THE TIMES THEY ARE A CHANGIN'

NEW COURT RULE AMENDMENTS AND THEIR IMPACT ON WORKERS' COMPENSATION APPEALS

By: Todd J. Sanders, Esq.

Introduction

The arrival of the New Year just celebrated brought a number of changes to the rules of judicial administration and appellate procedure that significantly impact appellate practice, with some of particular interest to workers' compensation practitioners who find themselves in the appellate arena.[1] The amendments (effective at 12:01 a.m. January 1, 2019) that will have the most immediate effect concern the timing of events in the appellate process, and this article will address those changes as well as other noteworthy amendments. The article is not meant to be an exhaustive review of all amendments to the rules; rather, it is limited to those substantive amendments that are likely to affect lawyers tasked with pursuing a workers' compensation appeal.[2]

Timing Amendments

Once a party files a notice of appeal or extraordinary writ petition challenging a JCC's order, the Florida Rules of Appellate Procedure apply (*see* §440.25(5), Fla. Stat.), and they provide that the Florida Rules of Judicial Administration apply as well. *See* Fla. R. App. P. 9.020(h). Of primary interest here is Rule of Judicial Administration 2.514 (Computing and Extending Time). The amendments to this rule change the method of computing a time period stated in days or a "longer unit". Previously, one would exclude the day of the triggering event (e.g., service of a brief or rendition of an order) and begin counting from the next day, regardless of whether that next day was a Saturday, Sunday, or holiday.

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[1] The Florida Supreme Court decisions adapting the rules discussed here are: *In re Amendments to Florida Rules of Appellate Procedure – 2017 Regular-Cycle Report*, 43 Fla. L. Weekly S508 (Fla. October 25, 2018) and *In re: Amendments to Florida Rule of Appellate Procedure 9.800*, 43 Fla. L. S512 (Fla. October 25, 2018).

[2] Not discussed are the multitude of nomenclature changes throughout the rules or the edits and changes to Florida Rule of Appellate Procedure 9.800 (Uniform Citation System).

The revised rule, however, starts the count with the next *business* day, i.e., the next day that is *not* a weekend day or holiday. *See* Fla. R. Jud. Admin. 2.514(a)(1(A).

The obvious result of this change is that if a triggering event occurs on a Friday, the party affected by that event has at least two additional days to act. For example, in workers' compensation appeals, Florida Rule of Appellate Procedure 9.180(b)(3) provides that a notice of appeal must be filed within thirty days of the rendition of the order appealed. With the amendment to the judicial administration rule, if the JCC renders an order on a Friday, the thirty-day clock for filing the notice of appeal starts running on the next business day, not the following Saturday. Similarly, Florida Rule of Appellate Procedure 9.180(h)(1) and (2) provides that initial briefs for appeals of final orders and nonfinal orders are due thirty and fifteen days, respectively, after the JCC certifies the record on appeal. Thus, if certification occurs on a Friday, the clock for the brief's due date doesn't start until the next business day. This extra time benefit applies across the board to answer and reply briefs, motions, responses to motions (or show-cause orders), and so forth. And if the due date falls on a weekend or holiday, the time for action is extended even more. *See* Fla. R. Jud. Admin. 2.514(a)(1)(C).[3] What the rule giveth, the rule taketh away, however. Rule 2.514(b) as amended also eliminates the five-day "grace" or "bonus" period parties previously had for acting when served by e-mail (it still exists for service by regular mail).

Do not despair, though, for the Rules of Appellate Procedure were amended such that they not only effectively nullify the elimination of the bonus time previously afforded by the judicial administration rule for service by e-mail, they tack on an extra five days in many instances, extending the time from twenty to thirty days for serving or filing briefs and ten to fifteen days for filing motions and responses regardless of how served.[4] *See* Fla. R. App. P. 9.110(g) (notice of cross-appeal); 9.120(d) (jurisdictional briefs to the supreme court); 9.210(f) (answer and reply briefs in appeals); 9.300(a) (responses to motions); 9.320(b) (oral argument requests); 9.330(a)(3) (responses to motions for rehearing, clarification, certification, and written opinion); and 9.331(d)(1) (responses to *en banc* motions). Also, Rule 9.350 now provides that voluntary dismissals are not effective until fifteen days after the notice of appeal is filed, instead of the previous ten. A similar extension is given to cross-appellees seeking to include additional documents, exhibits, or transcripts to the record (Rule 9.200(c)) and filing a notice of joinder

[3] This could mean that courts will start including specific due dates in their orders in instances in which they do not previously do so.

[4] The changes to the rule for computation of time still apply, however.

for purposes of realignment as an appellant or petitioner (Rule 9.360). For those who find themselves litigating in the Florida Supreme Court, Rule 9.410 was amended to address the timing of attorneys' fee motions. *See* Fla. R. App. 410(b)(3) and (b)(4).

Timing amendments are also found in Rule 9.180 - the appellate rule exclusive to workers' compensation appeals. Now, appellants have twenty (instead of fifteen) days to deposit the estimated cost of the record upon notification of the amount. *See* Fla. R. App. P. 9.180(f)(5)(B). Likewise, Rule 9.180(f)(6)(B) gives parties twenty days to object to a court reporter or transcriptionist, Rule 9.180(g)(3)(B) increases from fifteen to twenty days the time for filing a verified petition to be relieved of costs, and Rule 9.180(g)(3)(F) increases from twenty to thirty days the time a party or the Division may timely file an objection to that petition.

Other Amendments

Time was not the only thing on the mind of the rules committee and Florida Supreme Court in this new round of rules amendments.

For example, unless otherwise ordered, attorneys who represent more than one party in an appeal are now limited to one initial or answer brief, and just one reply brief (if a reply is authorized).[5] *See* Fla. R. App. P. 9.210(a)(6). This new rule also provides that whatever brief is filed must include arguments of all parties the attorney represents. The same one-brief limit applies to a single party responding to more than one brief and a party represented by more than one attorney. If, however, in an appeal or cross-appeal more than one initial or answer brief is authorized, it is service of the last initial or answer brief that triggers the twenty-day deadline for filing the responsive brief. But if the last authorized brief was not served, then the responsive brief is due twenty days after the authorized brief could have been timely served. *See* Fla. R. App. 9.210(f). Rule 9.225, pertaining to notice of supplemental authority, was amended to provide that a party may file a notice as to decisions, rules, issues, statutes or other authorities discovered after service of the filing party's last brief, not after the last brief served in the case.

Rule 9.330 was amended to add "Written Opinion" to the title and reorganizes the rule so that the different motions the rule allows (e.g., rehearing,

[5] Which may occur if an attorney represents multiple employers or carriers, for example.

clarification, etc.) are treated separately in corresponding subsections. In addition to this organizational change, the rule makes clear that it applies to both court orders and decisions. And perhaps more importantly, the amended rule spells out the required contents for a motion for clarification and for written opinion. *See* Fla. R. App. P. 9.330(a)(2)(C) and (D). The amendment concerning motions for written opinion is the most extensive.

The committee note to the rule states that it was amended "to broaden the grounds upon which a party may permissibly seek a written opinion following the issuance of a per curiam affirmance." As amended, it provides that a party requesting a written opinion is to set forth the reasons why a written opinion would provide "a legitimate basis for supreme court review", or an explanation for an apparent deviation from prior precedent or guidance to the parties or lower tribunal when:

- the issue decided is also present in another case before the court or another district court of appeal;

- is expected to recur in future cases;

- there are conflicting decisions on the issue from lower tribunal; or

- the decided issue is one of first impression, or the issue "*arises in a case in which the court has exclusive subject matter jurisdiction*."

See Fla. R. App. 9.330(a)(2)(D)(i) – (iii)(a.)-(e.) (emphasis added).

Perhaps not surprisingly, regarding the last enumerated ground for a written opinion, the committee note to the amendment specifically refers to the First District Court of Appeal's exclusive subject matter jurisdiction "regarding workers' compensation matters." The amendment also removed the statement that was previously required with respect to motions for a written opinion.

In addition to continuing the limitation of one motion of each type per order or decision, the rule now requires that all motions filed under the rule must be combined in a single document. *See* Fla. R. App. P. 9.330(a)(3)(b). The amendment also adds a new subsection stating that the rule applies "only to appellate orders or decisions that adjudicate, resolve, or otherwise dispose of an appeal, original proceeding, or motion for appellate attorneys' fees" and is not

meant to limit the court's "inherent authority to reconsider nonfinal appellate orders and decisions." *See* Fla. R. App. P. 9.330(a)(3)(e).

The notice of joinder rule (9.360) was amended to clarify that joinder is for appellees or respondents seeking realignment as an appellant or petitioner, and requires that the *body* of a joinder notice set forth the proposed new caption, and directs that, upon filing of the notice and payment of the fee, the clerk shall change the caption to reflect the realignment of the parties in the notice.[6] *See* Fla. R. App. P. 9.360(a), (b) (and committee note to 2018 amendment). There is also a new rule that allows parties to file a "Notice of Related Case or Issue" to inform the court of a "pending, related case arising out of the same proceeding in the lower tribunal or involving a similar issue of law". *See* Fla. R. App. P. 9.380. The new rule does not allow for argument, however; rather, it is to include only information identifying the related case and is to be in the format prescribed in Rule 9.900(k). Finally, Rule 9.420(c) was amended to provide that petitions invoking the court's original jurisdiction pursuant to Rule 9.030(b)(3) are to be served both by e-mail and in paper format when Florida Rule of Judicial Administration 2.516(1) or (2) applies (typically where an attorney lacks an email account or the case involves a pro se party).

Conclusion

Although the amendments to the rules of judicial administration and appellate procedure are extensive, the most obvious and immediate practical is the broadening of the time for filing or serving various appellate pleadings – additional time that may (or at least should) result in fewer appellate deadlines being missed (even if it may prolong final disposition of the case). Although the other amendments I have discussed will not likely have a broad immediate impact, those who have a case pending at the appellate level should check to see whether the amendments impact their case before filing anything else. Happy New Year.

[6] In workers' compensation cases, this situation sometimes arises when there are multiple potential employers or carriers who may initially be named as an appellee but wish to challenge at least part of the appealed order.