

**RULE 9.160 | DISCRETIONARY PROCEEDINGS TO REVIEW DECISIONS OF COUNTY COURTS**

**(a) Applicability.** This rule applies to those proceedings that invoke the discretionary jurisdiction of the district courts of appeal to review county court orders described in rule 9.030(b)(4).

**(b) Commencement.** Any appeal of a final order certified by the county court to involve a question that may have statewide application, and that is of great public importance or will affect the uniform administration of justice, must be taken to the district court of appeal. Jurisdiction of the district court of appeal under this rule must be invoked by filing a notice and the order containing certification with the clerk of the lower tribunal. The time for filing the appeal will be the same as if the appeal were being taken to the circuit court.

**(c) Notice.** The notice must be in substantially the form prescribed by rule 9.900(a), except that such notice should refer to the fact of certification. A conformed copy of the order or orders designated in the notice of appeal must be attached to the notice together with any order entered on a timely motion postponing rendition of the order or orders appealed. The notice must be accompanied by any required filing fee except as provided in rule 9.430 for proceedings by indigents.

**(d) Method of Certification.** The certification may be made in the order subject to appeal or in any order disposing of a motion that has postponed rendition as defined in rule 9.020(h). The certification must include:

- (1) findings of fact and conclusions of law; and
- (2) a concise statement of the issue or issues that may have statewide application, and that are of great public importance or will affect the uniform administration of justice.

**(e) Discretion.**

- (1) Any party may suggest that an order be certified as involving a question that may have statewide application, and that is of great public importance or will affect the uniform administration of justice.



However, the decision to certify will be within the absolute discretion of the county court and may be made by the county court on its own motion.

(2) The district court of appeal, in its absolute discretion, will by order accept or reject jurisdiction. Until the entry of such order, temporary jurisdiction will be in the district court of appeal.

**(f) Scope of Review.**

(1) If the district court of appeal accepts the appeal, it will decide all issues that would have been subject to appeal if the appeal had been taken to the circuit court.

(2) If the district court of appeal declines to accept the appeal, it must transfer the case together with the filing fee to the circuit court that has appellate jurisdiction.

**(g) Record.** The record must be prepared and transmitted in accord with rule 9.110(e).

**(h) Briefs.** The form of the briefs and the briefing schedule will be in accord with rules 9.110(f), 9.210, and 9.220.

**(i) Cross-Appeal.** Cross-appeals will be permitted according to the applicable rules only in those cases in which a cross-appeal would have been authorized if the appeal had been taken to circuit court.

**(j) Applicability of Other Rules.** All other matters pertaining to the appeal will be governed by the rules that would be applicable if the appeal had been taken to circuit court.

### Committee Notes

**1984 Amendment.** This rule was added to implement the amendments to sections 26.012 and 924.08 and the adoption of section 34.195 by the 1984 Legislature. Section 34.195 authorizes only the certification of final judgments, but section 924.08 authorizes the certification of non-final orders in criminal cases. Therefore, this rule does not provide for appeals from non-final orders in civil cases. Under the rationale of *State v. Smith*, 260 So. 2d 489 (Fla. 1972), the authority to provide for appeals from nonfinal orders may rest in the supreme court rather than in the legislature. However, in keeping with the spirit of the legislation, the rule was drafted to permit certification of those non-final orders in criminal cases that would otherwise be appealable to the circuit court.



Sections 26.012 and 924.08 authorize only the certification of orders deemed to be of great public importance. However, section 34.195 refers to the certification of questions in final judgments if the question may have statewide application and is of great public importance or affects the uniform administration of justice. The committee concluded that any order certified to be of great public importance might have statewide application and that any order that would affect the uniform administration of justice would also be of great public importance. Therefore, the additional statutory language was deemed to be surplusage, and the rule refers only to the requirement of certifying the order to be of great public importance.

The district court of appeal may, in its discretion, decline to accept the appeal, in which event it shall be transferred to the appropriate circuit court for disposition in the ordinary manner. Except as stated in the rule, the procedure shall be the same as would be followed if the appeal were being taken to circuit court. The rule does not authorize review of certified orders by common law certiorari.

It is recommended that in those cases involving issues of great public importance, parties should file suggestions for certification before the entry of the order from which the appeal may be taken. However, parties are not precluded from suggesting certification following the entry of the order except that such suggestion, by itself, will not postpone rendition as defined in rule 9.020(h).

**1992 Amendment.** Subdivision (c) was amended to require that the appellant, except in criminal cases, attach to its notice of appeal a conformed copy of any orders designated in the notice of appeal, along with any orders on motions that postponed the rendition of orders appealed.

**2020 Note.** Section 924.08, referred to in these Committee Notes under the 1984 Amendment, was repealed, effective January 1, 2021.

**2023 Amendment.** The language in section 34.017(1), Florida Statutes (1984), referred to as section 34.195, Florida Statutes, in the 1984 Committee Note and characterized as surplusage, was retained by the 2020 Legislature when it amended section 34.017, Florida Statutes (2020), and repealed sections 26.012(1)(c) and 924.08, Florida Statutes. The present amendment conforms the language of the rule to the existing statutory language.

