the workers’ compensation judge. The “appellant,” asks the appellate court to review the trial judge’s rulings and reverse those rulings to find in their favor. As set forth in Florida Rule of Appellate Procedure 9.180, these are the basic steps an appellant must follow to take an appeal:

1. The appellant must file a “notice of appeal” with the filing fee of \$300.00. The “notice of appeal” must be filed (not mailed) with the trial judge’s office no later than thirty (30) days from the date the trial judge’s office mailed or electronically served (e-mailed) the order to the parties.

2. An appellant who wishes to appeal, but does not have the money to pay the filing fee, may file a “verified petition or motion for indigency” in the trial judge’s office with the “notice of appeal.”

3. The appellant must also file “designations” which tell the clerk which items should be in the “record” that will be reviewed by the appellate court.

4. An appellant who does not have the money to pay for the cost of preparing the record must file with the trial judge’s office a “verified petition” or motion to be relieved of the costs of preparing the record on appeal and a “sworn financial affidavit.”

5. The appellant will then file the “initial brief,” and after the “appellee” files an “answer brief,” the appellant will file the “reply brief.”

A brief explanation of how to complete each step is set forth below. The rules and statutes that apply to appellate proceedings in workers’ compensation cases include, but are not limited to Florida Rules of Appellate Procedure 9.180, 9.200, 9.210, 9.310, 9.330, and 9.331, and Sections 57.081(1), 440.25(5), and 440.271, Florida Statutes.

B. Notice of Appeal.

The filing deadline for the notice of appeal is the most important deadline, and cannot be late. A notice of appeal must be filed (not mailed) no later than 30 days after the date the order to be reviewed is mailed or electronically served (e-mailed) by the trial judge’s office to the parties. *See* Florida Rule of Appellate Procedure 9.180(b)(3). In other words, the notice of appeal must be filed (not mailed) no later than 30 days from the date of mailing or e-mailing stated on the order. For example, if the order states that the order was furnished by mail or e-mail on October 3, 2015, to the parties, the notice of appeal must be filed 30 days from October 3, 2015, the date the judge’s office stated on the order that it mailed or e-mailed the order to the parties.

To start the appellate process, the notice of appeal must be filed with the trial judge’s office, not the district court of appeal. The \$300.00 filing fee, made payable to the First District Court of Appeal in a check or money order, must be filed with the notice of appeal.

Florida Rule of Appellate Procedure 9.900(a) provides a sample form of a notice of appeal. However, *unlike* the sample form, the workers’ compensation notice of appeal must contain a certification of the benefits affected by the appeal. *See* Florida Rule of Appellate Procedure 9.180(b). This means that a claimant appealing the trial judge’s denial of certain money and

medical benefits, must write in the notice of appeal that they are appealing those particular benefits. *See* Florida Rule of Appellate Procedure 9.180(b)(3).

As an example, a claimant who lost a request for temporary indemnity (money) benefits for the period of January 1, 2015, through May 31, 2015, and a request for authorization of a psychiatrist for evaluation and treatment, would state in the notice of appeal that:

I hereby certify that this appeal affects only the following periods and classifications of benefits and medical treatment:

1. temporary indemnity benefits for the period of January 1, 2015, through May 31, 2015, and
2. authorization of a psychiatrist for evaluation and treatment.

If the order entered by the trial judge is titled “Abbreviated Final Order” or uses similar wording, the claimant who wishes to appeal must first file with the trial judge a request for findings of fact and conclusions of law *before* they can file a notice of appeal. The request for findings of fact and conclusions of law must be filed (not mailed) with the trial judge no later than 10 days from the date the trial judge’s office stated that it mailed the order. The filing of this request delays the time for filing notice of appeal until the judge mails or emails an order granting or denying the request.

C. Filing Fees

An appellant who is not able to pay the filing fee must file a document called a “verified petition or motion for indigency” and financial affidavit with the trial judge at the *same time that the appellant files the notice of appeal*. Florida Rule of Appellate Procedure 9.180(g)(2), states what information must be included in the verified petition or motion for indigency. The appellant must sign this document in person before a notary public, to make it “verified,” and send a copy to the attorney for the opposing party. If the trial judge grants the motion and issues a certificate

of indigency, the appellant may proceed with the appeal without paying any filing fees. If the trial judge denies the motion and does not issue a certificate of indigency, the appellant will have to deposit the filing fee with the trial judge within 15 days from the date of the order denying the motion or file a written request with the First District Court of Appeal to review the trial judge's denial of the verified petition or motion for indigency.

D. Designations of Record.

For the appellate court to review a case on appeal, a record on appeal has to be prepared and filed with the First District Court of Appeal. The trial judge's office, court clerk, or other person assigned by the court will prepare the record on appeal.

The appellant does not have to prepare the record on a final appeal, but does have to tell the trial judge's office in writing what documents or items should be in the record. Florida Rule of Appellate Procedure 9.180(f)(1), lists the documents or items that are automatically included in the record on a final appeal. If all of the documents or items that the appellant wants in the record on appeal are included on the list that are automatically included, the appellant does not need to file a written designation regarding the record on appeal. *See* Chapter on Pulling Together the Record on Appeal.

However, if the appellant wants any document or item that is not on that list, they need to file a written designation telling the trial judge to include the particular document(s) or item(s) in the record on appeal. An appellant who does not want something in the record on appeal or only wants a part of the automatically included items also needs to file a written designation. Any written designation must be filed no later than 10 days from the date of the notice of appeal. *See* Florida Rule of Appellate Procedure 9.200(a)(3).

E. The Costs of Preparing the Record on Appeal.

The trial judge's office, court clerk, or other person assigned by the court to prepare the record on appeal will issue a notice of estimated costs after designations have been filed, or after the time period for filing the designations passes. The appellant has 15 days from the date the notice of estimated costs was sent to deposit with the trial judge a check or money order in the amount stated in the notice of estimated costs.

An appellant who is not able to pay the amount stated in the notice of estimated costs, must file a verified petition to be relieved of costs and a sworn financial affidavit. Both the verified petition to be relieved of costs and the self-represented appellant's financial affidavit have to be filed with the trial judge's office no later than 15 days from the date the "notice of estimated costs" was sent. Florida Rule of Appellate Procedure 9.180(g)(2) and (3) lists the type of information an appellant must include in both the verified petition to be relieved of costs and the financial affidavit. The appellant must send a copy of both the verified petition to be relieved of costs and the financial affidavit to: (1) all parties involved in the case (such as the attorney for the opposing party and the opposing party); (2) the Division of Workers' Compensation; (3) the office of the general counsel of the Department of Financial Services; and (4) the clerk of the district court of appeal.

If the trial judge grants the verified petition to be relieved of costs, the 60-day period for preparing the record on appeal starts the date of the order granting the verified petition to be relieved of costs. If the trial judge denies the verified petition to be relieved of costs completely or only grants it in part, the appellant must deposit the estimated costs with the judge's office within 15 days from the date of the order denying the verified petition to be relieved of costs or the order granting it only in part.

F. Appellant's Briefs.

The appellant's "initial brief" in a final appeal must be served in the district court of appeal no later than 30 days after the lower tribunal certifies the record to the appellate court. The date the lower tribunal certifies the record to the appellate court usually appears on or near the last page of the record on appeal. An appellant who is unable to serve the initial brief within the 30 days, needs to file a motion for extension of time with the clerk of the district court of appeal *before* the 30 days run out. Florida Rules of Appellate Procedure 9.210(a) and (b) describes what the appellant needs to include in the initial brief and other general requirements. *See also* Chapter 5 of this Handbook, Writing and Appellate Brief.

After the initial brief is filed, the appellee has 20 days to file an answer brief.

The appellant can then file a "reply brief" within 20 days of service of the answer brief. A reply brief is not required, but it is usually a good idea to file one. A reply brief responds to what was said in the answer brief filed by the opposing party. If an appellant decides to file a reply brief, it must be served within 20 days after service of the answer brief. An appellant who wants to appear before the appellate court and argue his/her case, must file a "request for oral argument" no later than the time the appellant serves the reply brief. Florida Rules of Appellate Procedure 9.210(a) and (e) describe what the appellant needs to include in the reply brief and other general requirements.

A claimant who won in the lower tribunal may have to defend an appeal filed by the opposing party. If the opposing party files a notice of appeal, the claimant, as the appellee, will need to do the following:

1. File designations as to items to be part of the record that will be reviewed by the

appellate court.

2. File an answer brief.

The appellee's designations to items to be a part of the record that will be reviewed by the appellate court must be filed with the trial judge no later than 20 days after the date of the notice of appeal. An appellee does not need to file any designations if they only want those items that are automatically included as set forth in Florida Rule of Appellate Procedure 9.180(f)(1). *See also* Chapter 3, Pulling Together the Record on Appeal.

The appellee's answer brief must be served no later than 20 days from the date of service of the initial brief. Florida Rules of Appellate Procedure 9.210(a) and (c) describe what must be included in the answer brief and other general requirements. If an appellee wants to appear before the appellate court and argue the case, the appellee must file a request for oral argument no later than at the time of service of the answer brief. *See also* Chapter 4, Motion Practice in the Appellate Courts; Chapter 6, Checklist for Appellate Briefs and Generally Petitions in the District Courts of Appeal; and Chapter 18, Oral Argument in Florida's Appellate Courts and the Florida Supreme Court.

Current through June 2016

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