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PRO SE APPELLATE HANDBOOK© DISCLAIMER

CAUTION: READ THIS DISCLAIMER BEFORE PROCEEDING.

THIS HANDBOOK IS NOT INTENDED TO BE A SUBSTITUTE FOR ADVICE BY AN EXPERIENCED APPELLATE LAWYER ON HOW TO HANDLE AN APPELLATE MATTER

The PRO SE APPELLATE HANDBOOK: REPRESENTING YOURSELF ON APPEAL©, 2007 Florida Appellate Practice Section, is prepared by individual members of The Florida Bar Appellate Practice Section, as a public service. This Pro Se (also called a “Self Represented” Litigant) Handbook is not a comprehensive appellate guide and does not answer all questions or guarantee success. It is also not intended to advise individuals in the unlicensed practice of law. It should not be cited to as authority.

This Handbook is not to be used to provide legal advice to other people, nor would attorneys who are not experienced in appellate practice do well in relying on this Handbook. It is always a work in progress, it is not all-inclusive, and the most current version can be found at: http://www.flabarappellate.org.

This is a very basic guide to assist someone unable or unwilling to hire an attorney to advance or defend an appellate matter. It is not a substitute for reading and understanding all of the Florida Rules of Appellate Procedure and the Florida Statutes that apply to all types of appeals and extraordinary writs. Nor is it a substitute to retaining an appellate attorney skilled in and knowledgeable of appellate law. A PARTY TO AN APPELLATE CASE SHOULD HIRE AN ATTORNEY EDUCATED AND EXPERIENCED IN APPELLATE PRACTICE.

A pro se party must read and understand the Florida Rules of Appellate Procedure. A pro se party may also do well to consult Florida Appellate Practice, published by The Florida Bar,
and *Florida Appellate Practice*, by Philip Padovano, as well as other Florida appellate manuals for additional information for appeals and petitions.

**CAUTION: THE DANGERS OF SELF-REPRESENTATION**

“Self Representation” or proceeding “pro se” means the party does not have a lawyer to them in a legal matter and is representing him/herself. It does not matter whether self-representation is by choice or because the party cannot hire a lawyer. A pro se party should be aware of the following:

1. The appellate court is not going to give a pro se party (a party representing him/herself) any special treatment or relax the rules simply because that party is pro se and is not a lawyer.

2. All parties and attorneys must follow the Rules of Judicial Administration and the Florida Rules of Appellate Procedure, as well as any of the appellate court's “internal operating procedures” or “IOPs” that are specific to that court. It makes no difference if a party is pro se during the appeal and has no formal legal training.

3. The Florida Rules of Appellate Procedure set forth the pleadings and documents that must be filed, along with the number of days to file a pleading or document, such as a motion or brief.

4. All parties must comply with filing deadlines. No party is allowed to file a motion or brief late simply because that party is representing him/herself and does not have any formal legal training. No party is allowed to ask for extensions of time and/or continuances of a court proceeding simply because that party is pro se.
5. The appellate court's review of a case is limited to the record on appeal made in the lower tribunal. If, for example, a party forgot to introduce a particular piece of evidence as an exhibit in the lower tribunal to make it part of the record on appeal, the appellate court cannot consider any argument regarding that evidence, raised for the first time on appeal. This is because the evidence was not part of the record in the lower tribunal. Similarly, the appellate court usually cannot consider any argument that was not made in the lower tribunal.

6. The appellate court must follow the laws, rules, regulations, and court decisions that are controlling and factually on point. The appellate court cannot make any special exceptions for pro se parties.

7. If a lawyer represents the opposing party, the appellate court may order one side to pay the opposing party's attorney's fees and costs if the other party wins the appeal, or in certain cases such as family law appeals, order an award of fees.

8. If a lawyer represents the opposing party, a pro se party may have a hard time winning their case. A lawyer's legal training and knowledge may result in the opposing party winning the case through skillful use of procedural or technical requirements, or through skillful use of case law and legal argument.

9. The rule regulating the Florida Bar and the Florida Supreme Court forbid the “unlicensed practice of law.” That means a non-lawyer (even a lawyer from another state or law student) cannot give legal advice or speak for anyone in court proceedings without a license to practice law in the State of Florida. In other words a non-lawyer without a license to practice law in the State of Florida,
cannot give legal advice to anyone or attempt to act as another person’s lawyer – either in written papers or in court appearances. Both The Florida Bar and the Florida Supreme Court take the unlicensed practice of law very seriously. The Florida Bar investigates and prosecutes, and the Florida Supreme Court punishes (including a fine up to $2,500 or jail time up to five (5) months), any person found to act as a lawyer on behalf of another person without having a license to practice law in the State of Florida.

Before proceeding, a pro se party should contact their local bar association and/or The Florida Bar and ask whether they have or know of any "pro bono" programs that may help a pro se party obtain legal representation in an appeal without having to pay any appellate attorney's fee. If there is no “pro bono” program in place in the area, hiring an appellate attorney may save the otherwise pro se party money in the long run.

**By using The Florida Bar Appellate Practice Section Pro Se Appellate Handbook, the User agrees to indemnify and hold harmless The Florida Bar Appellate Practice Section and anyone involved in the preparation of the Pro Se Appellate Handbook.**
CHAPTER I: INTRODUCTION

A. The Importance of Meeting with an Appellate Attorney

A person who wants to appeal (the "appellant") or who must defend an appeal (the "appellee") is best protected by meeting with an attorney who knows and works in appellate law (an "appellate attorney"). If an appellate attorney is not available, this Handbook should be consulted immediately upon entry of an order that may be the subject of an appeal. This is because, generally, appeals can only be brought from a "final" judgment. Final judgments are discussed below, as well as in the Chapter on the Appellate Process and Final Appeals.

B. The Final Judgment Rule and Why It Is Important

A final judgment is a lower tribunal's order that leaves nothing left to be done in the case except to follow what the judgment states to do. For example, if the trial court rules against a party in a pre-trial ruling, the party normally has to wait until the trial is over and the court has entered a final judgment. After that, the party normally has a right to bring an appeal to challenge that ruling in the final judgment. This is called the "final judgment rule."

There are certain exceptions to the final judgment rule, some of which are covered in other parts of this Handbook.

The final judgment rule matters to an appellant because a notice of appeal has time limits that must be followed. An appeal is started by filing a notice of appeal within a certain time period or the appellate court does not have the power or "jurisdiction" to hear the appeal. If this time limit is not followed, a person may not be able to appeal. The failure to timely file a notice of appeal is called "waiving the right to an appeal." This reflects one of the important reasons to consult with an appellate attorney if one is available: to find out whether a
particular order presents a right of appeal and whether a particular order requires that the notice of appeal (or petition) be filed right away.

C. The Overall Structure of an Appeal

As a general rule, in Florida the time limit for starting a final appeal starts to run when the lower tribunal "renders" the final judgment ("rendition"). The appellant has 30 days from that date of rendition to file a notice of appeal. See Florida Rule of Appellate Procedure 9.110(a) & (b) (civil and final administrative law cases); Florida Rule of Appellate Procedure 9.140(b)(3) (criminal cases); see also Florida Rule of Appellate Procedure 9.030 (jurisdiction of the courts). If the notice of appeal is not filed within that time, the appellate court does not have the power, or jurisdiction, to hear the appeal, and the appeal will be dismissed.

The appellant then has 10 days to file what are called "directions to the clerk" and "designations to the court reporter." See Florida Rule of Appellate Procedure 9.200(a)(3). The directions to the clerk are directions telling the lower tribunal clerk what the appellant wants to have included in the record on appeal. Putting together the record on appeal is discussed in detail in another chapter in this Handbook.

The party opposing the appeal, the "appellee," as a general rule has 10 days from the filing of the notice of appeal to file a "cross appeal." A cross appeal is filed if the appellee believes the lower tribunal made a mistake in not granting all of the relief the appellee wanted. See Florida Rule of Appellate Procedure 9.110(g) (civil and final administrative law cases); Florida Rule of Appellate Procedure 9.104(4)(criminal cases). If a cross appeal is filed, the parties are called, "appellant/cross appellee" and "appellee/cross appellant."

It is important to understand the difference between a notice of appeal and a notice of cross appeal. A notice of cross appeal is filed in cases where the appellee believes the lower
tribunal made a mistake in not granting all of the relief the appellee wanted as to that particular final judgment or final order being appealed. But, if the appellee believes there is another, separate final order or final judgment in the same case that was erroneous or that did not grant all of the desired relief, then the appellee must file their own notice of appeal, not a notice of cross appeal. And, again, that notice of appeal must be filed within 30 days of the date of that final judgment or order.

Once the notice of appeal is filed, the lower tribunal clerk prepares the record on appeal and sends it to the appellate court. Fifty days after the notice of appeal is filed, the lower tribunal sends the appellate parties (the appellant and the appellee) an "index to the record" on appeal. The index to the record on appeal is a list of everything in the lower tribunal/court file, with page numbers, that the clerk of the lower tribunal will be sending to the appellate court. The record on appeal, which is discussed in more detail in a separate chapter, is made up of pleadings, pre-trial motions, orders, discovery, and exhibits that were part of the lower tribunal file below. It also has transcripts of the hearings that the lower tribunal judge held, trial testimony, if there was a trial, and other testimony, if there was a court reporter at those events, the hearing has been transcribed (or reduced to typewritten form), and if one of the parties filed those transcripts with the lower tribunal. See Florida Rule of Appellate Procedure 9.200(a) & (b).

In addition to time limits for filing a notice of appeal or a notice of cross appeal, there are also time limits for filing appellate briefs. The appellant's initial brief is generally due 70 days after the filing of a notice of appeal. An easy way to find the initial brief due date is by using the rule that the appellant's initial brief is due 70 days from the date the notice of appeal is filed. See Florida Rule of Appellate Procedure 9.110(f). If the appellant needs more time, the appellant may contact the opposing party--before the brief is due to be filed--to see if the
opposing party objects to a request for an extension of time. The appellant may then file a "motion for extension of time" (and send a copy to the opposing party), requesting in that motion more time to file the initial brief (usually 30 days) and stating in the motion that the opposing party has been contacted and that the opposing party does (or does not, if that is what the opposing party has stated) object to the motion. The motion must be filed, before the brief is due, in the clerk's office of the appellate court where the appeal is pending. Generally, the appellate court will allow one 30-day extension for reasons such as vacation plans or busy schedules, but after that one extension, many appellate courts will require that some hardship or emergency be shown.

Appellate briefs are the written arguments of the appellant and the appellee that are presented to the appellate court. These briefs are presented to the appellate court before oral argument. Oral argument is like a formal hearing before a trial judge. There are three appellate judges and arguments are limited to those contained in the briefs: no new evidence or arguments can be made. The party seeking to present their brief in oral argument must file a "request for oral argument" by the time the reply brief is due. See Florida Rule of Appellate Procedure 9.320. After the parties have filed their briefs, the appellate court will determine whether to grant oral argument. However, sometimes appeals are decided on the appellate briefs without oral argument. Appellate courts do not always grant a request for oral argument. If the appellate court grants a request for oral argument, the appellate court will send an order or notice of oral argument, which will give the date and time of the oral argument and the number of minutes for the appellant and the number of minutes for the appellee that the appellate court is going to allow for oral argument.
Some general points about appeals warrant discussion. Appellate courts do not take evidence. They generally do not hear arguments that were not argued to the lower tribunal. They generally will not hear issues or arguments that were not raised in the lower tribunal first. To put it differently, if the appellant believes the lower tribunal made mistakes, unless they are fundamental error, those mistakes must have been brought to the lower tribunal's attention while the lower tribunal still had the chance to fix them (before the entry of a final judgment or final order). Appellate courts decide whether a lower tribunal judge made mistakes below.

Litigants should also understand that there have been many changes in the appellate courts over the years in Florida. These changes include limiting the number of pages allowed in appellate briefs to 50 pages for the appellant's initial brief, 50 pages for the appellee's answer brief, and 15 pages for the appellant's reply brief. See Florida Rule of Appellate Procedure 9.210(a)(5). The appellate courts generally will not allow briefs that go over these page limits. Sometimes the appellate courts decide to allow an extension of the page limit. However, extensions of page limits are very, very rare. Also, oral argument time is very limited. Most appellate courts allow only a set number of minutes for oral arguments, which is usually 20 minutes per side. See Florida Rule of Appellate Procedure 9.320. At oral argument, the parties must make their argument within the time allowed by the court.

The issues an appellate can review are also limited or framed by what is called "the standard of review" that the appellate court uses to decide whether the lower tribunal made a mistake. The standard of review is how much the appellate court will give deference to, or question less strictly, a lower tribunal's rulings. The greater the deference, the harder it will be to convince the appellate court to find the lower tribunal's decision was a mistake. Appellate
courts give the greatest deference to a lower tribunal's findings of fact. This is because the trial judge or jury and not the appellate court had the best opportunity to observe the witnesses and determine, first hand, how truthful the witnesses appeared to be. Appellate courts will normally not find the lower tribunal's findings of fact to be a mistake unless the appellate courts decide the findings of fact are not supported by "competent, substantial evidence" or that the findings of fact are "clearly erroneous."

Appellate courts also give a lot of deference to issues below that involve both law and facts, such as rulings about what evidence would or would not be allowed during trial. As to those kinds of matters, a lower tribunal has discretion, and appellate courts will not find these rulings to be mistaken unless an "abuse of discretion" is shown. This is because appellate courts respect the trial judge's and jury's ability to watch the witnesses who are testifying and to determine how believable those witnesses are.

Finally, appellate courts review with the least amount of deference to the lower tribunal those issues that are pure legal issues. This standard of review is called "de novo" review. Under the "de novo" standard of review, appellate courts look at the law and decide for themselves what the law says and what the decision of law should be. The reason that the appellate courts give so little deference to the lower tribunal when reviewing a legal issue using this standard of "de novo" review is because appellate courts are in just as good a position to decide the law as lower tribunals are.

Given these limits, it is important that an appellant carefully consider whether to go ahead with an appeal without the help of an appellate lawyer. By getting an experienced, qualified appellate lawyer, who understands the many different rules and standards of review and
which ones apply, a parry may increase their odds of winning and may save money in the long run.

If the appellant cannot locate an experienced appellate lawyer, then the appellant should read this Handbook cover to cover, as well as other appellate books, as soon as the appellant gets an order that the appellant wants to appeal. In that way, the appellant has important information to decide whether the appellant can even appeal, whether the appellant must appeal right away, and, if so, the time by which the appellant must act.
CHAPTER 2: ATTORNEY’S FEES AND COSTS ON APPEAL

A. Is a Pro Se Litigant Entitled to Attorney’s Fees on Appeal?

The short answer is no. While there are bases for appellate attorney’s fees under statute and contract in certain circumstances, a pro se litigant (a party who is not an attorney and who is representing him/herself) is generally not entitled to attorney’s fees for his/her own time spent appealing a case.

B. Can a Pro Se Litigant Be Liable or Responsible for the Opposing Party’s Appellate Attorney’s Fees on Appeal?

Yes. A pro se litigant could be responsible or “liable” on appeal for the opposing party’s attorney’s fees. If the opposing party is represented by an attorney on appeal, a pro se litigant could be liable on appeal for the opposing party’s appellate attorney’s fees. In the lower tribunal, a pro se litigant may be liable for the opposing party’s attorney’s fees if authorized by a statute or by an agreement of the parties. For example, see the case of Dade County v. Pena, 664 So. 2d 959 (Fla. 1995). “In the absence of an expressed contrary intent, any provision of a statute or of a contract . . . providing for the payment of attorney’s fees to the prevailing party shall be construed to include the payment of attorney’s fees to the prevailing party on appeal.” § 59.46, Florida Statutes (2007). Examples of some Florida Statutes that provide for an award of attorney’s fees, including attorney’s fees on appeal, include:

1. Section 57.105 (providing for reasonable attorney’s fees to the prevailing party where the losing party knew or should have known that his/her claim or defense was not supported by the facts and/or the law);

2. Section 120.69(7) (stating the prevailing party may be awarded attorney’s fees where an agency or substantially interested party files a petition for enforcement of agency action);
3. Section 723.068 (providing for reasonable attorney’s fees to the prevailing party in a proceeding between private parties to enforce the provisions of Chapter 723, Mobile Home Park Lot Tenancies);

4. Section 1000.05(7) (stating the prevailing party may be entitled to attorney’s fees in an action brought under the Florida Educational Equity Act, prohibiting discrimination based upon race, national origin, sex, handicap, or marital status in the state system of public education);

5. Section 403.412(1)(f) (stating the prevailing party may be entitled to attorney’s fees in an action brought under the Environmental Protection Act).

However, under Florida Rule of Appellate Procedure 9.400(b), before a party is entitled to attorney’s fees on appeal, a party must file a motion for entitlement to attorney’s fees in the appellate court; and that party must serve its motion no later than the time for service of the reply brief. The party must also state in the motion the substantive ground (a basis in a statute or a basis in a contract) in support of the claim to recover fees. See Rule 9.400(b), Florida Rules of Appellate Procedure.

C. Is a Pro Se Litigant Entitled to or Responsible for the Opposing Party’s Costs on Appeal?

The short answer is yes generally. The party that prevails or “wins” on appeal in an appellate proceeding (the prevailing party) is entitled to recover certain costs incurred on appeal, including the fees for filing and for service of process, charges for the lower tribunal clerk’s preparation of the record, bond premiums, and other costs that the law permits. See Florida Rule of Appellate Procedure 9.400(a). Thus, if a pro se litigant is the prevailing party in an appeal, that litigant would be entitled to recover costs incurred on appeal. However, if a pro se litigant is not the prevailing party, that litigant would be liable for the other party’s costs on appeal.

D. How Are Costs incurred on Appeal Recovered?
To recover costs incurred on appeal, one must file a motion for costs in the lower tribunal within thirty days after the appellate court has issued its mandate. See Rule 9.400(a), Florida Rules of Appellate Procedure.

A motion for costs is different from the motion for appellate attorney’s fees because the motion for entitlement to appellate attorney’s fees must be filed in the appellate court no later than the time for service of the reply brief. Once the appellate court enters an order finding entitlement to attorney’s fees, the motion to determine the amount of appellate attorney’s fees must be filed in the lower tribunal to determine the amount of appellate attorney’s fees. That motion to determine the amount of appellate attorney’s fees must be filed in the lower tribunal within thirty days after the appellate court has issued its mandate.
CHAPTER 3: PULLING TOGETHER THE RECORD ON APPEAL

A. What is the Record on Appeal? An Overview.

1. Introduction.

Almost all of the information necessary to know about the record on appeal can be found in Rules 9.200, 9.140, 9.180 and 9.900 (appellate forms) of the Florida Rules of Appellate Procedure. What is provided below is merely a general discussion. While the information provided in each of the record on appeal sections below, for the various types of appeals, generally applies to all types of appeals, there are some important differences among the different types of appeals. Appellate parties, therefore, must carefully study the specific rules of procedure that apply to civil appeals, criminal appeals, workers’ compensation appeals, appeals from final agency orders and the other types of appeals.

The record is a collection of the testimony, the lower tribunal’s rulings and most of the documents that were presented to the lower tribunal. The record gives the appellate court a history of what happened in the lower tribunal. The record is limited to what was actually before the lower tribunal. You cannot add new documents or evidence to the record on appeal.

In particular, the record is made up of the original pleadings filed in the lower tribunal and all exhibits filed in the lower tribunal. The record also includes any transcripts that were filed in the lower tribunal. Finally, the record has a progress docket, which is a list of everything that was filed in the lower tribunal.¹

The record does not include certain documents that the appellate court will not need, such as summonses, praecipes, subpoenas, returns, depositions, other discovery and notices of hearing.

¹See Florida Rule of Appellate Procedure 9.200(a)(1).
unless these items are specially designated. A summons is the document that was served at the beginning of the case that notified the defendant of the lawsuit and the need for an appearance.

A praecipe is somewhat like a summons, and it is not always present in a lawsuit. It is a document issued at the beginning of a lawsuit telling the defendant to do something or to show why he has not done it. Finally, a return is also a document issued at the beginning of the case. It is the proof that the complaint was properly served on the defendant.

An appellate court cannot review what happened in the lower tribunal without a record. An appellate court is usually required to presume that the lower tribunal’s decision or rule is correct or lawful (the “presumption of correctness”), unless the person who filed the appeal can clearly show that the lower tribunal made some type of harmful error or mistake or that the rule or law in question is illegal or unconstitutional. If you are the appellant and are asking the appellate court to reverse and remand or correct in some way what the lower tribunal did, it is your job to make sure that the appellate court has everything it needs to review what happened in the lower tribunal and determine whether the lower tribunal made a mistake that the appellate court can correct.

However, if a judgment was entered against you in the lower tribunal because you did not receive proper notice of the lawsuit at the beginning and did not respond to, or “answer” the lawsuit, certain documents that would not usually be important in the record must be included. For example, if an appellant is appealing a default judgment for failure to respond to the complaint within thirty days of being served, an appellant needs the documents that show how

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3 See Florida Rule of Appellate Procedure 9.200(e).
the appellant was served and any other documents in the record that would explain why the appellant did not respond.

Also, the record does not automatically include notices of taking deposition, depositions, or any other discovery. Discovery is only in the record if a party earlier filed it, before the appealable order was entered, with the lower tribunal. A party cannot file these items with any court or tribunal once the case is on appeal. Finally, the record does not usually include physical evidence. Physical evidence means actual objects; for example, a gun.

The record on appeal in a family law case is somewhat different. In family law cases, the items in the record are the same as just described except that the lower tribunal keeps the original orders, reports, and recommendations of magistrates and hearing officers. The lower tribunal also keeps the original judgments. The appellate court receives copies of these documents instead of the originals.

2. How Does an Appellant Get the Record on Appeal to the Appellate Court?

Generally, in most direct appeals, and in some post-conviction appeals, the appeals division of the clerk of the lower tribunal’s office assembles the record on appeal the same way, by copying the parts of the lower tribunal file that go into the record on appeal, numbering those pages, and placing those pages into numbered volumes. The clerk’s office then prepares an index to the record on appeal. The clerk’s office provides a copy of the record on appeal to each of the parties (at the trial level, those are usually called the plaintiff and defendant or the State and the defendant) as well as to the appeals court. The record on appeal is prepared differently in some criminal post-conviction appeals.

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5Florida Rule of Appellate Procedure 9.200(a)(1).
When an appellant files a notice of appeal without directions to the clerk, the clerk of the court in the lower tribunal where the case was heard automatically sends the complete record to the appellate court. This is what happens in most appeals.

B. Pulling Together the Record on Appeal in Civil Appeals.

1. Identifying What Needs to Be Included in the Record on Appeal.

If the appellant would like, the appellant may pick and choose certain items from the lower tribunal court file for the record on appeal before that record is sent to the appellate court. The appellant must prepare a document titled “directions to clerk.”

If the appellant prepares directions to clerk, the appellant prepares and files that document with the clerk of the court where the proceedings took place at the lower tribunal level within 10 days of filing the notice of appeal. In this document, which is really a list, the appellant tells the lower tribunal what items the appellant wants and which items the appellant does not want to include in the record. Rule 9.900(f) of the Florida Rules of Appellate Procedure contains an example of a directions to clerk document. If the appellant files directions to clerk, the appellee (the other side) has 20 days to file a similar document that tells the clerk to include any other documents and exhibits that the appellee wants in the record.

If the appellant chooses to pick only certain items for the record instead of sending the whole record to the appellate court, the appellant must prepare at the same time what is called a “statement of judicial acts” to be reviewed. A statement of judicial acts tells the appellate court which of the lower tribunal’s actions the appellant wants the appellate court to reverse. The

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7Florida Rule of Appellate Procedure 9.200(a)(3).
8Florida Rule of Appellate Procedure 9.200(a)(3).
statement of judicial acts also allows the other party—the appellee—to decide whether to add additional portions of the record.\(^{10}\) The appellant must file, at the lower tribunal level, this statement of judicial acts along with the directions with the clerk’s office of the court where the proceedings were held.\(^{11}\)

Rarely, instead of preparing a record on appeal, both sides work together to prepare what is called a “stipulated statement” for the appellate court. A stipulated, or agreed, statement shows how the case proceeded in the lower tribunal and what the lower tribunal decided, and will be described more in the next section.

2. What is a Transcript, How Does the Appellant Get It, and Why Does the Appellant Need It?

The record often includes a transcript. A transcript is a written copy prepared by a court reporter, whom one of the parties requested attend a deposition, lower tribunal hearing or proceeding, of everything that was said by everyone who spoke at that hearing, or some other proceeding in the lower tribunal before a judge, including what the judge said. The transcript is prepared by a court reporter or official court transcriptionist in criminal cases. In civil cases, if a party did not arrange for a court reporter to be present at a proceeding, there often will not be any transcript available. In some cases, the transcript is already in the record. That is because one of the parties not only asked the court reporter to transcribe the proceedings, but that party then filed a copy of that transcript in the lower tribunal. Other times, even though a court reporter was present for certain proceedings, such as a hearing or a trial, or the proceedings were electronically recorded, neither side asked a court reporter to prepare a transcript of the

\(^{10}\)See Florida Rule of Appellate Procedure 9.200, 1977 Amendment Committee Notes.

\(^{11}\)Florida Rule of Appellate Procedure 9.200(a)(3).
proceeding. Therefore, that transcript is not in the record, but the appellant may need it for the appeal.

Transcripts often have the most important information for an appeal. In these cases the pro se party may need to order the transcript from the court reporter for a complete record on appeal.

Unlike adding affidavits or other documents that were never filed and, therefore, not part of the record below, a transcript is different. It is an electronic and paper recording of what happened below. So, if an appellate party orders a transcript for the record, that party is not adding anything new for the appellate court to consider. Adding new information is forbidden. That party is only asking the court reporter to transform the notes taken at the proceeding into an electronic and paper transcript that the appellate court can read of a hearing or proceeding that actually took place below.

The appellant, within 10 days of filing the notice of appeal, must tell the clerk of the lower tribunal where the proceeding was held which hearings need to be transcribed and then included in the record. The appellee has 20 days from the date of the notice of appeal to designate any additional proceedings that need to be transcribed and put into the record.

Whether you are the appellant or appellee, when preparing a list of proceedings to be transcribed, a copy of that list, or “designation”, is sent to the court reporter who attended the proceeding and who will be preparing the transcript. Florida Rule of Appellate Procedure 9.900(g) has the form to use for the designation to reporter. The designation to reporter should list the dates of all of the days of trial and any hearings that need to be transcribed. If an appellate party designates a proceeding to be transcribed, that party must pay for the original and any necessary copies of the transcript; necessary copies include the copies that will, as the
appellate rules require, be sent to the opposing party. The designation to reporter form includes a “reporter’s acknowledgment.” The court reporter will fill that out and send it to the court and the parties.

Unless the party ordering the transcript has made some other arrangements with the court reporter, when that party orders the transcript in the designation, that party must also pay the court reporter one-half of the estimated cost of the transcript. When the court reporter delivers the completed transcript(s) and copies, that party must pay the rest of the costs of the transcript(s) and copies.\textsuperscript{12}

The court reporter has 30 days from the date of the appellate party’s designation to prepare the transcript. When the court reporter receives the designation, he/she writes at the bottom of the designation form the date it was received and the estimated date of completion of the listed transcript(s). Within five days of receiving the designation, the court reporter sends the completed designation form to the clerk of the appellate court. If the court reporter cannot prepare the requested transcript(s) within 30 days, the court reporter will ask the appellate court, by way of a motion, for extra time. If the court reporter asks for that extra time, the appellate court will give the parties five days to object or agree to the extension of time. The appellate court will then either grant or deny the court reporter’s request for extra time, and will then issue an order that tells the court reporter and the parties when the transcript is due.\textsuperscript{13}

When the court reporter finishes the transcript, he/she will deliver the original to the clerk of the lower tribunal and send copies to the parties according to the designation. If the designation told the court reporter to give fewer than all of the parties copies of the transcript (for

\textsuperscript{12} Florida Rule of Appellate Procedure 9.200(b)(1).
\textsuperscript{13} See Florida Rule of Appellate Procedure 9.200(b)(2)-(3).
example, the designation only ordered one original to be filed in the record and one copy), the
party that did that designation has five days from the date that party received the transcript to
serve a copy of the transcript on those parties.\(^{14}\)

Sometimes a court proceeding takes place, but there was no court reporter present or a
transcript is unavailable. In that case, the party seeking to re-create that transcript can prepare a
statement of the evidence from the best available means, including from one’s memory. This
statement of evidence is then served on the appellee—the opponent—who has 10 days from the
date of service to object or propose amendments to the statement of evidence. After that, the
statement of evidence and any objections or proposed amendments are filed with the lower
tribunal. The lower tribunal will settle any disagreements and give final approval to the
statement of evidence. Once that happens, the statement, in the form that the lower tribunal
determines to be the most correct, becomes part of the record.\(^{15}\)

When the appellant prepares a stipulated statement, the appellant attaches a copy of the
order that the appellant is appealing and also attaches as much of the record as necessary for the
appellate court to make a ruling on the issues. If an appellant writes a stipulated statement, the
appellant and the opposing party—the appellee—obtain the lower tribunal judge’s approval first
and then let the clerk of the lower tribunal know as soon as possible that they intend to use a
stipulated statement instead of a record. The appellant and the appellee must file the stipulated
statement with the lower tribunal where their proceeding took place. The lower tribunal then
passes it on to the appellate court.\(^{16}\)

\(^{14}\)Florida Rule of Appellate Procedure 9.200(b)(2).
\(^{15}\)Florida Rule of Appellate Procedure 9.200(b)(4).
\(^{16}\)See Florida Rule of Appellate Procedure 9.200(a)(4).
3. How and When Does a Cross Appeal Affect the Appellate Record?

Sometimes in an appeal, there is also a cross appeal, which is explained in detail in a separate chapter. The appellee then becomes the appellee/cross-appellant, and the appellant becomes the appellant/cross-appellee. If there is a cross appeal, the cross-appellant has twenty days from the filing of the notice of appeal to direct the clerk of the lower tribunal or lower tribunal in which the proceeding was originally held to add documents, exhibits, or transcripts to the record.

If the cross-appellant designates less than the entire record, then the cross-appellant must serve a statement of judicial acts to be reviewed with the cross-appellant’s designation. The appellant/cross-appellee then has 10 days after service of that designation and statement of judicial acts to be reviewed, to designate any other items for the record. In so doing, the total time for the clerk of the lower tribunal to prepare and transmit the record is extended by 10 days.17

4. What Happens If There Is a Mistake in the Appellate Record?

The appellate parties are responsible for making sure the record on appeal has everything in it that was filed in the lower tribunal that the appellate parties need to prosecute or defend the appeal.

The appellant is responsible for checking the record on appeal to make sure nothing has been left out. Sometimes the record has an error, which may include, for example, a document that is mislabeled, an error in record page numbering, a document that was filed but does not show up in the record on appeal. If an error appears, the appellant or appellee can correct it by one of three ways. First, the appellate parties can agree to the correction. Second, an appellate
party can file a motion with the clerk of the lower tribunal where the proceeding was held to correct the mistake before the clerk sends the record to the appellate court. Third, if the clerk’s office of the lower tribunal has already sent the record to the appellate court, then one of the parties can file a motion to supplement or correct the record on appeal, in the appellate court, asking the appellate court to make the correction.\footnote{See Florida Rule of Appellate Procedure 9.200(c).}

If the clerk’s office has left something out of the record on appeal, the appellant must file a “motion to supplement the record.” The motion to supplement the record should explain what was left out of the record on appeal and why that item needs to be in the record.

If the appellate court finds that the record is incomplete for some reason, or if the appellate court wants a particular document, transcript or exhibit that neither party has designated, the appellate court will order the party to provide those missing parts of the record that the appellate court wants to see. No appellate proceeding will be decided with an incomplete record until the appellate court gives the parties the chance to supplement that record.\footnote{See Florida Rule of Appellate Procedure 9.200(f)(1).}

An appellate party cannot simply send in documents to the appellate court. An appellate party must file a motion to correct, amend, or supplement the record explaining why the record needs to be corrected or supplemented, and identifying the documents or papers that need to be corrected or added to the record. The appellate party filing that motion may attach these documents as exhibits to the motion, but they will not be a part of the record on appeal unless the appellate court grants that motion. \footnote{Florida Rule of Appellate Procedure 9.200(f)(2).}
C. Pulling Together the Record on Appeal in Criminal Appeals.

1. Introduction.

This section describes the record on appeal in two types of criminal appeals from circuit court to the district appellate court. An appeal from a conviction or sentence in a criminal case is a “direct appeal.” An appeal from an order on a post-conviction motion, such as a motion under Florida Rule of Criminal Procedure 3.800, 3.850, or 3.853, is a “post-conviction appeal.”

This section will describe what is required for the record on appeal to be properly prepared in a criminal appeal. The next section will describe the differences in the preparation of a record in a post-conviction appeal.

2. Steps to Preparing the Record on appeal in Criminal Appeals.

The clerk’s office assembles the record on appeal in a criminal appeal in ways that are very similar to civil cases. The reader is, therefore, directed to read Section B of this Chapter for more details.

a. Prepare and serve a “Designation to Reporter.”

The procedure for preparing and serving a designation to reporter in a criminal case is basically the same as in a civil case. If there was a trial or a hearing that relates to one of the issues that the appellate party plans to argue on appeal, that party tells the court reporter to prepare the transcript of that trial or hearing. That “designation to reporter” must be done within 10 days of filing the notice of appeal.

Like civil cases, the appellate party must file a signed original of the designation to reporter with the court where the trial took place. The appellate party must send a copy of the designation to reporter to the court reporter and a copy to the State.
If an appellate party does not have the money for a criminal appeal, that party can ask the trial court to declare them indigent. If the trial court agrees that the party is indigent, the indigent party does not have to pay for the transcripts, but still must prepare and serve a “Statement of Judicial Acts to Be Reviewed” along with the designation to reporter. The indigent party must list on the designation to reporter only the proceedings that relate to the issues that the indigent party is planning to bring up in the appeal. A section below talks about how to prepare a statement of judicial acts to be reviewed.

b. Prepare “Directions to the Clerk.”

Like a civil appeal, unless the appellant in a criminal appeal tells the clerk’s office not to, the clerk’s office will put almost everything that was filed in the lower tribunal in the record on appeal. Also like civil cases, the clerk’s office automatically includes most of the documents, exhibits, and transcripts in the court file. The clerk’s office generally leaves out of the record on appeal things like summonses, notices of hearing, notices of deposition, discovery materials, and physical evidence (such as a weapon, drugs, or a videotape or audiotape). The record on appeal also includes a docket, listing the events and filings in the case.

An appellant might want the record on appeal to include an item that the clerk’s office does not automatically include. For instance, an appellant in a criminal appeal, like a civil appeal, may plan to bring up a discovery issue. If so, the appellant will want the record on appeal to include discovery materials. Or, if the appellant plans to bring up an issue about an audiotape or videotape, the appellant must include that audiotape or videotape so the appeals court can review it.
If the appellant wants the record on appeal to include items the clerk’s office does not include automatically, the appellant prepares directions to the clerk. Directions to the clerk are discussed in more detail under civil appeals in the previous section.

The rules require the appellant in a criminal appeal to file directions to the clerk in the court where the appellant-defendant was tried, within 10 days after the appellant-defendant filed the notice of appeal. The appellant-defendant must also send a copy should to the State.

If the appellant does not need the record on appeal to include everything the clerk’s office automatically puts in it, the appellant can file directions to the clerk telling the clerk’s office what to leave out. If the appellant asks the clerk’s office to leave items out of the record on appeal, the appellant files a statement of judicial acts to be reviewed, which is described below. If the appellant directs the clerk’s office to leave something out of the record on appeal, the State in a criminal appeal, like an appellee in a civil appeal, can tell the clerk’s office to include items that the appellant has left out.

c. Prepare and Serve a Statement of Judicial Acts to Be Reviewed.

If the appellant is indigent and needs to have a court reporter prepare transcripts, the appellant needs to prepare a “statement of judicial acts to be reviewed.” Also, if the appellant has directed the clerk’s office to exclude items from the record on appeal, the appellant must file a statement of judicial acts to be reviewed, which lists all of the issues the appellant intends to bring up on appeal. The appellant-defendant must file the statement of judicial acts to be reviewed in the court where the appellant-defendant was tried and send a copy to the State.

d. Correcting Mistakes or Omissions in the Record on Appeal the Clerk Prepares.
When the record on appeal has been prepared, the clerk’s office will send the State and, if the defendant has been declared indigent, the defendant, a copy of the record on appeal. If the defendant has not been found indigent, the clerk will send him/her a copy of the index to the record on appeal, as the clerk’s office does in a civil appeal. The appellant is responsible for making sure the record on appeal has everything in it that it is supposed to and should check the index to the record on appeal carefully to make sure nothing has been left out. If something is missing, the appellant should file a “motion to supplement the record,” which is discussed in the next section.

e. Prepare and Serve a Motion to Supplement the Record.

The section “B” in civil appeals discusses how to prepare a motion to supplement the record. Usually in a criminal case, unlike a civil case, the clerk’s office sends the record on appeal to the appeals court at the same time it sends the record on appeal to the State and to the appellant. If the clerk’s office has already sent the record on appeal to the appeals court and either the appellant-defendant or the State wants something added, the appellate party wanting to add that item must file the motion to supplement the record in the appeals court. If the appellate party files a motion to supplement the record before the clerk’s office sends the record on appeal to the appeals court, that party must file the motion in the lower tribunal. That party also must send a copy of the motion to supplement the record to the opposing appellate party, the State.

If the appeals court grants the motion to supplement the record, it will enter an order telling the clerk’s office of the lower tribunal to prepare a supplemental record on appeal.

D. Pulling Together the Record on Appeal in Post-Conviction Appeals.
In criminal cases, the record on appeal may be prepared differently in post-conviction appeals than in direct appeals, depending on whether there was an evidentiary hearing on the post-conviction motion.

1. The Record on Appeal After an Evidentiary Hearing of a Post-Conviction Motion.

Just as in a direct appeal, in a post-conviction appeal after an evidentiary hearing, the clerk’s office copies the papers that go into the record on appeal from the lower tribunal file, puts page numbers on them, and puts them in numbered volumes. The clerk’s office sends a copy of the record on appeal to the appellee-State, and, if the appellant-defendant has been declared indigent, to the appellant-defendant. If the defendant has not been declared indigent, the clerk will send him/her only a copy of the index to the record on appeal.

In a post-conviction appeal after an evidentiary hearing, the appellant does not have to file a designation to reporter. If the appellant does not file a designation to reporter, the clerk’s office will tell the court reporter to transcribe the evidentiary hearing. If the appellant has not been declared indigent, however, it will be the appellant’s responsibility to pay the cost of preparing the transcript. Failing to pay the cost of preparing the evidentiary hearing transcript can delay preparation of the record on appeal.

The lower tribunal clerk’s office will automatically include in the record on appeal these things: the post-conviction motion, the State’s response, a reply if one was filed, the order on the motion, and any attachments to any of these documents, along with the transcript of the evidentiary hearing. If there was a motion for rehearing, the clerk’s office will include the rehearing motion, the State’s response, the reply, the order on the motion, and any attachments to any of these documents.
If the appellant wants the clerk’s office to include other items in the record on appeal, the appellant can file directions to the clerk. The sections above describe how to prepare and serve directions to the clerk. The appellant can tell the clerk’s office to include the record from a previous appeal, such as a direct, criminal appeal. If the appellant does that, the clerk’s office is not required to prepare new page numbers or a new index to the previous record.

Just as in any direct, criminal appeal and just as in a civil appeal, it is the appellant’s responsibility in a post-conviction appeal to make sure the record on appeal has everything it is supposed to. If something is missing that was part of the lower tribunal file below, it is the appellant’s responsibility to file a “motion to supplement the record.” The sections above describe how to prepare a “motion to supplement the record.”

2. The Record on Appeal in a Summary Denial of Post-Conviction Motion Case.

An order denying a post-conviction motion without an evidentiary hearing is called a “summary denial.” In summary denial cases, the record on appeal usually contains copies of these things: the post-conviction motion, the State’s response, a reply if one was filed, the order on the motion, and any attachments to any of these documents. If there was a motion for rehearing, the record on appeal will also include that motion, the State’s response, the reply, the lower tribunal’s order on the motion, and any attachments to any of these documents.

In summary denial cases, the clerk’s office does not have to put page numbers on the pages of the record on appeal or prepare an index to it unless the appeals court so orders. The clerk’s office is also not required to send a copy of the record on appeal to the parties in a summary denial case.

E. Pulling Together the Record on Appeal in a Workers’ Compensation Appeal.

1. Introduction.
If the party in a workers’ compensation case has received an order from a judge of compensation claims and filed a notice of appeal of the order with the First District Court of Appeal, that party must make sure that an appropriate appellate record is made, just as it is required in civil and criminal appeals. The “record on appeal” in a workers’ compensation appeal is a file prepared from the documents and evidence presented to the judge of compensation claims, which is provided to the appellate court for its review in deciding the appellant’s appeal. Like civil and criminal appeals, it is also critical here that the appellate record be complete. It must include all of the information that was presented to the judge of compensation claims that relates to the appellant’s argument on appeal.

There are certain things that cannot be included in the appellate record in a workers’ compensation appeal. An appellate court reviews the decision of the judge of compensation claims in light of the evidence presented to that judge. That means that the appellate court cannot consider things that were not presented to the judge, like letters that the judge of compensation claims did not accept into evidence, affidavits that were not filed with the judge of compensation claims, or papers prepared after the judge of compensation claims issued his/her order.

If the appellant is not sure what items should be included in the record, it may help to review the entire file of the judge of compensation claims. This will show exactly what is in the judge of compensation claims’ file, which may help in deciding which documents the appellant wants to make sure the appellate court sees before the appellate court decides the appeal. If the appellant wants to review the judge of compensation claims’ file, the appellant does so by calling the office of the judge of compensation claims to schedule a time to review it. The judge’s office will then make sure the file is available for review. An appellate party wanting to review that
file will be required to review the file in the judge’s office. If an appellate party wants copies of any documents, the appellate party will need to pay the judge of compensation claims the cost of the copies and the staff will make the copies for that party. Once the party reviews the judge’s file, the party will have a better understanding of what documents it should have the clerk include in the appellate record.

There are two kinds of appellate records in a workers’ compensation appeal: (1) the record prepared in an appeal of a non-final order, which is called an appendix; and (2) the formal record prepared in an appeal of a final order. This means that, if an appellant has appealed a non-final order, the “record” will actually be an appendix that the appellant prepares and files with the appellant’s initial brief. However, only a few types of non-final orders are appealable in workers’ compensation cases. If the appellant has appealed a final order, the judge of compensation claims prepares a formal record based in part upon the appellant’s directions to the clerk.

2. Preparing a Record on Appeal in Non-final Workers’ Compensation Orders.

If a party is appealing a non-final order in a workers’ compensation case, no formal record will be prepared. Instead, that party prepares an appendix to file with his/her initial brief. The appendix should include all of the documents that concern or support the appellant’s argument on appeal. For example, if an appellant is appealing a judge’s decision on the proper venue for the workers’ compensation proceeding, the appellant wants to include in the appendix the motion to change venue, any response that was filed to the motion, a transcript of any hearing the judge held on the motion, any documents that were presented to the judge for the purpose of deciding the motion, and the judge’s order on the motion.
The appellant may already have in his/her possession copies of the papers that were filed in the lower tribunal that are needed to include in the appendix. If so, the appellant can usually prepare the appendix from these copies. If the appellant makes an appendix from the documents the appellant has in the appellant’s own files, the appellant keeps a copy of each document for his/her own records; this is because the appellate parties will not receive the appendix back at the end of the appeal.

In some cases, however, it may be important for the appellate court to know when a document was filed with the judge of compensation claims. If one of the issues on appeal is whether a document was timely filed, the appellant should obtain a copy of that document from the judge of compensation claims, because that copy will include a date stamp showing when it was filed with the judge.

Also, if the appellant does not have certain papers or documents, the appellant will have to obtain copies of those documents from the judge of compensation claims. The copies do not have to be certified, but they must be accurate and the appellate parties cannot change or mark up the copy.

If an appellate party needs a transcript of a hearing that was held before the judge of compensation claims, that appellate party needs to make arrangements, before that hearing is even held, to have a court reporter at the hearing or to be sure the judge will electronically record the hearing, and to have the hearing transcribed. This will require hiring a court reporter, who will get the audio recording of the hearing from the judge of compensation claims, give the party an estimate of the cost to prepare the transcript, and then prepare a written transcript from the recording. Like civil and criminal appeals, the party ordering that transcript will need to pay the court reporter their fee for preparing the transcript and any charge they may have for copies of
the transcript. If the appellate party wins the appeal, however, the court may order the losing party to repay the winning party for the cost of the transcript.

Once an appellate party in a workers’ compensation appeal has gathered the necessary documents and transcripts, the appellate party must arrange them into an appendix. In most cases, the appellate party should place all of the documents in his/her appendix in chronological order. That is, the appellate party should start with the first document filed with the judge of compensation claims relating to the issue on appeal, then continue in the order in which the remaining documents were filed, and end with the order which the appellate party is appealing.

The appendix must be on standard 8½” x 11” paper. If any documents are on larger pieces of paper, the appellate party compiling that appendix should reduce the documents to standard, 8½” x 11” size paper when copying them. The pages of the appendix must all be numbered, and the appendix must have a table of contents at the beginning. The appendix should be bound separately from, not as part of, the initial brief. If that appellate party, however, wants to bind the brief and appendix together, the brief and the appendix are separated by a divider with a labeled tab.

Once the appendix is prepared, the appellate party files it with the appellate court at the same time the party files the initial brief. The appellate party should provide copies of the initial brief and the appendix to every party that is a party to the appeal.

A party in a workers’ compensation appeal who files an answer brief (the appellee) may decide that the appendix is incomplete, or missing important documents or transcripts that were part of the record below. If so, that party can file an appendix with his/her answer brief, following the same format and procedure discussed above, including any additional documents that the party thinks are necessary for the appellate court to consider. Further, if the appellant
files a reply brief and it seems that there are additional documents the appellate court should review that have not already been included in an appendix, the appellant can file an additional appendix with the reply brief.

3. Preparing a Record on Appeal in Appeals of Final Workers’ Compensation Orders.

If an appellant has filed a notice of appeal of a final order, the judge of compensation claims will begin to prepare a formal record. Generally, the judge of compensation claims will include in the record the claim or petition for workers’ compensation benefits and any amended petitions or claims; any notice of denial of the claim; any pretrial stipulation; any pretrial order; any documents, exhibits, or deposition transcripts that were admitted into evidence; transcripts of any hearings held before the judge of compensation claims; and the order the appellant is appealing.

Although the judge of compensation claims prepares this record, the appellant can direct the judge to include, or to not include, certain items in the record. Because the appellant, like appellants in other civil cases, may need to pay some, or all, of the costs of preparing the record, the appellant may not want every document or transcripts of every hearing in the appellate record. On the other hand, the record needs to include all documents related to the issue the appellant is going to argue on appeal. That means that, when the appellant first files his/her notice of appeal, the appellant should immediately consider what documents and transcripts the appellant wants the judge of compensation claims to include in the record.

4. Directions to the Judge of Compensation Claims Regarding the Record on Appeal.

Like appellants in civil and criminal appeals, if the appellant in a workers’ compensation appeal wants to ensure that certain items are, or are not, included in the record, or to ensure that
certain items are not included in the record, the appellant needs to file directions with the judge of compensation claims. For example, an appellant may want the record to include specific motions, notices, subpoenas, or requests to produce documents—items that may not generally appear in the record prepared by the judge of compensation claims. On the other hand, if the appellant had many hearings before the judge of compensation claims, but the issue that the appellant is arguing on appeal was only addressed at one specific hearing, the appellant may not want to include in the record the transcripts of every hearing.

If the appellant decides to file directions with the judge of compensation claims telling the judge what items to include in the record, the appellant should file the directions within 10 days of filing the notice of appeal. The appellant should file the original directions with the judge of compensation claims, file a copy of the directions with the appellate court and provide a copy to every party in the workers’ compensation appeal proceeding. Like civil and criminal appeals, the directions with the judge of compensation claims must specifically indicate what documents, papers, exhibits, or transcripts in the lower tribunal file should be included in, or excluded from, the appellate record. The directions should be in the form of a pleading; that is, they should include the style of the case and should have the same format as other court documents filed in the case.

The directions should be titled, “Directions to Judge of Compensation Claims,” and should include the following: “The claimant/appellant, [the claimant’s name], directs the judge of Compensation Claims to (include/exclude) the following items (in/from) the original record described in Florida Rule of Appellate Procedure 9.180(f): . . .” Then list each item the appellant wants included, and specify the date the item was filed with the judge of compensation claims.
Similar to a civil appeal and to a criminal appeal, if the appellant directs the judge of compensation claims to prepare a record that does not include the entire file of the judge of compensation claims, the other parties to the appeal will be permitted to file their own directions asking the judge of compensation claims to include additional items not designated by the appellant. If this happens, the appellant will still be required to pay the costs for preparing the record, including those items the appellant designated and the items designated by the other party, unless the judge of compensation claims has entered an order excusing the appellant from paying for those costs.

5. The Costs of Preparing a Record.

Once the judge of compensation claims determines what the record should include—based upon the rules the judge must follow and any directions that have been filed—the judge will send the appellant a notice of the estimated costs, telling the appellant how much he/she expects the preparation of the record to cost. The appellant has 15 days from the date the judge sent this notice to the appellant (not the date the appellant received it), to either (1) pay the estimated costs, or (2) file a motion asking to be excused from paying all or some of the costs.

The appellant will only qualify to have these costs waived or excused if the appellant can show that the appellant is “insolvent” or “indigent.” According to the law, an appellate party is insolvent or indigent if the appellant has stopped regularly paying his/her debts and cannot pay his/her debts when they are due, or if a bankruptcy court has entered an order stating that an appellate party is insolvent. If an appellate party believes that he/she meets these criteria, that party must file a verified petition with the judge of compensation claims within 15 days after the date the judge sent the notice of estimated costs to that party (not the day the party received the notice), stating that the appellate party is insolvent. This verified petition is not filed before
receiving the notice of estimated costs and is not filed more than 15 days after the judge sent the notice of estimated costs; meaning, if the verified petition is filed under one of those circumstances, the petition will be denied as untimely.

A form “Verified Petition For Relief From Paying Costs Of Preparation Of The Record” can be found on the internet at www.jcc.state.fl.us/JCC/forms.asp. The petition must be sworn, signed by the appellate party, and notarized by a notary public. The appellate party must attach to the petition a complete and detailed “Financial Affidavit,” which must also be sworn, signed by the appellate party, and notarized by a notary public. The financial affidavit must list all of your assets, liabilities, and income, including assets you own with your spouse if you are married. A form for the financial affidavit is also available at www.jcc.state.fl.us/JCC/forms.asp. An appellate party must also attach to his/her petition a copy of any directions he/she filed with the judge of compensation claims specifying what items he/she wanted included in the record. When filing that petition, financial affidavit, and a copy of the directions with the judge of compensation claims, the appellate party must provide copies of the same documents to all other parties to the appeal. The appellate party must also provide a copy to the division of workers’ compensation (whose website is http://www.fldfs.com/wc/), the office of general counsel of the department of financial services (the department’s website is http://www.fldfs.com), and the clerk of the appellate court.

If no one objects to the petition, the judge of compensation claims may enter an order excusing that appellate party from paying all or a portion of the costs for preparing the record. If someone does object, the judge will hold a hearing if the appellate party filing the petition requests such a hearing.
If the petition is denied, the appellate party who petitioned must either deposit the estimated costs with the judge of compensation claims within 15 days from the day the judge entered the order denying the petition, or file a motion with the appellate court asking the appellate court to reverse the judge’s order denying that petition. The motion must be filed within 30 days after the day the judge of compensation claims entered its order denying that petition. The appellate party filing that motion should attach to that motion a copy of (1) the appellate party’s petition for relief from paying costs (the petition that was filed with the judge of compensation claims); (2) any objection to that petition filed by other parties; (3) a transcript of any hearing the judge of compensation claims held on that petition; and, (4) the order denying that petition.

If the appellate court denies the motion to reverse the judge’s order, the appellate party has no other recourse; he/she must pay the estimated costs within 15 days of the date of the appellate court’s order. If the appellant does not get an order excusing the appellant from paying the costs and the appellant does not pay the costs when the appellant is supposed to, the judge of compensation claims will notify the appellate court, and the appellate court may dismiss the appellant’s appeal.

If the appellant is able to pay the costs, the appellant must deposit the estimated amount with the judge of compensation claims. Any questions that concern the form of payment should be directed to the office of the judge of compensation claims. Although the appellant must pay this amount up front, if the appellant wins the appeal, the court can order the losing party to reimburse the money the appellant spent to pay for the preparation of the record.

6. The Contents of the Record.
Once the costs are paid or excused, the judge of compensation claims will begin to put together a formal record to send to the appellate court. As stated above, unless the appellate party files directions indicating otherwise, the judge of compensation claims should include in the record the claim or petition for workers’ compensation benefits and any amended petitions or claims; any notice of denial of benefits; any pretrial stipulation; any pretrial order; any documents, exhibits, or deposition transcripts that were admitted into evidence; transcripts of any hearings before the judge of compensation claims; and the order the appellant is appealing. Two items require some special explanation: (1) the preparation of transcripts to be included in the appellate record, and (2) including evidence that was proffered to the judge of compensation claims but not admitted into evidence—that is, a party asked the judge to admit the document or thing into evidence, but the judge refused to do so.

a. Transcripts Available.

The hearings held before the judge of compensation claims are usually tape-recorded. To get a transcript of the tape recordings, the judge of compensation claims must have a court reporter prepare the transcript from the tape-recorded hearing. The judge of compensation claims will select a court reporter or transcriber to do this and will provide to the appellate parties the name of the person or company.

A party may object to the court reporter selected by the judge of compensation claims by filing an objection with the judge within 15 days from the date of the judge’s notice stating the name of the court reporter. If a party does object, the judge of compensation claims will hold a hearing to decide whether the party has a good reason for the objection and whether a different court reporter should be selected. The court reporter finally selected by the judge of compensation claims will then prepare the transcripts of the hearings specified by the directions
or by the judge of compensation claims, and will provide the transcript and any needed copies to the judge of compensation claims. The court reporter will notify the parties when the transcripts are complete and when they have been provided to the judge of compensation claims.

b. No Transcript Available.

In some cases, a transcript of a hearing may not be available because the tape recording is destroyed, damaged, faulty, or lost. If this happens, the appellate parties must try to “reconstruct” the record. To do this, the appellant must prepare a written statement, similar to a “stipulated statement” in other civil appeals, entitled “proposed statement of the evidence or proceedings,” detailing what the appellant remembers occurred during the hearing, being as specific as possible. The appellant should file this statement with the judge of compensation claims and provide a copy of the statement to the other parties to the appeal. The other parties will have 10 days to send the appellant and the judge of compensation claims any objections or proposed amendments to the appellant’s statement. Then the appellant should ask the judge of compensation claims to review the statements to see if the judge can enter a settled and approved statement that accurately reflects what happened at the hearing.

If the parties and the judge of compensation claims cannot agree on a complete and accurate statement of the evidence or proceedings, the record cannot be reconstructed. If this happens, the appellant should ask the judge of compensation claims to enter an order verifying or noting that the record could not be reconstructed. Then, the appellant should file with the First District Court of Appeal a “motion to remand for hearing de novo,” attaching a copy of the judge of compensation claims’ order verifying that the record could not be reconstructed. In this motion, the appellant asks the appellate court to reverse the order on appeal and to remand or
return the case to the judge of compensation claims for a hearing “de novo,” meaning an entirely new hearing.

c. Proffered Evidence.

Sometimes, the issue on appeal involves whether the judge of compensation claims should have considered or admitted into evidence a certain document or certain testimony that was not allowed into evidence. When the judge of compensation claims refuses to consider certain evidence, that evidence will usually not be included in the record. However, a party arguing on appeal that the judge of compensation claims should have considered a document or testimony as evidence, can ask the judge of compensation claims to include this document or testimony in the appellate record as “proffered evidence.”

7. Transmitting the Record.

Similar to civil and criminal appeals, the judge of compensation claims will pull together all of the documents required by the appellate rules, all of the documents designated by the parties, and all of the transcripts received from the court reporter, into a formal record. The judge of compensation claims will paginate the record and will prepare a table of contents. The judge will then send the record to the appellate court and provide each party or their attorney with a copy of the record.

According to the rules of procedure, the record should be completed and filed with the appellate court within 60 days from the date the notice of appeal was filed. If a party asked to be excused from paying the costs of preparing the record, this 60-day period begins to run later: (1) if the judge excused the payment of the cost of preparing the record, the 60 days begins to run on the date the judge excused the payment; or (2) if the judge denied the request to be excused from paying the costs for preparing the record, the 60 days begins on the date the party then deposited
the estimated cost amount. However, the judge of compensation claims may ask the appellate court for an extension of time to file the record if necessary.

8. Correcting, Amending, or Supplementing the Record on Appeal.

After the judge of compensation claims has prepared the appellate record, an appellate party may discover that the record is not correct or complete. If so, that party can file a motion with the appellate court to correct, to amend, or to supplement the record. Motions to supplement are discussed in more detail in Section B of this Chapter. If the appellate court grants that motion, the appellate party who filed the motion must file a designation with the judge of compensation claims directing that the documents be added to the appellate record. Similarly, the opposing appellate party may file a motion to correct, amend, or supplement the record.

There may be extra charges for the cost of correcting, amending, or supplementing the record. If so, the judge of compensation claims will notify the appropriate person, and that party will need to deposit the amount of the additional cost with the judge of compensation claims within 15 days of the date shown on the notice of the additional costs.

A complete appellate record will allow the appellate court to fully review the appeal. If an appellate party has additional questions about the procedure for preparing the appellate record, that party should call the employee assistance office in his/her district. The locations, addresses, and phone numbers for these offices can be found on the internet at http://www.fldfs.com/WC/organization/eao_offices.html.

F. Pulling Together the Record on Appeal of a State Agency's Decision.

In certain circumstances, Florida law allows people to appeal decisions or rules issued by state agencies. Without a complete record of all documents that led up to the agency's decision
or rule, the appellate court will not be in a position to determine whether the agency committed error or made a mistake. Therefore, the person bringing the appeal has the same duty as in any other appeals to make sure that the appellate court receives all of those documents. The non-appealing party is allowed to supply any extra documents that might be missing from the record, and may want to do so, but that party has no duty to do so.

The procedures for furnishing the record to the appellate court are primarily found in Florida Rules of Appellate Procedure 9.190 and 9.200, and all parties involved in the appeal should carefully review and comply with those rules. As in other types of appeals, when a party files a notice of appeal of a state agency’s decision or rule, the appealing party has 10 days to send the agency clerk written directions on what documents should be included or excluded from the record on appeal. The non-appealing party has an additional 10 days to send the agency clerk supplemental directions to include any important documents that may be missing from the appealing party's directions. A standardized form "directions to clerk" is included in the appellate rules and may be used as a guide or template in preparing directions to the agency clerk.

As the name implies, the directions to agency clerk must be filed with the clerk of the state agency that issued the decision or rule being appealed. The agency clerk is typically located at the same address as the agency's main headquarters. Most state agencies have a rule published in the Florida Administrative Code identifying the agency clerk's address. If unsure, the agency clerk's name and address can also be obtained by calling the agency's lawyer or searching the agency's internet web site. Like any other pleading, motion, or other paper filed in a legal proceeding, a copy of the directions to the agency clerk must be served on all other parties in the case. It is also wise to send a courtesy copy to the clerk of the appellate court.
The types of documents that should be included in the record on appeal will depend on the type of agency action being appealed, and the types of mistakes the agency made. In this regard, it is very important to review Florida Rule of Appellate Procedure 9.190(c), Sections 120.57(1)(f) and (2)(b), 120.574(2)(d), Florida Statutes, which specifically identify the types of documents that must be included in various types of agency action appeals. As in other types of appeals, such documents normally include, all notices, pleadings, motions, memoranda of law, hearing transcripts, evidence, proposed orders, and orders issued in the administrative proceeding.

Also like other appeals, the record may generally only include documents that were “of record”: documents actually filed with and reviewed by the state agency before it issued the decision or rule. If documents that the agency was not given an opportunity to consider find their way into the appellate record, the appellate court may strike the document from the record and may even penalize (or "sanction") the party who was responsible for placing it in the record on appeal.

If the agency action was based on evidence or other presentations made at one or more hearings, it is critical to make sure that a transcript of those hearings is included in the record on appeal. Most state agencies have a duty to make sure that the final hearing is "preserved" by providing a certified tape recording or a court reporter. It is sometimes difficult to get an accurate transcript from a tape recording. Therefore, if a party thinks that he/she might desire to appeal in the future the agency's decision, that party should try to convince the agency's lawyer to have a court reporter present at all important hearings. If the agency declines to do so, the party should consider hiring a court reporter at that party’s own expense. Otherwise, the
appellate court will not have an accurate record of what happened at the hearing, and as a result, may not be in a position to review the appeal.

If a relevant hearing transcript was not ordered before the agency issued its decision or rule, the appealing party will be responsible for ordering and paying for this transcript and including it in the record on appeal. If the appellant wins the appeal, the transcript expenses may be recoverable from the losing party or losing parties by filing an appropriate motion to tax appellate costs in a timely manner after the appeal has ended.

Other than the hearing transcript, there usually are no other fees assessed for preparing the record on appeal. This is because the rules of appellate procedure generally require the agency clerk to prepare and submit the agency's "original" documents as the record on appeal. However, some agencies have special rules and statutes that allow them to use copies instead of the originals. If that is the case, the agency clerk may impose fees for making copies of all the documents in the record on appeal. If the record is large, which is often the case, the cost to prepare the record could be significant. Therefore, if costs are a concern to an appellant, before deciding to appeal, the appellant should check with the agency clerk to get an estimate of any anticipated fees for preparing the record.

From the date that the notice of appeal is filed, the agency clerk has 50 days to prepare and serve the index to the record on appeal. Many times, the agency clerk is unable to meet this deadline and needs an extension of time. If so, it is up to the appealing party to file a motion asking the appellate court to grant an extension to prepare the index. As in other appeals, if the appellate court grants a time extension to prepare the index, it will also extend the time for filing the initial brief.
Once the record index is received by the parties in a state agency appeal, they are required to use the assigned page numbers identified in the index when citing or referring to the record on appeal in their briefs. The index is discussed in more detail in Section B of this Chapter.

When an appellate party receives the record index, the party should carefully review it to make sure that it is complete. Sometimes, one or more documents might be accidentally left out or mislabeled. If a party sees that a document is missing from the record index, that party can file a motion to supplement or correct the record with the appellate court explaining the situation, and requesting that the agency clerk be directed to "supplement or correct" the record with the missing or mislabeled document.

On the other hand, a party’s review of the record index might also show that one or more documents that were never considered by the agency have somehow found their way into the record on appeal. If that happens, a party can file a motion to strike with the appellate court requesting that those documents be "stricken" and removed from the record on appeal.

The agency clerk will send each party only an index of the record--not the record on appeal itself--because the parties to the administrative proceeding should already have their own set of the documents. The agency clerk usually does not send the record to the appellate court until after all of the appellate briefs have been filed. Therefore, if a party to an agency appeal needs to review the actual record itself, that party can make arrangements with the agency clerk to review it before it is sent to the appellate court. After the record has been sent to the appellate court, an appellate party can call the clerk of the appellate court to review the record there. Alternatively, many state agencies now have on-line dockets posted on their web sites, which provide easy public access to copies of most, if not all, documents in the record on appeal. For
example, the Division of Administrative Hearings' on-line docket is accessible at www.doah.state.fl.us.
Appendix - Form "Directions to Agency Clerk"20

STATE OF FLORIDA
[Insert state agency's name]

[Insert name of appealing party],

Appellant,

App. Ct. case No. ______

vs.

[Insert names of agency and all other non-appealing parties]

[Agency] case No. ______

DOAH case No. ______

Appellees.

APPELLANT'S DIRECTIONS TO AGENCY CLERK

Pursuant to Florida Rules of Appellate Procedure 9.190 and 9.200, appellant [insert name of appealing party] hereby requests the [insert name of agency]'s agency clerk to include the following materials in the record on appeal of the above-styled case:

1. Any and all original documents described by Florida Rule of Appellate Procedure 9.190(c)(2)(A) [or insert citation to other applicable rule]. See also Florida Rule of Appellate Procedure 9.200(a)(1) ("the record shall consist of the original documents...filed in the lower tribunal") (emphasis added).

2. A progress docket, as described by Florida Rule of Appellate Procedure 9.200(a)(1).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail on [insert names and addresses of all parties' attorneys or parties appearing pro se]; on this _____ day of ________________, 20____.

20 Additional forms for use on appeal can be found in the Florida Rules of Appellate Procedure, 49
Respectfully submitted,

[Insert name, address, phone no.]

cc: Clerk of [insert name of appellate court]
CHAPTER 4: MOTION PRACTICE IN THE APPELLATE COURTS

Motion practice is an important difference between appeals and lower tribunal proceedings. As a general rule, appellate parties or appellate litigants do not file nearly as many motions in appeals as those that parties or litigants file in lower tribunal cases.

Generally speaking, motions that are proper in the appellate court concern the way the appeal moves through the appellate or higher court. For example, a party might file a motion to dismiss the appeal, a motion for an extension of time to file a brief, or a motion to consolidate the appeal with another appeal.

Rule 9.300 of the Florida Rules of Appellate Procedure contains the requirements for appellate motions. A motion:

• explains what it is that the appellate party wants the appellate court to do (the “relief” sought);

• explains why the appellate court should do what the appellate party is seeking (the “argument”); and

• contains citations to any statutes, rules or cases that support the appellate party’s argument (the “authorities”).

If a party believes the appellate court must consider any documents from the lower tribunal file ("the record"), the party attaches copies of those documents to that party’s motion. The party attaches copies because the appellate court may not have yet received the record from the lower tribunal.

A party must “serve” a copy of the motion on the other parties, sending the other parties a copy of the motion (along with any attachments). At the end of the motion, the party must include a “certificate of service” that tells the appellate court how the party served the motion.
(such as by U.S. Mail), and the date the motion was served. The party must sign the motion and the certificate of service.

The other parties to the appeal may respond to the motion generally within 10 days. In the case of motions, a party generally cannot reply to this response. The appellate court usually decides the motion based only on the motion and response. The court generally does not have a hearing or oral argument on a motion.

If a party wants extra time to file and serve an appellate brief or other document, the party may want to ask the other party (or the other party’s attorney if the opposing party has counsel) if he/she will agree to an extension of time. In the motion for extension of time, the party filing the motion (the “movant”) tells the court whether the other party agrees or disagrees with the request for additional time. If the other party agrees to the motion, the court might rule on it faster than it might if the court has to wait for the other party’s response. A motion for an extension of time to file a brief usually includes the date that a party would like to serve and file the brief, instead of just asking for an extension of a certain number of days. For example, asking for an extension until January 20, 2009, to serve and file the brief will be less confusing than just asking for a 30-day extension of time.

Motions filed in the Florida Supreme Court generally do not temporarily postpone (“toll”) the appeal deadlines unless the party filing the motion also files a separate motion to toll time. A motion to toll time asks the Florida Supreme Court to postpone the current appeal deadlines until the court rules on the motion. For example, if a party files a motion for an extension of time to file the brief in the Florida Supreme Court, the party also files a motion to toll time. This will temporarily postpone or “toll” the original deadline for the brief until the Court rules on the motion for extension of time. If a party has any questions or concerns about
the schedule of the appeal or the tolling effect of a motion, a party should seek advice from an appellate lawyer.

Sometimes a party may want to “stay” the lower tribunal until the appeal is decided. In other words, the party wants the lower tribunal proceedings to stop until the appellate court decides the appeal. For instance, sometimes a party will file a motion to stay to halt the other party’s attempt to collect on a judgment. A party files a motion to stay with the lower tribunal, not the appellate court. Rule 9.310 of the Florida Rules of Appellate Procedure contains the rules regarding “stays.” Stays pending review are addressed in more detail in a separate chapter of this Handbook.

There are two situations when a stay is automatic. If the judgment that is being appealed is only for the payment of money, an automatic stay (without filing a motion) will apply if a bond is posted in an amount provided for under Rule 9.310 of the Florida Rules of Appellate Procedure. The amount of the bond must be equal to the amount of the judgment, plus twice the statutory rate of interest on judgments. The lower tribunal court clerk’s office has information on the statutory rate of interest. When a public body or official (such as the State of Florida or a public board or commission) appeals a decision, the lower tribunal automatically stays the proceedings until the appeal is decided. In all other situations, a party who wants to temporarily stop the lower tribunal proceedings files a motion to stay with the lower tribunal.

When an original motion is filed with the appellate or higher courts, sometimes that party must file extra copies of the motion. The following chart shows some of the more common motions and the number of copies that a party must file with the original motion, for example, in the Florida Supreme Court:
<table>
<thead>
<tr>
<th>Motion Type</th>
<th>Copies Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>motions to dismiss, quash or strike</td>
<td>original and 7 copies if appeal is pending on merits. original and 5 copies if appeal pending on jurisdictional question</td>
</tr>
<tr>
<td>motion for extension of time</td>
<td>original only</td>
</tr>
<tr>
<td>motion to stay</td>
<td>original only</td>
</tr>
<tr>
<td>motion to expedite</td>
<td>original only</td>
</tr>
<tr>
<td>motion to consolidate</td>
<td>original and 1 copy</td>
</tr>
<tr>
<td>motions regarding amicus curiae and intervenors</td>
<td>original only</td>
</tr>
<tr>
<td>motion for rehearing</td>
<td>original and 7 copies</td>
</tr>
</tbody>
</table>

When a party files a motion, the party also must include plain, unaddressed, postage-paid, legal- sized envelopes (9 1/2" x 4 1/8") for all parties in the case. This allows the appellate or higher court to send copies of its decision on the motion (the “order”) to the party filing the motion and the other parties. The court generally does not accept motions by fax or email. A party must mail or courier the motion to the appellate court for filing or file it in person at the courthouse.

For more information on the procedures for filing motions, a party can contact the clerk=s office for the appellate court at www.flcourts.org or check the Florida Supreme Court’s website at: www.floridasupremecourt.org, under ÂFrequently Asked QuestionsÂ and then “Clerk’s Office Frequently Asked Questions.” Local libraries can also be contacted for internet service to research the appellate and higher court requirements. The Florida Supreme Court can also be reached directly at (850) 488-0125 for general questions. A separate chapter in this Handbook contains additional contact information for each of the courts in Florida.
CHAPTER 5: WRITING AN APPELLATE BRIEF

A. Introduction

In most appeals, an initial brief, an answer brief, and a reply brief will be filed. These may also be referred to as the appellate pleadings. The appellant, who filed the notice of appeal, will file the initial brief and might file a reply brief. The appellee will file the answer brief. The reader will find more discussion of petitions for extraordinary writs in a separate chapter; in such cases, the parties are referred to as petitioner and respondent.

Before writing a brief, the appellant must determine which kind of brief needs to be written and what position is to be argued in that brief. The initial brief is filed first.

If filing an answer brief, the party so filing must wait until he/she receives the initial brief to file the answer brief. This is because the answer brief responds to, or answers, the arguments made in the initial brief.

If filing a reply brief, the party so filing must wait to receive the answer brief to file the reply brief, because you are going to respond to the arguments made in the answer brief.

The initial brief will contain a section for facts (that were part of the lower tribunal record below), arguments, and case law and statutes supporting the appellant’s argument that the lower tribunal committed error or erred in its ruling.

The answer brief will contain facts, arguments, and case law supporting the appellee’s argument that the lower tribunal was correct in its ruling.

The reply brief will address the facts, arguments, and case law discussed in the answer brief. It will contain explanations about why the arguments raised in the answer brief are incorrect based on the case law and the facts in the case on appeal. A reply brief should not restate the facts or re-argue the points that were already addressed in the initial brief.
To write the appellate brief, the party writing it studies several things before starting.

The party writing the appellate brief looks at the record on appeal that the clerk of the lower tribunal or agency, which entered the order or opinion that is on appeal, prepared. This record is supposed to include the important pleadings filed in the case and transcripts of any important hearings that were held that relate to the issues raised in the appeal.

The party writing the appellate brief also researches what law applies to the party’s case and to the issues raised in the case. This may include statutes, case law, rules, or other sources of law. The party writing the appellate brief goes to a law library or does legal research on the computer to look for cases or statutes, preferably ones from the State of Florida, that support his/her argument. Then the party writing the appellate brief gathers together any statutes and case law that support the argument he/she is going to make in the appellate brief. This is because the Florida Rules of Appellate Procedure require the appellate party to specifically refer to those cases or statutes in the appellate brief to support his/her argument.

The party writing the appellate brief also looks for and gets a copy of Rule 9.800 of the Florida Rules of Appellate Procedure (which law libraries in Florida will have). This rule explains how to cite or reference case law or statutes in the brief. When the party writing the appellate brief refers to a case or statute in the brief, that party follows the formatting of the law citations provided in Rule 9.800.

B. Formatting for All Briefs.

Florida Rule of Appellate Procedure 9.210 requires that all briefs have a specific format. In general, all briefs must be printed or typed on 8-1/2-by-11-inch opaque, white, unglossed paper. The lettering must be black. The paper must have margins of at least one inch on all sides. If a brief is typed on and printed from a computer, Rule 9.210 requires that the brief be
typed in Times New Roman 14-point font or Courier New 12-point font. If the brief includes footnotes or headings, Rule 9.210 requires that these be in the same font. The Rule requires that the writing be double-spaced, except for indented quotations, footnotes, or headings, which may be single-spaced.

The brief must have a cover sheet stating the name of the appellate court, the case number the appellate court has assigned to the case or a space to enter that number if it is a new case that does not have a number, the “style” of the case (i.e., John Smith v. Jane Doe), the name of the lower tribunal that entered the order or opinion on appeal, the name of the brief (i.e., initial brief of appellant John Doe), and the name and address of the person filing the brief.

All briefs must be either stapled in the upper left corner, or bound in a book form by fastening the papers along the left side in a way that will allow them to lie flat when opened.

C. The Initial Brief.

If the appellate party is the appellant, that party will be filing the initial brief. This document will be that party’s communication to the appellate court setting out why the lower tribunal erred in its decision. The initial brief will have the following sections:

- Table of Contents
- Table of Citations
- Statement of the Case and Facts
- Summary of the Argument
- Argument
- Conclusion
- Certificate of Service
- Certificate of Font Compliance
The initial brief can generally be no more than 50 pages long, not counting the pages necessary for the Table of Contents or Table of Citations.

1. Table of Contents.

This is a list of the sections or headings in the brief with the corresponding page numbers. The table of contents must include the issues on appeal, with page numbers, that are raised in the brief. For example, an initial brief table of contents might look something like this if it is an appeal about a summary final judgment:

<table>
<thead>
<tr>
<th>Table of Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table of Citations</td>
<td>1</td>
</tr>
<tr>
<td>Statement of the Case and Facts</td>
<td>2</td>
</tr>
<tr>
<td>Summary of the Argument</td>
<td>3</td>
</tr>
<tr>
<td>Argument</td>
<td>5</td>
</tr>
<tr>
<td>Issue I: Whether the lower tribunal erred in granting summary judgment,</td>
<td>5</td>
</tr>
<tr>
<td>Issue II: Whether the lower tribunal erred in finding the plaintiff was entitled to an award of attorneys’ fees</td>
<td>7</td>
</tr>
<tr>
<td>Conclusion</td>
<td>10</td>
</tr>
<tr>
<td>Certificate of Service</td>
<td>10</td>
</tr>
<tr>
<td>Certificate of Font Compliance</td>
<td>10</td>
</tr>
</tbody>
</table>

2. Table of Citations.
The table of citations (also called the table of authorities) is similar to that of the table of contents; however, it will include a list of the cases and statutes the party drafting the brief referred to in the brief to support the argument(s) along with the page numbers where the cases and statutes were referred to. The cases are listed in alphabetical order. Statutes are listed in numerical order. The citations to law, that are the name of the statute or case, follow the format that is required in Rule 9.800 of the Florida Rules of Appellate Procedure. For example, a table of citations in an appellate brief might look like this:

<table>
<thead>
<tr>
<th>Case/Statute</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gray v. State,</td>
<td>9</td>
</tr>
<tr>
<td>123 So. 2d 159</td>
<td></td>
</tr>
<tr>
<td>(Fla. 3d DCA 2002)</td>
<td></td>
</tr>
<tr>
<td>Smith v. Smith,</td>
<td>7</td>
</tr>
<tr>
<td>222 So. 2d 222</td>
<td></td>
</tr>
<tr>
<td>(Fla. 2d DCA 1999)</td>
<td></td>
</tr>
</tbody>
</table>


Before writing the brief, the party writing the brief will have reviewed the record on appeal that was prepared by the clerk of the court (or other lower tribunal) that entered the order or opinion that the appellant is appealing. The statement of the case and facts explains to the appellate court, based only on the documents and evidence that appear in the record, what happened in the case while it was active in the lower tribunal. This gives the appellate court a history of the case.
The Florida Rules of Appellate Procedure, as explained above, require that every statement the appellate party makes in the statement of the case and the facts is followed by a reference to the page number of the record on appeal where that statement can be found or supported. Usually, the appellate party would refer to a page of the record in parenthesis with an “R” followed by the volume and page number. If there is a transcript in the record that has separate page numbers, the appellate party refers to a page of the transcript in parenthesis as “T” followed by the page number.

For example:

Mr. Roberts filed a complaint alleging Ms. Wynn breached a contract. (R. I/1). At trial, the expert testified that the injury was caused by the accident. (T 36).

The appellate party may not discuss in the brief any fact or circumstance that is not included in the record, such as events occurring after the order or opinion on appeal was entered, or documents or evidence he/she did not present to the lower tribunal.

In the statement of the case and the facts, the appellate party discusses:

(a) what kind of case this is;
(b) the procedural history of the lower tribunal proceeding, that is, the pleadings that were filed and when they were filed, what issues the pleadings raised, and how the lower tribunal ruled on them;
(c) the evidence that was presented to the lower tribunal at the trial or hearing, in the form of both written documents or the testimony of witnesses who explained what happened; and
(d) the outcome of the trial or hearing.
The appellate party drafting the brief includes in this section those facts that specifically relate to the issue he/she is arguing. For example, if the appellate party is arguing that the lower tribunal should have considered certain evidence at trial, the appellate party does not need to include in his/her brief, facts about hearings that were held before the trial on issues that were not related to the evidence that appellate party wanted considered.

The statement of the case and the facts is presented in chronological order to make it easier for the appellate court to follow and understand.


This section provides a brief overview of the arguments made in that specific appellate brief; so it is much like a “road map” that gives the overview of what the arguments are in about two pages. Some appellate parties write the summary of the argument before writing the arguments section of the appellate brief, while other appellate parties write the summary of the argument after writing the arguments section of the appellate brief. The summary is usually not longer than two pages, and is never longer than five pages.

5. Argument.

This section includes a discussion of the legal reasons why the opinion or order from the lower tribunal is incorrect, and an explanation of the specific relief that the appellant or appellee seeks (what the appellant wants the appellate court to do if it agrees with the argument). For example, an appellant may ask the appellate court to reverse the final judgment and remand, or send back, to the lower tribunal for a new trial, while an appellee may ask the appellate court in the answer brief (discussed in more detail below) to affirm the final judgment. The argument is to be supported by references to legal cases, statutes, and rules that help support that appellate party’s argument that the lower tribunal decision was incorrect.
The argument is divided into specific legal issues. In many cases, the appellant might only argue one specific issue. In other cases, the appellant might argue that the lower tribunal made more than one error. Each issue the appellant raises should have merit; it should be based upon a reasonable legal argument that the lower tribunal made a mistake in its ruling.

The appellant often makes an outline of the argument the appellant wants to make, much like what teachers have instructed in middle school. The appellant’s issue or issues are clearly and concisely stated. If the appellant is arguing more than one issue, the appellant starts with the strongest point first.

The argument section in the brief starts with a topic sentence for each issue. Then, it discusses the case law statutes, and rules that deal with the issue for that section. The appellant’s argument tries to persuade the appellate court that the lower tribunal made an error and that the appellant should be given the relief or remedy he/she is asking for. The appellant discusses the language of any statutes that apply and the facts and rulings in the cases being relied on, and explains how and why they apply to the facts and supports the argument the appellant is making.

In each issue, the appellant also discusses the “standard of review.” This is a legal term that refers to how an appellate court must look at the case on appeal. For example, some cases are reviewed “de novo,” meaning the appellate court looks at the record and comes to its own conclusions, without giving much weight to the decision of the lower tribunal. Other cases are reviewed for an “abuse of discretion,” meaning the appellate court will give deference to certain findings the lower tribunal made and will only reverse if the lower tribunal’s decision was extremely unreasonable. The appellate rules require that the appellate parties do research of the cases to decide what “standard of review” applies to the issues on appeal. The appellant repeats these steps for each issue raised in his/her brief.
6. Conclusion.

This no more than one page in length and includes the type of relief the appellant is seeking. This section states what it is that the appellant wants the appellate court to do. For example, the conclusion in appellate brief in a case involving a trial might look something like this:

<table>
<thead>
<tr>
<th>Conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>The appellant requests that this Court reverse the final judgment entered below with instructions to hold a new trial.</td>
</tr>
</tbody>
</table>

7. Certificate of Service.

According to Rule 9.420(c) of the Florida Rules of Appellate Procedure, the brief must include a statement that the brief was mailed and/or faxed to all of the other parties in the appeal. It must be signed by the appellate party and should include a signature block containing the appellate party’s name, address and telephone number.

For example, a certificate of service might look like this:

| I hereby certify that a copy has been furnished to _______(name of opposing person), address, city, state zip by mail/fax/hand delivery on _________(date). |
|JOHN DOE |
|222 N.W. 2nd Street |
|City, State 11111 |
|Telephone: (234) 567-8901 |
|By: ________________ |
|JOHN DOE |

According to Rule 9.210(a)(1) and (2), of the Florida Rules of Appellate Procedure, the font of the letters in the brief must be either Times New Roman 14-point font or Courier New 12-point font. The appellate party includes in his/her brief a statement that the font used in the brief complies with this Rule, and sign below the statement. A certificate of compliance might look like this:

<table>
<thead>
<tr>
<th>Certificate of Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>I certify that the lettering in this brief is (Times New Roman 14-point Font or Courier New 12-point Font) and complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).</td>
</tr>
<tr>
<td>By: ____________________</td>
</tr>
<tr>
<td>JOHN DOE</td>
</tr>
</tbody>
</table>

D. The Answer Brief.

The answer brief, as explained above, includes discussions about why the appellant’s argument is incorrect and why the lower tribunal was correct in its ruling. The Florida Rules of Appellate Procedure require that the answer brief contain the following sections:

- Table of Contents
- Table of Citations
- Statement of the Case and Facts
- Summary of the Argument
- Argument
- Conclusion
- Certificate of Service
- Certificate of Font Compliance
The answer brief, like the initial brief, can be no more than 50 pages long, not counting the pages necessary for the table of contents or table of citations.

The appellee follows the same format as discussed above in the section regarding initial briefs for the table of contents, the table of citations, the conclusion, the certificate of service, and the certificate of font compliance. However, the statement of the case and facts, the summary of the argument, and the argument are slightly different.


If the appellee agrees with the statement of the case and the facts as set out in the initial brief, the appellee does not have to include that section in the answer brief. If the appellee does not agree with the statement of the case and the facts in the initial brief, or the appellee believes that the statement of the case and the facts in the initial brief was incomplete, the appellee will include a statement of the case and the facts in the answer brief. However, the appellee does not restate all of the facts and circumstances that are already set forth in the initial brief. Instead, the appellee includes in the answer brief statement of the case and facts only those facts that the appellee believes were misstated or left out in the initial brief.

2. Summary of the Argument and the Argument.

The appellee uses the same methods as set out above for the initial brief; however, the appellee’s argument focuses on the reasons why the lower tribunal was correct in its ruling and why the appellant’s legal argument is incorrect and why the lower tribunal’s decision was correct, or at least why the lower tribunal reached the correct result. Although the appellee argues that the appellant’s arguments are incorrect, the appellant and the appellee argue their positions in their appellate briefs respectfully and without name-calling or insults.

E. The Reply Brief.
The Florida Rules of Appellate Procedure do not require that the appellant file a reply brief. If the appellant decides to file a reply brief, the appellant’s reply brief includes these sections:

- Table of Contents
- Table of Citations
- Summary of the Argument (not required)
- Argument
- Conclusion
- Certificate of Service
- Certificate of Font Compliance

The reply brief can be no more than 15 pages long, not counting the pages necessary for the table of contents or table of citations.

The appellant’s reply brief generally follows the same format as the answer brief. The reply brief only responds to the issues raised in the answer brief. The Florida Rules of Appellate Procedure do not allow an appellant to argue a new issue unless that new issue was specifically brought up in the answer brief. Although the appellant argues that the appellee’s arguments are incorrect, the appellant, like the appellee, does so respectfully and without name-calling or insults.

The reply does not simply repeat the arguments used in the initial brief. If the initial brief covered all of the legal arguments necessary to make and there is nothing in the answer brief that needs a response, the appellant generally does not file a reply brief.

F. Filing and Service of Appellate Briefs.

Please refer to the other chapters in the Handbook regarding proper timing of service and
filing procedures for the respective appellate court where the appeal would be pending. Similar rules apply to petitions, but there are significant time and format differences; so please refer to that Handbook chapter and the Florida Rules of Appellate Procedure to determine proper timing of and filing procedures for the respective appellate court where the appeal would be pending.
CHAPTER 6: CHECKLIST FOR APPELLATE BRIEFS AND
GENERALLY PETITIONS IN THE DISTRICT COURTS OF APPEAL

Like the other Chapters, this Chapter Checklist is NOT a substitute for reading the Florida Rules of Appellate Procedure and NOT a substitute for visiting each court’s website, at www.flcourts.org, to learn that particular court’s internal requirements.

Obtain a copy of the Florida Rules of Appellate Procedure (“FRAP”)


Number of Pages for Briefs (FRAP 9.210(a)(5))

____ 1. Appellant’s initial brief and appellee’s answer brief: 50 pages (including the conclusion)
____ 2. Appellant’s reply brief: 15 pages (including the conclusion)

Paper Size and Binding of Briefs (FRAP 9.210(a)(1) and (3))

____ 1. Opaque, white, unglossed 8 1/2” x 11” paper
____ 2. Briefs are securely stapled in the upper left corner

How Briefs Must Look Overall (FRAP 9.210(a)(2))

____ 1. 1” margin on all sides (the courts measure the margins)
____ 2. Typed and double spaced
____ 3. Print on only one side of paper
____ 4. Font must be either Times New Roman 14-point font or Courier New 12-point font.
____ 5. If the brief is typed on a computer, that brief must certify to the appellate court that the brief meets the FRAP font requirement. This certification paragraph follows the certificate of service (see below) in all briefs.
Cover Sheet of Any Brief (FRAP 9.210(a)(4)) Must Have, in the Following Order

1. Name of the appellate court at the top of the page (e.g. First District Court of Appeal, State of Florida)

2. Appellate court case number (lower tribunal case number is also a good idea)

3. Names of the parties and whether they are the appellant or the appellee (e.g. Jane Doe, Appellant v. John Doe, Appellee)

4. Title of the document ("Initial Brief of Appellant," "Answer Brief of Appellee," or “Reply Brief of Appellant”)

5. Name of the lower tribunal, court or agency which ordered the decision that is being appealed (e.g., "Appeal from the Thirteenth Judicial Circuit, Hillsborough County")

6. Name, address and telephone number of the pro se party filing the brief

What Initial Brief Must Contain (FRAP 9.210(b))

1. Cover sheet, as set forth above

2. Table of Contents that includes a list of the issues presented for review and the page numbers on which argument on each issue begins

3. Table of Authorities with page references of: (a) cases listed alphabetically with citations; (b) statutes; (c) other authorities, including rules of procedure

4. Statement of the Case and Facts. This section must contain citations to the volume and page numbers in the lower tribunal or agency record on appeal and include: (a) kind of case; (b) history of the case in lower tribunal before the notice of appeal was filed; (c) outcome in the lower tribunal or agency, and (d) facts relevant to the issues on appeal

5. Summary of Argument (generally, 2 pages is enough and no more than 5 pages)

6. Argument for each issue stated in the table of contents, that tells the appellate court why the appellant thinks the lower tribunal committed error in his/her case
and how that error harmed his/her case

7. Conclusion telling the appellate court what remedy is sought on appeal (e.g. reverse, reverse and remand for a new trial, etc.)

8. Certificate of Service (see below)

9. Certificate of Font Compliance, that the brief used either of the required fonts

10. Original brief must be signed by the party submitting the brief

What Answer Brief Must Contain (FRAP 9.210(c))

1. Cover sheet

2. Table of Contents listing the issues presented as stated by the appellant in the initial brief and the page numbers on which argument begins for each issue

3. Table of Authorities with page references to: (a) cases listed alphabetically with citations; (b) statutes; (c) other authorities, including rules of procedure

4. Statement of the Case and Facts may be omitted if the appellee agrees with the appellant’s statement. If not, then the correct facts must be included with references to the page numbers where the facts appear in the record.

5. Summary of Argument (2 pages should be adequate)

6. Argument for each issue stated in the table of contents

7. Conclusion telling the appellate court what the appellee wants it to do with the appeal (e.g. affirm).

8. Certificate of Service (see below)

9. Certificate of Font Compliance that the brief is prepared with the required fonts

10. Original brief must be signed by the party submitting the brief.

What Reply Brief May Contain (FRAP 9.210(d))

Note: A reply brief is not required. It is only necessary or commonly filed if the appellant needs to respond to arguments in the appellee’s answer brief. A reply brief should not merely repeat the arguments in the initial brief.
1. Cover sheet
2. Reply Argument for each issue stated in the table of contents
3. Conclusion that tells the appellate court what the appellant wants it to do
4. Certificate of Service (mailing to the opposing party or attorney)
5. Certificate of Font Compliance, that the brief used either of the required fonts
6. Original of brief must be signed by the party submitting the brief

Timely Service (Mailing) of Briefs (FRAP 9.110(f) and 9.210(f))
1. Appellant: 70 days from filing notice of appeal (unless the court grants a motion for extension of time filed by the Appellant)
2. Appellee: 20 days after service of appellant's brief (unless the court grants a motion for extension of time filed by the Appellee)
3. Reply: 20 days after service of appellee's brief (unless the court grants a motion for extension of time filed by the Appellant)

Serve (mail or hand delivery) 1 copy of the brief on the attorney for each party or, if a party is not represented by an attorney, serve 1 copy on each unrepresented party.

The appellate party must serve (mail or hand deliver to other parties) the brief within the times required by the Rules. The court may reject the brief if it is not timely (see FRAP 9.410). If an appellate party needs more time to write the brief, he/she must file a motion for extension of time under FRAP 9.300(a)—before the brief is due—asking the court for additional time. The appellate courts do not prefer last-minute motions for extension of time.

Filing Brief with Appellate Court (FRAP 9.210(g)) before service, or immediately after service
1. Supreme Court: 1 original and 7 copies of the brief on the merits
2. District Courts of Appeal: 1 original and 3 copies
3. Circuit Courts: 1 original and 1 copy
CHAPTER 7: TIMELINE FOR APPEALS FROM FINAL ORDERS OF LOWER TRIBUNALS

This timeline highlights the time for filing documents in proceedings that invoke the appellate jurisdiction of the Florida Supreme Court, the district courts of appeal, agencies and the circuit courts. See the Florida Rules of Appellate Procedure for the specific time for filing documents involving original proceedings, petitions for writs, procedures in death penalty appeals, review of collateral post-conviction criminal appeals, juvenile proceedings in dependency and termination of parental rights proceedings, and proceedings that seek review of probate orders and guardianships, administrative actions, and orders granting a new trial.

For purposes of this timeline, and throughout this Handbook, the timeline for appeal is measured from rendition of an order, when all three of the following events occur: (1) the lower tribunal’s order is reduced to writing; (2) the written order is signed by the judicial officer; and (3) the written, signed document is filed with the clerk of the lower tribunal from which the order is issued. See Rule 9.020(h), Florida Rule of Appellate Procedure. With some exceptions, the date of service or mailing is not, in most cases, what matters in calculating the time for filing a notice of appeal.

Generally, a party seeking to appeal has 30 days from rendition of a final order within which to file a notice of appeal. When computing time, Rule 9.420(f) of the Florida Rules of Appellate Procedure explains that counting begins on the day following the event that triggers the running of time. The period of time includes the last day of that time frame unless the last day falls on a Saturday, Sunday, or holiday. Holidays are only those holidays listed in the Rule. If the last day falls on a Saturday, Sunday, or holiday, the final day to file or act is the next regular business day. Saturdays, Sundays, and holidays are not counted in the calculation unless
the time to act is less than seven days. Thus, if the court or other lower tribunal renders an order on January 1, the notice of appeal is generally due no later than January 31. If January 31 is a Sunday, the notice is generally due no later than Monday, February 1. This timeline is based on the 2008 version of the Florida Rules of Appellate Procedure. The Florida Rules of Appellate Procedure are amended from time to time. So, it is always important to consult the most current version of the Rules to be certain of the deadlines. In addition, it is better to file a notice of appeal well before, rather than close to, the deadline to reduce the chance of missing that deadline.
**FINAL APPEALABLE**

**Mandatory Review or Discretionary Review Granted**
- Supreme Court—Rule 9.030(a)(1), (2)
- District Courts of Appeal—9.030(b)(1), (4)
- Circuit Courts sitting on Appeal—9.030(c)(1)

**WITHIN 30 DAYS OF RENDITION OF ORDER**
- Notice of appeal

**WITHIN 10 DAYS OF NOTICE OF APPEAL**
- Appellant’s directions to the clerk to include or exclude certain documents (optional)
  - Rule 9.200(a)(3)

**WITHIN 10 DAYS OF NOTICE OF APPEAL**
- Appellant’s designation
  - Rule 9.200(b)(1)

**WITHIN 20 DAYS FROM NOTICE OF APPEAL**
- Appellee’s directions to the clerk (optional)
- Appellee’s designation (optional)

**WITHIN 20 DAYS FROM SERVICE OF THE RECORD OR DESIGNATION**
- Designation furnished by court reporter
  - Rule 9.200(b)(2)

**WITHIN 30 DAYS FROM SERVICE OF THE RECORD OR DESIGNATION**
- If the appeal involves a criminal matter, the initial brief shall be served.
  - Rule 9.140(g)

**EXCEPTIONS**

- **WITHIN 10 DAYS FROM FILING NOTICE**
  - Petitioner’s brief on jurisdiction
  - Rule 9.120(d)

- **WITHIN 20 DAYS OF FILING THE NOTICE OF APPEAL**
  - Appellant’s initial brief due if the appeal is from an order of a district court of appeal,
  - Rule 9.110(i)

- **WITHIN 60 DAYS FROM THE DATE THE COURT ACCEPTS OR POSTPONES ITS DECISION ON JURISDICTION**
  - Record transmitted by clerk of the district court of appeal
  - Rule 9.120(a)

- **WITHIN 20 DAYS FROM RENDITION OF ORDER ACCEPTING OR POSTPONING JURISDICTION**
  - Petitioner’s brief on merits
  - Rule 9.120(f)
CONTINUED

WITHIN 50 DAYS FROM NOTICE OF APPEAL
Record prepared by clerk of court and index served on parties—Rule 9.200(d); (Criminal) 9.140(f); 9.110(e)
Unless the appeal is from an order issued by the district court of appeal, then the clerk shall have 60 days to transmit the record to

WITHIN 110 DAYS FROM NOTICE OF APPEAL
Record transmitted by the clerk of courts—Rule 9.200(d); 9.110(e)

WITHIN 70 DAYS AFTER FILING NOTICE OF APPEAL
Appellant’s brief due—Rule 9.110(f)
Unless appeal is criminal, in which case the initial brief is due within 30 days of service of the record or designation of appointed counsel, whichever is later—Rule 9.140(g)

WITHIN 10 DAYS FROM APPELLANT’S NOTICE OF APPEAL OR 30 DAYS FROM RENDITION OF ORDER
Appellee’s cross appeal—Rule 9.110(b)(4)

WITHIN 20 DAYS AFTER FILING OF APPELLANT’S BRIEF
Appellee’s answer brief due—Rule 9.210(f)

WITHIN 20 DAYS OF FILING APPELLEE’S BRIEF
Appellant’s reply brief due—Rule 9.210(f)
CONTINUED

NO LATER THAN THE TIME THE LAST BRIEF OF THAT PARTY IS DUE
Request for oral argument is due.— Rule 9.320

ORAL ARGUMENT (IF REQUEST GRANTED)

OPINION OR DECISION RELEASED

WITHIN 15 DAYS OF RELEASE OF OPINION
Motion for rehearing—Rule 9.330(a)

WITHIN 10 DAYS FROM SERVICE OF MOTION FOR REHEARING
Response to motion for rehearing
Rule 9.330(a)

FINAL ORDER ON REHEARING

WITHIN 15 DAYS OF FINAL ORDER
Mandate issued by court. Rule 9.340

CASE CLOSED OR SEEK ADDITIONAL REVIEW IF AVAILABLE
CHAPTER 8: THE APPELLATE PROCESS CONCERNING FINAL APPEALS

A. Introduction.

After a judge or a jury enters a decision in a civil case, the party who loses has the right to have a higher court review or evaluate that decision. That process of higher court review is known as the appeal or appellate process. This chapter describes how and when to begin that process.

Appeals are an important part of the American legal system. The legal systems of all states in this country allow for at least one level of appellate review as a matter of right. The right to seek appellate review comes from the United States and Florida Constitutions. Appellate courts are set up only to review and correct errors committed below and to make appellate decisions based on the review of those errors. Appeals provide checks on the trial process and help to guide judges on the law in future cases. Lower tribunal judges understand this.

A party who has lost a decision in the lower tribunal is the party with the right to appeal. (A party can sometimes, but very rarely, appeal a favorable decision.) The appealing party, or appellant, disagrees with the result in the lower tribunal, either with a final order or judgment entered by the judge or a verdict entered by a jury. The appellant’s responsibility is to (1) identify the problem or error, and (2) persuade the appellate court that there is, in fact, error in the final order, judgment, or verdict appealed, and that the error is so serious that it needs to be sent back and corrected, or “reversed and remanded.”

The party opposing the appeal, the appellee, is the party that agrees with the outcome of the trial and will argue during the appeal that the judge's or the jury's decision should be left alone, or “affirmed.” In some cases, the appellee may also disagree with an aspect of the final
order, judgment, or verdict and will file what is called a “cross appeal.”

The highest court in Florida is the Florida Supreme Court. The next highest courts are the appellate courts of Florida, and they are divided into five districts covering specific counties: First District Court of Appeal, Second District Court of Appeal, Third District Court of Appeal, Fourth District Court of Appeal, and Fifth District Court of Appeal. Circuit Courts act as appellate courts in certain types of cases (for example, when reviewing the actions of a county government agency). The appellate court only reviews actions of the lower tribunal – not actions of the parties. The appellate court focuses on whether the lower tribunal made the right decision. The appellate court can:

• Find no error and “affirm” the lower tribunal’s decision, judgment, or order, thereby declaring that the decision of the lower tribunal was right and that it will stand.

• Find error and “reverse,” “modify”, or “remand” (send back to the lower tribunal) for the lower tribunal to do something. It may rule that the mistake was a “harmless error,” which means that even though there was an error, it did not affect the outcome of the case enough to make any real difference. In that case, the lower tribunal’s decision will be affirmed just as if there was no error.

• Modify a final lower tribunal decision by affirming with minor changes that do not affect the main holding or findings of the lower tribunal’s decision.

• Remand (send) the case back to the lower tribunal with instructions from the appellate court to the lower tribunal telling the lower tribunal what to do. Usually, a remand means there were errors in the lower tribunal's decision that must be fixed in the lower tribunal. The lower tribunal must sometimes hold a hearing and receive evidence before the lower tribunal rules on a particular issue that the appellate court tells it to
reconsider.

- Reverse a lower tribunal decision, where the appellate court rules, or holds, the lower tribunal should have reached the opposite result. Unlike a remand, the appellate court has enough evidence in the record to make a determination to reverse without the lower tribunal having to hold a hearing for more evidence. Sometimes, the appeals court reverses and remands at the same time. This happens when the court has enough information to reverse the lower tribunal's decision, but some questions remain.

- Appellate courts may also issue decisions, or “opinions,” that combine these options on different issues raised in the appeal. An appellate court may affirm a judgment as modified by its opinion or it may affirm in part and reverse in part.

B. The Handbook.

As emphasized from the beginning of this Handbook, appellate practice is a complex, specialized area of law that requires detailed study and research. This book is merely a beginning guide. Someone thinking of filing an appeal or some sort of appellate proceeding is wise to seek the advice of an appellate lawyer and to retain an appellate lawyer to handle the appeal. A party served with a notice that the opposing party is appealing the decision should also contact an appellate attorney.

Just like appellate judges who do nothing but make appellate decisions, there are appellate lawyers who do nothing but practice appellate law. One reason for this is that arguing an appeal is different from representing a party in a trial, and there are very different rules for taking an appeal. If a party cannot afford appellate counsel, but had the right to have a lawyer appointed to represent that party at trial, that party also usually has the right to have one appointed to represent that party on appeal. Otherwise, as a self-represented “pro se” appellant
or appellee, that party will have to do deep research of the appellate and trial procedure and cases.

Appeals are not a way to get a second bite at the apple or to have an appellate court reconsider or reevaluate the evidence presented in the lower tribunal. Appellate courts only review the lower tribunal proceedings to evaluate and decide whether the lower tribunal made mistakes of law, not of fact. There is a chapter that discusses “preservation of error” that parties should review to decide whether or not to file an appeal. Unless an error is “fundamental,” an appellant cannot argue for the first time on appeal that the lower tribunal made a mistake. The error must have first been brought to the lower tribunal’s attention either through a motion before trial, an objection during trial, or a motion after the trial, order, or judgment.

This Handbook also includes a chapter on making the appellate “record.” As already explained in that chapter, appellate courts do not look at any new evidence. The appellate court relies on the pleadings, motions, and hearing or trial transcripts that were made and filed at the lower tribunal level, which make up the “record on appeal”.

Before beginning an appeal, parties should review the sections on “standards of review.” The standard of review affects the way the appellate court looks at a lower tribunal's rulings or decisions. Appellate courts are bound by, and carefully follow, specific standards to evaluate the different kinds of errors that the appellant argues were committed below. Standards of review are key. The greater the standard of deference, the more difficult it will be for the appellant to persuade the appellate court to find error and reverse the lower tribunal's decision.

For example, because appellate courts do not take evidence, do not weigh evidence, and do not retry cases, appellate courts give greatest respect to findings of fact in the lower tribunal. The trial judge or jury had the best opportunity to observe the witnesses and to judge their
truthfulness, first hand. As a result, findings of fact will not be found to be in error unless the appellate court determines they are not supported by “competent, substantial evidence” or are “clearly erroneous.”

Appellate courts also give great respect to rulings on whether to allow or exclude evidence or on whether to allow or deny requests to amend pleadings.

Pure questions of law, on the other hand, are reviewed under a “de novo” standard. This simply means that the appellate court is permitted to review the lower tribunal’s actions as if it were deciding the issue in the first place. In other words, the lower tribunal’s decision is not entitled to any deference and the appellate court can ignore the lower tribunal’s reasons for doing what it did. Issues like summary judgments, the interpretation of a contract, or the application of law to the facts are reviewed de novo, that is without any deference to the lower tribunal’s decision.

Understanding “standards of review” is important because, even if there were mistakes at the lower tribunal level, the appellant still carries the heavy burden on appeal of showing the mistake changed the outcome. If the lower tribunal mistake (also called error) did not affect the outcome below, the appellate court is generally obligated to approve, or “affirm,” the lower tribunal’s decision on appeal. Thus, the appellant must show that the outcome of his case would have been different if the lower tribunal had not made the mistake or if it had corrected the mistake or error.

The Handbook also has sections on: (1) preparing and filing motions, which are used very sparingly at the appellate level; (2) writing the appellate briefs that appellants and appellees must file with the appellate court; (3) and preparing for and presenting oral argument to the appellate court.
This Handbook also contains a section on attorneys’ fees and costs, which can be very important on appeal. This is because an appellant and an appellee may be able to hire an appellate lawyer if there is a contract or statute that permits the recovery of attorneys’ fees and costs. Attorneys’ fees and costs may also be important to discourage appeals that lack merit or are frivolous or harassing in nature. If the appellate court decides that an appeal or a defense to an appeal is wholly without supporting law or facts, it may require the party who made the frivolous claim or defense to pay the other party’s attorney’s fees and costs.

For an appeal to be heard, the parties must read and follow the Florida Rules of Appellate Procedure. The Florida Rules of Appellate Procedure can be found on the internet at www.floridabar.org.

C. What Is Needed to Appeal a Decision from the Lower Tribunal to the Appellate Court?

With some important exceptions that are beyond the scope of this Handbook, appeals can only be brought from a "final judgment” or an “order” that the statutes and appellate rules say can be brought on appeal. The final judgment is a lower tribunal's order that leaves nothing to be done in the lower tribunal except to follow or execute the judgment. A party in a lawsuit who wants to appeal a decision cannot do so until the lower tribunal has made its final decision in writing. If the lower tribunal has not yet signed and filed with the clerk of the lower tribunal (“rendered”) its final decision, the appeal is, with a few exceptions, not ready to be filed. It would be confusing if an appellate court were asked to step in and tell the lower tribunal how to run the courtroom while the case was still going on. That is why the appellate process requires a decision which is final and in writing before a party can begin an appeal.

D. Finality.

Not every decision by a judge is appealable. During the course of a lawsuit, from the
filing of the complaint through the entry of a final judgment, a lower tribunal judge usually makes many decisions. The judge may grant or deny a request that the case be dismissed on the ground that there is insufficient evidence of wrongdoing. A judge may limit the kind of discovery that may be allowed. A judge may grant summary judgment on some, but not all, of the claims in a lawsuit. Any court order that does not decide the whole case is likely not a final order. Only final judgments, or orders which end the case once and for all, are appealable. If an order is not final, then the time in which to file an appeal has not started.

For example, when a judge denies a motion to dismiss, the case goes on in the lower tribunal. That is why the order denying the motion to dismiss is considered a non-final order, not a final one. But if the judge grants the motion to dismiss the case with prejudice and enters a judgment dismissing the case, that order is final because it ends the case. A decision about the subject of the case has been made. The final decision (also called a final disposition, final judgment, or final order) ends the case as far as that tribunal is concerned.

If a party doesn’t like a pretrial ruling, the party must normally wait until the trial or the case is over and a final judgment “rendered,” before bringing an appeal to challenge the ruling. There are certain exceptions to the final judgment rule. Those exceptions will not be covered here, but are covered in the next chapter.

There is a table at the end of this chapter which lists examples of the kinds of decisions appellate courts consider final and those that require a final judgment to be entered before they will become final. The table does not cover every possible order a party can appeal. A party who wants to appeal an order must research the type of order, locate appellate decisions, and find out how that type of order has been treated in the past, and whether it is final or non-final, and therefore, not appealable.
If an order needs a final judgment on that order (such as a final judgment entered on an order granting summary judgment), and a party in the lower tribunal proceedings wants to appeal, that party should immediately file a motion with the lower tribunal for entry of final judgment on that particular order. That party should set that motion for hearing well before the thirty (30) days that the party has to file a notice of appeal will end. As will be explained below, timing is very important in starting an appeal.

E. What, Where, and When Does a Party Need to File Something to Start an Appeal?

Again, with some exceptions discussed later in this Handbook, usually only a final decision is appealable. Generally, a final decision is made after a hearing or a trial. The judge or jury has heard all the evidence and has made a decision.

The right to appeal a decision does not last forever. Similar to a statute of limitations, every court has a rule controlling the amount of time a party has to file an appeal after the final judgment. For example, in Florida Courts, a lower tribunal's final decision generally must be appealed within 30 days. See Florida Rule of Appellate Procedure 9.110(b) (civil cases), and Florida Rule of Appellate Procedure 9.140(b)(3) (criminal cases). That appeal is generally started by filing (not mailing) one original plus one copy of the notice of appeal with the lower tribunal (not the appellate court) and paying a filing fee. The clerk’s office of the lower tribunal has a schedule of the filing fees. Parties can bring a second copy of the notice of appeal and ask the deputy clerk in the clerk’s office to stamp the copy and for the party’s own records. If a notice of appeal is not filed within 30 days from the date of the final order or judgment, with few exceptions the right to appeal is lost forever. If the appellant does not file that notice of appeal within 30 days, the appellate court does not have the power, or “jurisdiction,” to hear the appeal, and the appeal, no matter how full of merit, will be dismissed.
After the notice of appeal is filed, the appellant has 10 days to file “directions to the clerk of the court” or a “statement of judicial acts to be reviewed” (if less than the full court file is to be assembled), or both, to have the lower tribunal’s appeals division assemble the important parts of the lower tribunal file and transfer it to the appellate court and to file designations to the court reporter (if there was a hearing transcript or trial transcript). See Florida Rule of Appellate Procedure 9.200. Those will be discussed in the chapter on Pulling Together the Record on Appeal.

With some important exceptions, the appellee has 10 days from the filing of the notice of appeal to file a "cross appeal," if he or she believes the lower tribunal made a mistake or “erred” in failing to grant some relief that the appellee sought. If a cross appeal is filed, the parties are called, "Appellant/Cross-appellee" and "Appellee/Cross-appellant." The rules to follow when a cross appeal has been filed are beyond the scope of this Chapter, and are discussed in the Chapter on Pulling Together the Record on Appeal.

In most civil appeals, the clerk of the appeals division in the lower tribunal prepares the record and sends it to the appellate court within 50 days of date of the appellant filing the notice of appeal. As the Chapter on Pulling Together the Record will explain in greater detail, the appellant has the responsibility to make sure a complete record is made for the appellate court to review. When the record is completed, the appellant should make arrangements with the lower tribunal's appeals division to look at the record to see what documents are in the record and what documents are missing.

The clerk of the appeals division then mails to the appellant and appellee the “index to the record on appeal,” which is a list of the pleadings, pre-trial motions, and a transcript of the trial testimony, including rulings and exhibits. The record index will assign page and volume
numbers to each item in the record so that the appellant, appellee, and the appellate court can find those items in the record if needed. The record index looks much like an index in a textbook. See Florida Rule of Appellate Procedure 9.200(a)(1), (d)(2).

There are important time limits for filing appellate briefs. The appellant's initial brief must be filed with the appellate court and mailed to the appellee within 70 days from the date of the filing of the notice of appeal. The appellee’s answer brief must be filed with the appellate court and mailed to the appellant within 20 days. If the appellant serves its initial brief by mail, the appellee can add five days to its deadline, or file and serve its answer brief within 25 days, rather than 20 days. The appellant has an opportunity to respond to the appellee’s arguments by filing with the appellate court and mailing to the appellee what is called a “reply brief” within 20 days. If the appellee serves its answer brief by mail, the appellant may also add five additional days to the 20-day deadline for serving the reply brief. As will be explained in greater detail in the section on motions in the appellate court, the appellate courts usually grant one timely 30-day motion for extension of time to file the briefs, if the opposing side does not object. See Florida Rule of Appellate Procedure 9.300. The Chapter in this Handbook on Attorney’s Fees and Costs on Appeal will explain when and how motions for appellate attorney’s fees and costs should be filed in the appellate court.

As will be explained in detail in the Chapter on Writing Appellate Briefs, briefs are the written arguments of the appellant and the appellee that are submitted to the appellate court before the parties' present their oral arguments. While the Chapter on Writing Appellate Briefs will explain in detail the requirements for the appellate briefs, the parties must remember that briefs have strict page limitations: 50 pages for the appellant's initial brief, 50 pages for the appellee's answer brief, and 15 pages for the appellant's reply brief. See Florida Rule of
Appellate Procedure 9.210(a)(5). Briefs that go over the set page limit will be rejected, unless the appellate court grants a motion for a party to file a brief with more than the page numbers permitted by the rules. These motions to exceed the page limits are rarely granted.

The appellant’s initial brief is the first and best opportunity for the appellant to explain to the appellate court what happened in the lower tribunal below, what mistakes were made, and why the appellant should get the relief that the appellant seeks on appeal. On the other hand, the appellee’s answer brief is the first and best opportunity for the appellee to explain to the appellate court what happened in the lower tribunal below, that mistakes were not made, and why the appellant should not get the relief that the appellant seeks on appeal.

After the parties have filed their briefs, the clerk of the appellate court may schedule the appeal for oral argument, although, in some situations, appeals are decided solely on the basis of the submitted briefs. A party must request oral argument through a separate motion served by the time the last brief of the party is due. See Fla. R. App. Pro. 9.320. Like the strict page limitations of the appellate briefs, the time allowed for oral argument in the appellate court is very limited. The general rule is that each side is allowed 20 minutes for oral argument. In a death penalty case, each side receives 30 minutes for oral argument. Even so, the court may allow more or less time for argument. The time limitations are strictly enforced. See, e.g., Fla. R. App. Pro. 9.320. At the beginning of oral argument, the appellant should request to “reserve time for rebuttal,” if the party wants the opportunity to reply to any arguments made by the opposing party. After the appellate court has heard oral argument, they will meet, decide the case, and issue a written decision or “opinion,” which may take two weeks or many months, depending upon the complexity of the issues. The Chapter on Oral Arguments will explain this in greater detail.
F. What Does the Appellate Court Review?

Appellate courts are limited in what they can review and decide. The appellant must outline the specific question it wants the appellate court to answer. The question may be as broad as, "Did the lower tribunal err in deciding in favor of the plaintiff?" or it may be very specific. Narrowing the question presented to the appellate court makes it easier for the court to fully understand what it is being asked to review and do.

It is sometimes said that the actions of the lower tribunal judge are on trial, not the actions of the parties to the original litigation. In fact, the parties do not have a chance to re-litigate the case before the appeals court. The trial level offers the only opportunity for parties to submit evidence, examine and cross-examine witnesses, and argue the facts and the law of the case. The appeals court only considers whether the trial was conducted properly and whether the outcome was reached by proper application of the law to the facts.

Only issues that were raised first in the lower tribunal can be challenged at the appellate level. The claimed errors must have been brought to the lower tribunal's attention while the lower tribunal still had the opportunity to correct the mistake. For example, if the appellant (or his/her attorney) did not object to the error during trial, the issue has been "waived" on appeal or otherwise has not been “preserved” for review by the appellate court.

At the appellate level, the court is restricted to the record before it. Only the evidence, argument, testimony, and objections considered by the lower tribunal may be considered by the appellate court. This body of pleadings and evidence are called the record. Every piece of evidence and every argument made by the parties' lawyers is recorded into one big document, the record, which is said to "close" once the trial is over and the final judgment issued. Once the record is closed, no more evidence can be included. Also, no more objections to evidence can be
made. There are a few exceptions to these general rules, but for the most part, a party cannot offer new evidence or new objections for the appellate court to consider that were not made to the lower tribunal.

The appellate court cannot reverse the decision of the lower tribunal judge based on a new document that the judge never got to see. The trial was the only opportunity to present that document. On the other hand, the plaintiff may argue on appeal that the judge should have allowed that document into evidence at trial, as long as the plaintiff made that argument and tried to get the judge to look at it in his original case. If the plaintiff tried to get the judge to consider the document and made sure that the document was included in the record for appeal, the plaintiff can then argue to the appellate court that the lower tribunal should have considered that document and, if it had, the result in the plaintiff’s case would have been different.

G. What is a Final, Appealable Order?

Whether an order is “final” for purposes of appellate review is a confusing area of appellate law. What is final is not always clear. The following questions help to decide what is final:

1. Is the order in writing, signed, and dated?
2. Has the order been filed with the clerk’s office?
3. Does the order end the case as a whole?
4. Other than the lower tribunal considering an attorney’s fees or costs motion, does the order leave nothing more for the lower tribunal to decide?
5. Does the order sound final? Does it state “for which let execution issue” or “go hence without a day” or “final judgment” or “dismissal of all claims with prejudice” or “case closed”? 
If the answer to these questions is “yes,” then the order is probably final. When in doubt, parties should consult an appellate attorney promptly after receiving the order to be certain the order is final and appealable. If the order is not final and appealable or if a notice of appeal is not timely filed, the appellate court will not have jurisdiction over the appeal and the appeal will be dismissed.

H. What Other Orders and Judgments Are Generally Considered Final and Appealable?

<table>
<thead>
<tr>
<th>Examples of Usually Final and Appealable</th>
<th>Examples of Usually Not Final, Not appealable</th>
</tr>
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<tbody>
<tr>
<td>Final judgment on Order of dismissal</td>
<td>Post-trial order denying motion requesting original judge hold hearing on attorney's fees and costs instead of retired judge who presided over final hearing - not appealable order notwithstanding Rule 9.130(a)(4), which authorizes appeals from &quot;orders entered after final order on authorized motions.&quot;</td>
</tr>
<tr>
<td>Summary final judgment</td>
<td>Order granting summary judgment (unless it contains language of complete finality)</td>
</tr>
<tr>
<td>Order of dismissal without prejudice--final appealable order if it would be time-barred if refiled.</td>
<td>Partial summary judgment denying affirmative defense of settlement Order denying motion to dismiss for failure to invoke arbitration clause</td>
</tr>
<tr>
<td>Order granting attorney’s fees and costs</td>
<td>An order granting remittitur</td>
</tr>
<tr>
<td>Cost judgment</td>
<td>Order granting motion to dismiss - not final</td>
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Post judgment orders denying or awarding attorney's fees are final, appealable orders of a separate and independent final judgment which require the filing of a separate notice of appeal and the payment of an additional filing fee. Therefore, the time for filing a notice of appeal from an order denying or awarding attorney's fees is tolled if a timely motion for rehearing is filed.

Post-judgment orders denying or awarding costs are final, appealable orders of a separate and independent final judgment which require the filing of a separate notice of appeal and the payment of an additional filing fee. Therefore, the time for filing a notice of appeal from an order denying or awarding attorney's fees is tolled if a timely motion for rehearing is filed.
appealable order if it never expressly dismisses the entire complaint.

Jurisdiction to review a non-final order denying an injunction does not confer plenary appellate jurisdiction on other matters.

Order granting summary judgment [or an order granting a motion to dismiss] that does not contain language making it a final order – not final, appealable order.\(^\text{23}\)

Orders denying motion to dismiss in a non-final appeal from an order certifying a class action - no appellate jurisdiction.

County court order granting in part and denying in part a motion for summary judgment - not a final, appealable judgment.

Order on one of two counts filed against defendants - not a final order for purposes of appeal; not a non-final order subject to interlocutory review under Florida Rule of Appellate Procedure 9.130.

Order setting aside a default is a non-final order and therefore not appealable.

Final judgment denying declaratory relief which reserves jurisdiction to issue a final

\(^{23}\)Parties can file a notice of appeal from an order granting summary judgment, putting a footnote in the notice of appeal that they recognize the order granting summary judgment is not final, and that they have filed a motion for entry of final judgment on the order granting summary judgment with the lower tribunal. The motion for entry of final judgment should be set with the lower tribunal for hearing right away. An amended notice of appeal should be filed with the appellate court as soon as that final judgment on the order granting summary judgment is entered. Alternatively, a notice of appeal can be filed with the lower tribunal, after which a motion to relinquish jurisdiction is filed with the appellate court asking the appellate court to give back jurisdiction to the lower tribunal to allow the lower tribunal to enter a proper final order as opposed to dismissing the case. Not all appellate courts prefer the second procedure, however.
judgment on counterclaims - no appellate jurisdiction yet.

Order outlining which parties would carry what burdens in trial being held pursuant to settlement of suit by some defendants - no appellate jurisdiction yet.

Order granting summary judgment on contract claim where there are remaining counts that arise out of the same transaction - not a final, appealable order.

Order granting insurer's motion to dismiss declaratory action on whether it had a duty to defend - not a final appealable order.

Order dissolving a temporary injunction – non-final order.

Partial summary judgment finding defendant liable for tortious interference with business relationship - not an appealable non-final order as there remained other counts involving same set of circumstances.

Order denying a motion for new trial is neither an appealable final order nor an appealable non-final order.

Order granting a motion for protective order from discovery – non-final, not an appealable order.

Order determining insurer has a duty to defend - non-final, non-appealable order.
Flowchart of an Appeal

Entry of a final appealable order ↓
within 30 days ↓
file notice of appeal with lower tribunal and pay the filing fee ↓
within 10 days ↓
appealing party ("appellant") files "directions to the clerk of the court" or "statement of judicial acts to be reviewed" or both ↓
also within 10 days from notice of appeal appellee must file a notice of appeal to cross appeal ↓
within 50 days ↓
clerk of the appeals division prepares the record on appeal and the index to the record on appeal ↓
within 70 days from the date of the filing of the notice of appeal ↓
apPELLant's initial brief must be filed with the appellate court and mailed to the appellee ↓
within 20 days from the date the initial brief was filed with the appellate court (plus five days if the initial brief was mailed) ↓
apPellee’s answer brief must be filed with the appellate court and mailed to the appellant ↓
within 20 days from the date the answer brief was filed with the appellate court (plus five days if the initial brief was mailed) ↓
apPELLant’s reply brief must be written, filed with the appellate court and mailed to the appellee ↓
all motions for attorney’s fees and costs must also be
filed with the court and mailed to opposing party
  (many appellants miss this deadline)
↓
clerk of the appellate court schedules the appeal for oral argument
  (no specific time frame when oral argument is scheduled)
↓
oral argument is presented
↓
the appellate court issues an opinion
↓
within 15 days from the date of the opinion
↓
any post-opinion motions for
  rehearing, rehearing en banc, and/or certification
  must be filed with the court and served on the opposing party
↓
the appellate court issues a decision on the post-opinion motion
↓
within 15 days
↓
the appellate court issues the mandate
  (the appellate court returns the jurisdiction to the lower tribunal)
CHAPTER 9: APPEALS FROM NON-FINAL ORDERS: 
WHAT CAN BE APPEALED, WHEN AND HOW

A. Introduction.

There are some orders that can be appealed before final judgment. A person does not always have to wait for a final appeal; that is, wait until the lower tribunal level case is over before that person can appeal. In some situations, a party to a lower tribunal decision can take an appeal from an order that is not a final judgment and is not “final”, as explained earlier in this Handbook. The kinds of orders that can be appealed immediately depend on the type of proceeding, for example, whether the case is a civil, criminal, administrative, workers’ compensation, or unemployment appeal, etc.

Florida’s District Courts of Appeal cannot consider all non-final orders by appeal, however. They can only consider and review certain kinds of non-final orders that Florida Rule of Appellate Procedure 9.130 says they can. Those kinds of orders that a party to a lower tribunal proceeding are found in Florida Rule of Appellate Procedure 9.130, and they include:

1. orders that have to do with venue (the county in which the case is being heard);
2. orders that grant, continue, modify, deny, or dissolve injunctions, or refuse to modify or dissolve injunctions;
3. orders that determine the jurisdiction of the person (whether the court has the authority and power to require the parties to do things);
4. orders that determine the right to immediate possession of property;
5. orders that determine the right to immediate monetary relief or child custody in family law matters;
6. orders that determine whether or not a party is entitled to arbitration;
7. orders that determine that, as a matter of law, a party is not entitled to workers' compensation immunity from suit;
8. orders that determine that a class should be certified (or that deny motions to certify a class);
9. orders that determine 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;
10. orders that grant or deny the appointment of a receiver, and terminate or refuse to terminate a receivership;
11. orders that determine that a governmental action has resulted in an extreme burden in cases under the Bert Harris Property Rights Protection Act.

Generally speaking, a district court cannot review—does not have jurisdiction over—any non-final orders that do not fall under the 9.130’s list.

B. When to Appeal a Non-Final Appeal.

A party must file a notice of appeal of a non-final order in the lower tribunal clerk’s office within 30 days of the date that the non-final order is rendered, meaning the date the order is signed and filed with the lower tribunal clerk’s office. Unlike a motion for rehearing of a final order, a motion for rehearing of a non-final order or judgment will not toll, or stop, the 30-days-to-appeal clock from running, the time to file a notice of appeal. The notice of appeal of a non-final order will still need to be filed within 30 days of the date the order is rendered, even if a party asks the trial judge to reconsider or rehear the order to be appealed.

Some non-final orders are entered after a final order is entered. Those non-final orders are reviewable as non-final orders. Other reviewable non-final orders are those entered on motions for relief from a final judgment filed under Florida Rule of Civil Procedure 1.540, Small

If a party cannot take an immediate appeal from a non-final order, there are other ways to try to get an appellate court to review the order before there is a final judgment. A party may ask the appellate court to review a particular order by filing an extraordinary writ. See the Chapter on Extraordinary Writs for a discussion on when to file such a writ.

There are some situations in which an order makes the case final as to one or more parties, even though the case is continuing against other parties. If an order ends the case as to some of the parties, but the case is still continuing as to other parties, a party may appeal that order. One example is an order dismissing a case with prejudice against one party, but not against other parties. That kind of an order may be a final judgment as to one party, but not as to others. This is usually called a partial final judgment. Appeals from partial final judgments that end the case against one party, but let it continue against other parties, are still appeals from final judgments; not appeals of non-final orders. Appeals from final judgments are discussed in the Chapter on the Appellate Process and Final Appeals.

If a party does not appeal from a non-final order that is listed in Florida Rule of Appellate Procedure 9.130 as appealable before final judgment is entered, that party does not lose the right to appeal after final judgment. That party can still get initial review of that non-final order on appeal from the final order or final judgment in the case. However, if the order makes the case final as to one or more parties, the party wanting to appeal that order must take any appeal as to those parties at once or lose the right to appeal at a later time.

A party can appeal more than one non-final order in a single appeal if all the orders being appealed were timely filed within 30 days of that date on which each order was entered.
Meaning, multiple non-final orders may be reviewed by a single notice of appeal if the notice is timely filed as to each of those orders. However, if one of the orders is not a reviewable non-final order, taking an appeal from a reviewable non-final order does not include that other order within the appeal. If the notice is not timely as to one order or more, the appellant (the party filing that notice of appeal) will not be able to obtain review as to the untimely orders.

C. Where the Appeals Need to Be Filed and What a Notice of Appeal Looks Like.

Appeals in these cases go to the same appellate court that would hear the appeal from the final judgment in the case. The notice of appeal (one original plus two copies, generally) of a non-final appeal are filed the same way they are filed in final appeals. See the Chapter on the Appellate Process and Final Appeals, and the Chapter on Pulling Together the Record on Appeal. In most cases, a party must file two copies of the notice of appeal, together with the filing fees, with the clerk of the lower tribunal within 30 days of rendition of the order to be reviewed. The notice must be designated as a notice of appeal of non-final order. It should be substantially in the following form:

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

CASE NO: ______________

____________________________,

Appellant,

v. 

____________________________,

Appellee.

NOTICE OF APPEAL
OF A NON-FINAL ORDER

/ 

NOTICE IS GIVEN that __________, (Defendant or Plaintiff)/Appellant, appeals to the
(name of the court that has appellate jurisdiction that has appellate jurisdiction), the order of this court rendered (date). A conformed copy of order is attached hereto. The nature of the order is a non-final order (state the type and name of the order)

(Name of Party)
(Address and Phone Number)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on (name and address of each other party) by (U.S. Mail or fax or hand delivery) this ___ day of ______, 20___.

(Appellant’s Name)

Note that if it is the defendant who is taking the appeal, the defendant’s name is listed first in the caption of the notice of appeal, instead of the plaintiff’s name. A conformed copy of the order or orders identified in the notice of appeal should be stapled to the notice.

D. The Key Ways that a Non-Final Appeal Is Different From a Final Appeal.

In the lower tribunal, while the non-final appeal is pending, the lower tribunal proceeding will keep going. Meaning, unless there is a stay order entered, the lower tribunal may continue moving forward with and deciding all matters, including trial or final hearing. The lower tribunal may not enter a final order disposing of the cause until the non-final appeal ends, also called the appeal’s conclusion. If the appeal is about questions of jurisdiction or venue, the lower proceedings will usually freely grant a request or motion for a stay, but motions seeking a stay should be filed promptly. See the Chapter on Stays Pending Review.
There are other ways that an appeal from a non-final order in a civil case differs from an appeal after final judgment. There are two main ways that an appeal from a non-final order is different. The first is the date when the first, or initial, brief is due. Appellant's initial brief should be served within 15 days of filing the notice of appeal. Those briefs that are due after the first brief (the appellee’s answer brief and the appellant’s reply brief) are served in the same time periods as in an appeal after final judgment. The second is how an appellant provides the appellate court with the documents from the lower tribunal that the appellate court must have to decide the appeal. In a non-final appeal, unlike appeals from final judgments, the clerk of the lower tribunal does not prepare a record on appeal and send it to the appellate court. Instead, the appellant in a non-final appeal must put together and must file and serve (meaning, mail or hand deliver) on the other side at the same time that the initial brief is filed, the important documents that the appellate court needs to have to decide the non-final appeal, organized and bound into the appendix, described by Florida Rule of Appellate Procedure 9.220.

The appendix in a non-final appeal must contain the order that the appellant wants the appellate court to review, and the portions of the testimony and pleadings that the appellant thinks are necessary to help the appellate court understand the issues that the appellant wants to present on appeal. It must also contain an index, or table of contents, in the beginning of the appendix to help the appellate court find the specific items that the appellant wants the appellate court to consider. That appendix may be included with the brief if it is separated from the brief with a tabbed divider, or it may be separately bound, with an appropriate cover page and its own certificate of service. If the appellate court determines that the appendix is incomplete, it may direct a party to supplement the appendix with the missing parts of the lower tribunal file that the appellant decides it needs to review the non-final appeal.
In terms of the number of copies of the brief and appendix to serve and file in a non-final appeal, if the appellant is appealing a county court decision and asking the circuit court to review a decision of the county court, the appellant must send the original and one copy of the initial brief and of the appendix to the circuit court (in addition to the copies to be sent to the other parties). If the appellant is appealing a circuit court decision and asking the district court of appeal to review a decision of the circuit court, the appellant must send an original and 3 copies of the brief and of the appendix to the court (in addition to the copies to be sent to the other parties).

E. Special Issues for Non-Final Appeals in Criminal Cases.

In criminal cases, a defendant may appeal, in addition to final judgments (including withholding of adjudication and sentences), orders entered after final judgment or after a finding of guilt. Those orders include orders revoking or modifying probation or community control, or both, or orders denying relief in post conviction proceedings under Florida Rules of Criminal Procedure 3.800(a), 3.850, or 3.853.

The State in a criminal case may appeal (1) orders 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; (2) orders suppressing before trial confessions, admissions, or evidence obtained by search and seizure; (3) orders granting a new trial; (4) orders arresting judgment; (5) orders granting a motion for judgment of acquittal after a jury verdict; (6) orders discharging a defendant under Florida Rule of Criminal Procedure 3.191; (7) orders discharging a prisoner on *habeas corpus*; (8) orders finding a defendant incompetent or insane; (9) orders finding a defendant mentally retarded under Florida Rule of Civil Procedure.
3.203; (10) orders granting relief under Florida Rule of Criminal Procedure 3.853; (11) orders ruling on a question of law if a convicted defendant appeals the judgment of conviction; (12) orders withholding adjudication of guilt in violation of general law; (13) orders imposing an unlawful or illegal sentence or imposing a sentence outside the range permitted by the sentencing guidelines; (14) orders imposing a sentence outside the range recommended by the sentencing guidelines; (15) orders denying restitution; and (16) as otherwise provided by general law for final orders. See Fla. R. App. P. 9.140(c). The State, as provided by general law, may also appeal to the circuit court non-final orders rendered in the county court.

The procedures in criminal non-final appeals differ from those in civil non-final appeals. The criminal defendant’s notice of appeal must be filed with the clerk of the lower tribunal with copies to the State Attorney and the Attorney General within 30 days of the date the order was rendered. In criminal appeals, the clerk of the lower tribunal is to prepare and serve the record on appeal within 50 days of the filing of the notice of appeal and the initial brief is to be served within 30 days of service of the record. All further briefs (the answer and reply briefs) follow the same time frame as for civil appeals.

In cases of summary denial (without a hearing) of petitions for post-conviction relief under Florida Rule of Criminal Procedures 3.800(a) or 3.850, the clerk of the lower tribunal is to send the appellate court the motion, the order, any motion for rehearing, and any order denying rehearing, plus all attachments to any of these items. The record on appeal in these cases is discussed more in the Chapter on Pulling Together the Record on Appeal. No briefs are required, but the appellant may file a brief within 15 days of filing the notice of appeal.

F. Special Issues for Non-Final Appeals in Juvenile Delinquency Cases

In juvenile delinquency cases, the State may appeal: (1) orders dismissing a petition for
delinquency or any part of it, if the order is entered before the beginning of an adjudicatory hearing; (2) orders suppressing confessions, admissions, or evidence obtained by search and/or seizure before the adjudicatory hearing; (3) orders granting a new adjudicatory hearing; (4) orders arresting judgment; (5) orders discharging a child under Florida Rule of Juvenile Procedure 8.090; (6) orders ruling on a question of law if a child appeals an order of disposition; (7) orders constituting an illegal disposition; (8) orders discharging a child on habeas corpus; and (9) orders finding a child incompetent pursuant to the Florida Rules of Juvenile Procedure. The affected child, parent, legal guardian, or custodian may appeal (1) an order adjudicating or withholding adjudication of delinquency or disposition order; (2) orders entered after an order adjudicating or withholding adjudication of delinquency, including orders revoking or modifying community control; (3) an illegal disposition; and (4) any final order as prescribed by law.

The procedures in non-final juvenile delinquency cases differ from those in non-final civil appeals in a number of ways. The State’s notice of non-final appeal must be filed in the lower tribunal within 15 days of the order, and before the beginning of the adjudicatory hearing. If the child is in detention and the case is stayed during an appeal by the State, the child is to be released if the offense would be bailable if the child were charged as an adult; otherwise, the lower tribunal has discretion to release the child. All references to the child are to be by initials, not by name, and all papers are treated confidentially.

There are also several types of orders that are immediately appealable in juvenile dependency cases or in cases involving the termination of parental rights. In juvenile dependency, termination of parental rights, and cases involving children and families in need of services, only certain persons may appeal to the appropriate court within the time and in the manner that the Florida Rules of Appellate Procedure prescribe. Those persons are limited to:
any child, any parent, guardian ad litem, or legal custodian of any child, any other party to the proceeding affected by an order of the lower tribunal, or the appropriate state agency as provided by law.

The procedures in non-final juvenile dependency and termination of parental rights cases differ from those in non-final civil appeals. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed (See Rule of Appellate Procedure 9.146; § 39.510, Florida Statutes (2007); § 39.815, Florida Statutes (2007)). All references to the child or the parents are to be by initials, not by name, and all papers are treated confidentially. The courts are to give priority to appeals in these cases. A termination of parental rights order with placement of the child for later adoption is suspended while the appeal is pending, although the child continues in custody. See Chapter on Appeals of Orders Rendered in Dependency and Termination of Parental Rights Proceedings.

G. Special Issues for Non-Final Appeals in Workers’ Compensation Cases.

In workers’ compensation cases, an appeal can be taken from any non-final order that determines:

(1) jurisdiction (the ability to hear the case);

(2) venue (the county where the case is heard); or

(3) compensability, provided that the order expressly finds an injury occurred within the scope and course of employment and that the claimant is entitled to receive causally related benefits in some amount, and provided further that the lower tribunal certifies in the order that determination of the exact nature and amount of benefits due to the claimant will require substantial expense and time.

The procedures in non-final workers’ compensation appeals differ from civil non-final
appeals in several important ways. The notice of appeal, already outlined above, must also include a brief summary of the types of benefits affected by the order. It must also include a statement setting forth the time frames involved. Such a statement could be, for example: “I hereby certify that this appeal affects only the following periods and classifications of benefits and medical treatment”, followed by a list of the benefits and time periods involved in the appeal. Such benefits may be withheld pending the outcome of the appeal. Within 15 days after filing the notice of appeal, the appellant must file an original and 3 copies of the brief with the court, and serve copies on the other side. The brief must be accompanied by an appendix that contains the order to be reviewed, any other documents or transcripts which were filed in the lower tribunal and which would be helpful to the appellate court in understanding the case on appeal, and at the beginning of the appendix an index of the contents of the appendix. See the Chapter on Workers’ Compensation Appeals and the Chapter on Pulling Together the Record on Appeal for more details.

H. Special Issues for Non-Final Appeals in Administrative Law Cases.

The Florida Statutes, in particular Chapter 120, the Administrative Procedure Act, dictate whether a non-final order of an administrative agency can be appealed. In many situations, the Administrative Procedure Act, Chapter 120, Florida Statutes, determines whether a non-final administrative agency action may be immediately appealed. Section 120.68, Florida Statutes, provides that non-final agency orders may be appealed if review of the final agency decision would not provide an adequate remedy. If a would-be appellant’s case is not one falling under and governed by Chapter 120, Florida Statutes, that appellant needs to check the particular statutes that govern that appellant’s type of case to see if appellant can appeal a particular non-final order.
The procedures for what needs to be done to obtain review of a non-final order in an administrative law case are different from the procedures in other types of cases. In administrative cases, an appellant can file a petition for review of non-final agency action under the Administrative Procedure Act, acting in agreement with Florida Rules of Appellate Procedure 9.100(b) and (c). Instead of filing a notice of appeal, an appellant must file a petition for review, along with the filing fees, within 30 days of rendition of the order to be reviewed. The administrative judge, the hearing officer, or the individual members of the administrative agency are not named as respondents (opposing parties). A copy of the petition must be served on the administrative agency. The petition must include the name of the court that is going to be reviewing the order, the name and designation of all parties on each side of the case, the basis for the court’s jurisdiction (authority to hear the case), the facts on which appellant relies in seeking relief, the nature of the relief sought (what the appellant wants the appellate court to do), and the legal argument with supporting cases, statutes, and rules. The appellant must sign and certify that he/she has served copies to the opposing side and to the administrative agency.

The appellant must also file and serve an appendix in accordance with Florida Rule of Appellate Procedure 9.220, which may not contain any matter not made part of the record in the administrative agency. The appendix must contain the order that the appellant wants the court to review and should contain any other documents that the appellant thinks the court will need to decide the appeal. If the court makes a preliminary, or initial, determination that the appellant’s petition is within its authority to review and may state a claim on which it can grant relief, the court will issue an order to show cause and require the other side to file a response and explain why the relief the appellant seeks should not be granted. The court will then generally give the appellant a chance to reply to that response. The court will then make its decision.
In cases not governed, or controlled, by the Administrative Procedure Act, different procedures (often a petition for writ of certiorari) may be provided. The appellant should review the particular statutes that govern the case in question to see what procedures may apply. See also and compare with the Chapter on Administrative Appeals and the Chapter on Pulling Together the Record on Appeal for more details.
CHAPTER 10: EXTRAORDINARY WRITS—CIVIL

A. Introduction.

An extraordinary writ is a different way that an appellate court may review the actions of the lower tribunal in special circumstances. See Florida Rule of Appellate Procedure 9.100. An extraordinary writ can be filed, provided certain criteria are satisfied, with the appellate court while the case is still going on in the lower tribunal. It is not the same as an appeal.

Firstly, the parties to a petition have different titles. If a party files a petition for writ, instead of being an appellant, that party is called a petitioner. This is because the party files a petition directly in the appellate court. The parties on the other side of the case are called the respondents. If a party files a petition for writ of mandamus or prohibition, the judge in the lower tribunal must also be named as a respondent in the body, but not the caption, of the petition. Unlike other respondents, the lower tribunal judge’s name should not appear in the caption of the petition. The lower tribunal judge’s name should appear only in the text, or content, of the petition.

Extraordinary writs are called extraordinary because they are very unusual. Appellate courts do not grant petitions for extraordinary writs except in very special circumstances. It is very hard to meet the requirements for an extraordinary writ. Even if all the requirements are met, the appellate court can still deny the writ and not decide the issues raised in the petition. Extraordinary writ petitions are used by the appellate courts only to fix a miscarriage of justice that cannot be fixed any other way.

B. Kinds of Extraordinary Writs in Civil Cases.

There are many different kinds of extraordinary writs. Each one serves a different purpose. Each is proper only in specific circumstances.
1. Writ of Mandamus.

If an official is required by law to perform a duty and refuses or fails to perform it, a party can file a petition for writ of mandamus. An appellate court may issue a writ of mandamus to force the lower tribunal, or another government officer, to perform an official duty.

The requirements for a writ of mandamus are:

1. The petitioner must have a clear legal right to have the trial judge or other officer perform an act;
2. The lower tribunal judge or other government officer must have a clear legal, ministerial duty to perform; and
3. The petitioner must have no other adequate legal remedy.

An appellate court, for example, may issue a writ of mandamus to require a clerk of a lower tribunal to accept a particular document for filing if the clerk is required to accept it, but has refused to accept it. An appellate court may also, for example, issue a writ of mandamus to require a lower tribunal to hold a hearing within a certain amount of time. That is not forcing the official to use discretion. However, an appellate court cannot use the writ to tell the lower tribunal how to decide the case because that would be forcing the official to use his discretion in a certain way.
2. Writ of Prohibition.

Prohibition is a writ used to stop a lower tribunal from doing something that it does not have jurisdiction to do. In other words, it is used to stop a lower tribunal from doing something unlawful or improper. The petition for writ of prohibition must be filed before the lower tribunal takes the action that the petitioner wants to prevent.

District courts of appeal can issue writs of prohibition to state agencies. The Florida Supreme Court can, on the other hand, issue writs of prohibition only to courts, not to other state agencies.

When the appellate court issues an order to show cause in a prohibition proceeding, it stays the proceedings below, unless its order states otherwise. A stay puts all of the lower tribunal proceedings on hold until the appellate court makes a decision. See Chapter on Stays for more details.

3. Writ of Certiorari.

Certiorari, also called “cert,” lets an appellate court review an order of the lower tribunal that departs from the essential requirements of law when there is no other means of appeal. It allows the appellate court to decide whether the lower tribunal is handling the proceedings in a regular way and according to the law. Certiorari gives the appellate court the power to reach down and stop a miscarriage of justice where no other remedy exists.

To get a writ of certiorari, a petitioner must show:

(1) That the action of the lower tribunal is a departure from the essential requirements of law. This requires more than just an error by the lower tribunal. Departure from the essential requirements of law means there is a violation of a clearly established principle of law. This violation results in a real miscarriage of justice or a denial of due process. Clearly
established law can come from many sources, including controlling case law, rules of court, statutes and constitutional law.

(2) That the error must result in an irreparable injury to the petitioner throughout the remainder of the proceedings. The irreparable injury must be more than the time and expense of an unnecessary trial. An example of irreparable injury is an order violating a party’s constitutional rights that cannot be fixed by an appeal at the end of a case. Such an order might be a broad “gag order” preventing the plaintiffs and their attorneys from discussing their case with the media with no showing that the gag order was necessary to protect the fairness of the proceedings. Another example is an order allowing temporary visitation by a grandmother over the objection of a mother, and setting a future hearing to determine permanent visitation rights. This type of order would violate the mother’s constitutional right to privacy. A later determination could not change the violation that already would have taken place.

(3) That there is no adequate remedy by appeal from a final judgment. This is also known as irreparable harm. If the error is something that the appellate court can fix in an appeal at the end of the case, the appellate court will not grant a writ of certiorari because there is no irreparable harm. For example, a denial of a trial by jury when the petitioner is entitled to a jury trial does not cause irreparable harm that cannot be fixed on appeal. This is because an appellate court can order a new trial following an appeal at the end of the case.

In civil cases, an area where certiorari is often requested is discovery. Discovery is the process before trial in which the parties exchange factual information through depositions, interrogatories, and production of documents. Not every incorrect discovery order creates certiorari jurisdiction. However, certiorari is sometimes granted when a court orders a party to
provide information that the party should not have to provide, or what is called privileged information.

A discovery order that requires a party to produce irrelevant documents does not necessarily cause irreparable harm. Certiorari is hardly ever granted just because the documents ordered to be produced are irrelevant. However, an order granting discovery of privileged material can cause irreparable harm, because once the party turns over information it should not have to disclose, it is impossible to get the information back. This is often referred to as a “cat out of the bag” situation.

An order denying discovery is usually not reviewable by certiorari. There are only a few times when an appellate court might issue a writ of certiorari following such an order. For example, certiorari might be proper if the order does not allow discovery from a key witness where there would be no realistic way to determine after judgment what that witness would have said or how it would have affected the case.

Generally, with very few exceptions, certiorari will not be granted to review the denial of a motion to dismiss. This is because there is an adequate remedy by appeal at the end of the case.

If a party petitions for a writ of certiorari and the appellate court denies it without an opinion, that does not end the entire case. The rest of the case continues in the lower tribunal.

Unlike the district courts of appeal, the Florida Supreme Court does not have jurisdiction to grant writs of common law certiorari.


The State of Florida gives its citizens and taxpayers certain rights or privileges. Quo warranto is used by citizens to test their abilities to use those rights or privileges. For example, a
petition for writ of quo warranto has been used to dispute the inclusion of certain lands in a municipality. Quo warranto stopped the City of Coral Gables from exercising jurisdiction over part of Key Biscayne. Quo warranto has also been used to decide whether the Florida Legislature’s override of the governor’s veto is constitutional.

Citizens and taxpayers are the people who can ask for the writ of quo warranto to enforce their public rights. Members of the general public do not need to show any real or personal interest in the enforcement of a public right. They just need to show that there is a public interest in the right. Quo warranto is a very unusual writ that is hardly ever used.

5. All Writs.

The term “all writs” refers to the power of a district court of appeal to issue any writ necessary or proper to the complete exercise of its jurisdiction. This includes the power to direct the lower tribunal to carry out the appellate court’s mandate, or to follow the instructions in the appellate court’s decision after an appeal.

All writs jurisdiction is not a separate basis to seek review in the appellate court. In other words, without an ongoing case in the appellate court, over which the appellate court already has jurisdiction, a party cannot ask for all “writs jurisdiction”. All writs jurisdiction exists only in connection with an existing case. The purpose of all writs jurisdiction is to protect the appellate court’s already existing jurisdiction in a case.

Some people have tried to use all writs jurisdiction to get the Florida Supreme Court to review a decision of a district court of appeal, such as a per curiam affirmed decision without a written opinion. However, the Florida Supreme Court does not have all writs jurisdiction to review that kind of decision.
C. Important Appellate Rules.

Which of the Florida courts have jurisdiction to issue extraordinary writs is discussed in Florida Rule of Appellate Procedure 9.030. That Rule explains which Florida courts have jurisdiction to issue extraordinary writs. Rule 9.030(a)(3) describes the Florida Supreme Court’s ability to issue extraordinary writs. The Florida Supreme Court can issue writs of prohibition to courts. It can also issue all writs necessary to the complete exercise of its jurisdiction, in other words, any writ that would allow the Florida Supreme Court to do its job. The Florida Supreme Court can also issue writs of mandamus and quo warranto to state officers and state agencies. Finally, the Florida Supreme Court can issue writs of habeas corpus.

Florida Rule of Appellate Procedure 9.030(b)(3) explains the jurisdiction of the district courts of appeal to issue extraordinary writs. District courts of appeal can issue writs of mandamus, prohibition, quo warranto, and certiorari. These courts can also issue all writs needed to the complete exercise of their own jurisdiction. Finally, judges of district courts of appeal can issue certain writs of habeas corpus.

Finally, Florida Rule of Appellate Procedure 9.030(c)(2) allows circuit courts to issue writs of certiorari to review non-final orders of county courts. It also allows circuit courts to issue writs of mandamus, prohibition, quo warranto, and habeas corpus. Like the other courts, circuit courts can also issue all writs needed to the complete exercise of their own jurisdiction.

D. Procedure for Extraordinary Writs.

1. The Contents of a Petition.

Unlike an appeal, a petition for an extraordinary writ does not start by filing a notice of appeal. It starts by filing a petition. The petition is like the initial brief. It contains all of the
legal arguments. Florida Rule of Appellate Procedure 9.100 sets out what a petition must include:

A. The basis for invoking the jurisdiction of the court. In this part of the petition, the party should explain to the court why it has the power to grant the requested writ. The party should include the citation to the appellate rule that grants this power.

B. The facts on which the petitioner relies. The party should set out, as clearly and briefly as it can, the facts in the record that show the party is entitled to the writ it is asking the court to grant.

C. The nature of the relief sought. In this section, the party must tell the court what it wants the court to do. For example, a petition for writ of mandamus might ask the appellate court to order the lower tribunal to hold a hearing.

D. Legal argument in support of the petition and appropriate citations of authority. In this part of the petition, the party must state its arguments and identify the cases, statutes, rules, or constitutional provisions that support the arguments.

2. The Appendix That Must Accompany the Petition.

If a party is asking the appellate court for an order directed to a lower tribunal, it must also provide the appellate court with an appendix. The appendix must be prepared as described in Florida Rule of Appellate Procedure 9.220. It should have an index along with a copy of the lower tribunal’s order that the party wants reviewed. The index should list, in order of the date they were filed below, the documents in the appendix and the pages where they appear. The appendix can also have copies of other parts of the record and other authorities. In the case of a petition for writ, the appendix needs to be separately bound and separated from the petition. It can either be completely separate, or it can be separated by a divider or tab.
When writing the statement of facts, the party should refer to the pages in the appendix that support the facts. For example, if the statement of facts includes something that a witness testified to at a hearing, the party should give the page of the transcript in the appendix where that testimony appears. A party should not hold back information that hurts its position or material that the opposing party is likely to cite. To do so may expose that party to a sanction or penalty from the appellate court.


A petition for a writ cannot be longer than 50 pages. The requirements for the margins and fonts are the same as the requirements for an appellate brief. A certificate of compliance is also required. This tells the court that the party has complied with the requirements of the appellate rules. A certificate of service is also required. This shows that the party has served a copy of the petition on all opposing parties, and also sent a copy to the trial judge.

The petition is filed directly in the appellate court. If a party files the petition in the wrong court, the court has the power to transfer it to the right court, not to dismiss it. A filing fee of generally $300 is required unless the party has been determined to be indigent. The party should call the appellate court clerk’s office to confirm that court’s filing fee.

4. Responding to Petitions.

If a party receives a petition for an extraordinary writ from the opposing party, it does not need to file a response. A response is only necessary if the appellate court issues an order requiring one. Because petitions for extraordinary writs are rarely granted, the appellate court will often deny the petition without a response from the other side.
Sometimes the appellate court will issue an order to respond. In other cases, the court will issue an order to show cause. An order to show cause requires the respondent to serve a response explaining why the writ should not be granted.

Neither a petition nor an order to show cause automatically stops the proceedings in the lower tribunal. The only exception to this relates to petitions for writs of prohibition. If the court issues an order to show cause after a petition for writ of prohibition, the lower tribunal cannot take any further action unless the appellate court says it can or until the appellate court decides the case.

5. Time Limits.

There are important time limits to remember.

A petition for writ of prohibition must be filed before the lower tribunal takes the action that the petitioner wants to stop the trial judge from taking.

There is a 30-day time limit for filing a petition for writ of certiorari. The time runs from the date of rendition of the order of the lower tribunal. The 30-day time limit may apply even if the petition being filed is called something else. For example, let’s say that a party calls its petition a petition for writ of mandamus, and does not file it until after 30 days. If the appellate court decides that it is really a petition for writ of certiorari, it will be too late for the appellate court to review the action of the lower tribunal because the petition was filed more than 30 days after the rendition of the lower tribunal’s order. The appellate court will deny an untimely petition.

Another important part to remember is that filing a motion for rehearing of a non-final order does not extend the time for filing the petition. If a party wants to file a petition for a writ of certiorari asking the appellate court to review a lower tribunal’s order, and the party moves for
rehearing or reconsideration in the lower tribunal, the time for filing a petition runs from the date of the original order. It does not run from the date of the rehearing. The lower tribunal judge cannot extend the 30-day time limit for filing a petition for writ of certiorari.

E. Conclusion.

An extraordinary writ will not be granted to fix an ordinary mistake in the middle of a case. A party should carefully think about whether to file a petition for an extraordinary writ. A petition for an extraordinary writ should only be filed if a party truly believes that there has been a miscarriage of justice that simply cannot be fixed later or any other way.
CHAPTER 11: STAYS PENDING REVIEW

A. Introduction.

Once a judgment has been entered against a party, the plaintiff can try to collect on the judgment (if the judgment is for money) or enforce the order. The plaintiff can collect or enforce a judgment, even if the other party appeals the judgment. The party who appeals (the “appellant”) may want to try to “stay” enforcement of, or execution on, the order or judgment. A stay prevents the winning party from trying to collect on the judgment or enforce the order. The appellant does not have to seek a stay to appeal, but a stay can help protect the appellant from collections and other enforcement proceedings until the appellate court decides the appeal.

B. Lower tribunal’s Continuing Power to Handle “Stay” Motions.

Usually, a party seeking a stay during an appeal must file a motion in the lower tribunal or administrative agency that decided the order that the party is appealing. Under Florida Rule of Appellate Procedure 9.310 and Florida Statute section 45.045, the lower tribunal or administrative agency has the power to grant, deny or modify the terms of a stay, even after a notice of appeal has been filed and even if the judgment is only for money. Sometimes, the appellate court will consider a stay request first, but it is usually required to file a motion for stay in the lower tribunal or in the administrative agency which decided the case. After the lower tribunal or administrative agency has ruled on a request for a stay, that decision can be reviewed by the appellate court. See “Review of Stay Orders” below.

C. Factors for Imposing a “Stay” Pending Review.

A lower tribunal must try to protect the party who won. That means that, if the order appealed is not for a specific amount of money, the lower tribunal will probably require the losing party to post a “bond” for a reasonable amount of money that the judge thinks will protect
the winning party until the appeal is finished. A bond is either cash deposited in the court registry or a promise to pay a certain amount of money that is guaranteed by a surety company. A surety company is like an insurance company. The clerk’s office of the court can provide the names of Florida approved surety companies, which have their own requirements for obtaining a bond.

D. Money Judgments.

Under Florida Statute section 45.045, which does not apply to certified class actions, a bond will never be more than $50 Million for each appellant, although this number may change in the future. Some Florida tribunals have ruled that the only way to stay execution or the enforcement of a money judgment is by posting cash or a surety bond and this may remain a subject of disagreement in certain courts. But section 45.045 does give the lower tribunal the power to lower the amount of a bond on a money judgment or eliminate the bond requirement to stay execution unless the appellant has an insurance or indemnification policy that provides insurance related to the judgment that is being appealed. Even under the statute, if you are asking a court to apply section 45.045, doing additional research will help you determine what your local courts have decided.

According to Section 45.045, if the lower tribunal lowers the bond amount or allows a stay without requiring a bond, the appellee is allowed to take discovery to make sure that the appellant has not hidden or spent money in a way that would make collection of a judgment more difficult. If it is discovered that the appellant has hidden or spent money, the lower tribunal then may, upon request from the appellee, change the amount of the bond or require the appellant to post a full bond in the amount explained below.
Unless the lower tribunal allows a lower bond or orders a stay without requiring any bond under section 45.045, the bond amount required is the face value of the judgment plus two years of interest at the statutory interest rate. The current interest rate can be obtained from the local court clerk or an authorized surety company. Posting a bond automatically stays execution or the enforcement of the judgment. A party posting a bond should send all parties a “Notice of Filing Supersedeas Bond,” so that everyone knows about the stay.

E. Public Entities and Officers.

In a civil case, if a judgment is entered against a state, public officer in their official capacity, board or commission member, or other public entity, and they appeal, they get an automatic stay and do not have to post a bond. The lower tribunal does have the authority, however, to remove or modify the automatic stay, and that decision can be reviewed by the appellate court as explained below. If a court order relates to a public records or meeting issue, and requires the meeting or records to be open to the public, an appeal of that order by a government agency will activate the automatic stay. This stay will only be in effect for 48 hours, unless a court decides otherwise upon request by the government agency.

F. Review of a Stay Order.

After the lower tribunal or administrative agency decides a stay issue, the order relating to the stay can be reviewed and changed by the appellate court. A new appeal is not necessary. Instead, the party seeking appellate review files a motion in the appellate court in which the appeal was filed to review the lower tribunal’s stay order. The party seeking appellate review of a stay order must identify facts to support an argument that the lower tribunal was mistaken (“abused its discretion”) when it denied or granted the stay motion.
G. Administrative Stays.

In a case before an administrative agency governed by Chapter 120, Florida Statutes, the “Administrative Procedure Act,” either the agency or the appellate court may grant a stay. Usually, a stay must first be sought by filing a motion for a stay in the administrative agency. Either party can ask the appellate court to review the agency’s ruling on a motion for a stay.

A party seeking a stay of an agency order suspending or revoking a license (other than a driver’s license), must file the motion for stay in the appellate court. The agency must respond to the motion for a stay within 10 days. The party seeking a stay can also ask the court to order the administrative agency to respond faster by filing another motion explaining why the court should quickly rule on the motion for a stay. The appellate court must grant the stay if the agency does not respond. If the agency does respond, it must prove to the appellate court that a stay would cause a probable danger to the health, safety, or welfare of the state. Otherwise, the court will grant the stay.

Some administrative revocation and suspension orders cannot be stayed. For example, if a driver refuses a blood, breath or urine test following a traffic stop, this results in an administrative suspension of the driver’s license. The driver’s license suspension may not be stayed during an appeal of the suspension/revocation order.

H. Length of the Stay.

A stay lasts until an appellate court issues its mandate, even if one of the parties asks the Florida Supreme Court to review a decision. The only method for obtaining a longer stay once an appellate court decides a case and rules upon any motions for rehearing, certification or clarification is to file a motion to stay the mandate in the appellate court. Otherwise, the court clerk will send the mandate to the parties and to the lower tribunal 15 days after an opinion is issued.
final (15 days after the opinion or 15 days after the appellate court decides a timely-filed motion for rehearing, certification or clarification).

I. Conclusion.

Because an appeal does not automatically stay execution or enforcement of most orders and judgments, asking for a stay is a very important way to protect the rights of an appellant while the appeal is pending. In addition to this Chapter of the Handbook, the appellant seeking a stay should also review Florida Rules of Appellate Procedure 9.310 and 9.190, Florida Statute section 45.045, and recent cases that discuss those rules and the statute.
CHAPTER 12: PRO SE ANDERS BRIEFS: WHAT A CRIMINAL DEFENDANT SHOULD DO WHEN HIS/HER ATTORNEY FILES AN ANDERS BRIEF

A. Introduction.

This Chapter is intended to aid a defendant whose appellate attorney has filed an *Anders* brief in the defendant’s direct appeal from a criminal conviction and sentence or post-conviction motion. This Chapter describes how to write a pro se or “self-represented” brief when appellate counsel has filed an *Anders* brief, the appellate court has granted appellate counsel’s motion to withdraw from the appeal, and the court permits the defendant to proceed in the appeal without appellate counsel.

B. What is an *Anders* Brief and Why Would an Attorney File One?

An appellate attorney that the court appoints (a court-appointed appellate attorney) does not owe the client the duty of a perfect appeal. But the appellate attorney does owe the client a duty to support the appeal for the client to the best of his/her ability. The Rules Regulating the Florida Bar (the code of ethics that regulate all attorneys who practice in Florida) require that an appellate attorney examine the lower tribunal record to determine what, if any, issues should be appealed. Attorneys are forbidden by their code of ethics from filing “frivolous” documents in courts or other lower tribunals. Frivolous documents are ones that have no serious purpose or meaning. Sometimes, the attorney representing a defendant finds that the case does not have any issues to raise in an appeal that are not frivolous. Meaning, all of the issues that an attorney might see to raise on appeal have no serious purpose or meaning. In those circumstances, Florida law allows the attorney to file an *Anders* brief telling the court that he/she believes the appeal does not have merit. If the attorney files an *Anders* brief, he/she may also file a motion to
withdraw from representing the defendant. Whether the motion to withdraw is required varies from appellate court to appellate court.

In the *Anders* brief, the attorney refers to anything in the record that might possibly support the appeal. When the attorney files an *Anders* brief, he/she must send a copy of it to the defendant. In addition, the attorney may file a motion to allow the defendant to file his/her own brief. The appellate court will then enter an order granting the motion and allowing the defendant the chance to file a brief in his/her own behalf. This brief is commonly referred to as a “pro se brief.” The defendant may raise any issues he/she wants the appellate court to consider in the pro se brief.

When an *Anders* brief is filed, the appellate court must perform a full review of the record to discover if any debatable issues exist. The appellate court will consider the *Anders* brief and, if one is filed, the pro se brief. Additionally, the court will consider the state’s answer brief and any reply brief, if those are filed. After the court has reviewed the record and all briefs, it will issue a decision.

C. Receiving the *Anders* Brief and the Record on Appeal.

When appellate counsel files an *Anders* brief, he/she must send a copy of that brief to the defendant who appellate counsel is representing. In addition, appellate counsel files a motion to withdraw and to allow the defendant to file a pro se brief. The appellate court will then issue an order granting the defendant a specific number of days, usually 30 days, to file the pro se brief. When the appellate court issues that order, the appellate attorney will send the record directly to the defendant or, if the office who appointed the appellate attorney has a policy that requires that

\[24\text{Anders v. California, 386 U.S. 738 (1967).}\]
the record be returned to that office, then the attorney will return the record to the assigning office which will, in turn, send the record to the defendant.


The pro se brief must comply with Florida Rule of Appellate Procedure 9.210. Please refer to the Writing an Appellate Brief Chapter of this Handbook for directions on how to prepare the brief and what the brief should include.

E. Prison Law Libraries & Inmate Law Clerks.

Florida prisons are required to provide law libraries to ensure that inmates have adequate legal materials to prepare court documents. The prison will also assign inmate law clerks who have completed a training class to assist inmates in doing legal research and preparing court documents. The rules regulating the Florida Bar and the Florida Supreme Court forbid the “unlicensed practice of law.” That means a non-lawyer (even an inmate law clerk, a lawyer from another state or law student) cannot give legal advice, tell you what you should/should not do or say, or speak for anyone in court proceedings without a license to practice law in the State of Florida. In other words a non-lawyer without a license to practice law in the State of Florida, cannot give legal advice to anyone or attempt to act as another person’s lawyer – either in written papers or in court appearances.

The Department of Corrections has rules regarding the use of law libraries. Because writing the pro se brief requires some legal research help to write the brief, it is important to learn the prison’s rules for use of the law libraries and inmate law clerks.

F. The Goal in Writing a Pro Se Brief.

The defendant’s job in writing a pro se brief is to show that reversible error occurred during the lower tribunal proceeding. In other words, the defendant needs to show that the lower
tribunal made a legal error (mistake). In addition, the defendant needs to show how that mistake harmed his/her case (was not harmless error). It is not enough to simply show that an error was made. The defendant must also prove that it harmed the case.

G. A Word About Ineffective Assistance of Counsel.

A pro se brief in an Anders case is not the time to make claims that trial counsel or lower tribunal counsel did not provide effective assistance during the lower tribunal proceedings. As a general rule, claims for ineffective assistance of counsel cannot be considered in the direct appeal. Therefore, the pro se brief should not include claims and argument that trial counsel did something wrong or did not do something to aid the case.

Ineffective assistance of trial counsel claims should be raised in a motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850 in the event the direct appeal is denied. The lower tribunal court cannot rule on a 3.850 motion while the case is pending in the appellate court. A defendant has two years from the date of the appellate court decision to file a Rule 3.850 motion. However, if the defendant wants to preserve the right to file post-conviction claims in federal court, the Rule 3.850 motion must be filed within one year from the date of the appellate court decision.

H. Writing a Pro Se Brief.

1. How to Begin Writing a Pro Se Brief.

Writing appellate briefs is addressed in greater detail in the chapter on Writing an Appellate Brief in this Handbook. The following is a summary of key points to writing appellate briefs in the situation where an Anders brief has been filed.

First, the record on appeal from the lower tribunal court case must be read in its entirety, including all the legal documents that were filed, and the transcripts from the hearings and trial,
if any. When writing the pro se brief, do not rely on mere memory of what happened in the lower tribunal court. The appellate court will only consider the facts that appear in the record on appeal. Notes taken while reading the record will assist in later citing the correct page number for the document and testimony when referring to the record in the brief.

Second, decide what the issues are to be raised and argued in the brief by thinking about what occurred during the proceedings. Did the trial attorney make a motion or an objection the lower tribunal ruled against? Did the trial attorney state that something would happen and it did not? Did the prosecutor do or say something wrong? Did the lower tribunal judge do or say something wrong? Is the sentence legal? If the lower tribunal judge denied a Rule 3.850 motion, was a reason given? Did the lower tribunal judge attach documents from the record to the order, which are documents that dispute the claims in the Rule 3.850 motion?

Third, the next point is whether the record contains all the documents and transcripts needed to present the issues to be raised on appeal. Sometimes, a hearing transcript, notice or motion needed for the appeal will not be included in the record. If that occurs, then a party wanting to include the document may need to file a motion to supplement the record under Florida Rule of Appellate Procedure 9.200(f). The motion to supplement is discussed in more detail in the Chapter on Pulling Together the Record on Appeal. The motion briefly explains what document or transcript is missing and why it is needed. The appellate court will issue an order granting or denying the motion to supplement. If granted, the appellate court will generally allow 30 days to have the documents filed. The appellate court will send a copy of its order to the lower tribunal clerk, who should file the documents. However, it remains the party’s responsibility to be sure the missing documents are filed within the allowed time. If the missing documents are not filed, that party will ask for an extension of time in the appellate court and
contact the lower tribunal court clerk. If the missing document is a hearing transcript, the party will file a motion to transcribe in the lower tribunal court so that an order can be entered directing the court reporter to transcribe the hearing.

Fourth, the party appealing does legal research to find case law and statutes that support his/her argument. The inmate law clerk can assist in doing the research in the law library, but cannot tell you what you should/should not do or argue on appeal. Sometimes the legal research will show that an issue is not a good one to raise. On the other hand, the legal research might show that there is an issue to raise that the party had not thought of by him/herself.

Fifth, the party appealing determines the standard of review for each issue being raised on appeal. The cases will often explain what standard of review should be applied for the type of error being discussed.

There are several different review standards. For example, if the lower tribunal court applied the wrong law, then the appellate court applies the “de novo” standard. Rulings on motions for judgment of acquittal are examples of issues of law that require de novo review. When the de novo standard is applied, the appellate court is not bound by what the lower tribunal court ruled and it considers the issue anew.

In other instances, the lower tribunal court has discretion to make a ruling. The decisions to admit evidence or grant a new trial are discretionary rulings. These issues will be reviewed under the “abuse of discretion” standard. To prove that the lower tribunal court abused its discretion, it must be shown that no reasonable judge would have made the same ruling.

Sixth, the party drafting the brief makes an outline of the argument section of his/her brief. That outline lists the issues the pro se party intends to raise and the standards of review for each of those issues. The party makes notes about the facts that support his/her argument which
he/she will want to include in the brief. The party makes similar notes about the case law and statutes that support the argument. This outline will help organize the arguments and present it to the appellate court in a clear and concise manner.

2. Writing the Pro Se Brief

Statement of the Case and Facts: In filing an Anders brief, counsel was required to review the lower tribunal record and refer to every legal point that might support an appeal. The Anders brief should contain a statement of the facts, so the pro se brief does not need to restate the facts. Instead, the defendant will limit the statement of the facts to those that are needed to understand the issues raised in the pro se brief. For example, if the defendant believes the lower tribunal incorrectly denied a motion to suppress evidence, the pro se brief will include facts about the motion to suppress, the hearing on the motion, and the court’s ruling.

Summary of Argument: The summary of argument is located before the argument in the pro se brief. But it is normally written last. It summarizes the argument and does not exceed five pages. Once the argument is written, the pro se party goes back and picks out the key ideas from the argument and uses those key points as the summary of argument.

Argument: The pro se party uses the outline he/she made to organize the argument into sections for each issue. The pro se party states the first issue. The pro se party tells the appellate court what the standard of review is for that issue. He/she explains the general law that applies to that issue. He/she cites a few cases and statutes that support the argument. A lot of cases need not be cited. Then the pro se party explains how the facts in his/her case show that an error was made. He/she cites to the volume and page number in the record to direct the appellate court to the facts that support his/her case. Cases with facts similar to his/her appeal are cited. After the pro se party explains how the facts in the case show that a legal error was made, the party then
tells the appellate court what relief it should give. For example, some mistakes require reversal and remand for a new trial, and others require reversal and dismissal, or reversal and resentencing.

This same procedure is repeated for each issue raised in the pro se brief.

**Conclusion:** At the end of the brief, one paragraph is included that tells the appellate court what relief the pro se party should receive. The relief may be different depending on whether the court reverses on one or more issues. For instance, the mistakes may require a new trial or a new sentencing hearing.

**Table of Contents:** After the pro se party has completed writing his/her brief, each section of the brief is listed in the table of contents with the page numbers where each section begins. Each issue within the Argument section must also be listed with its beginning page number.

**Table of Citations:** List all the cases cited in the brief in alphabetical order. Then list all statutes cited in the brief. If other authority is cited, such as books or articles, they are listed. The page numbers where each authority is cited are also listed.

**Certificate of Service and Certificate of Typeface Compliance:** Include a certificate of service at the end of the pro se brief to show you have mailed a copy of the brief to the State. An example of a certificate of service for pro se inmates is included in Florida Rule of Appellate Procedure 9.420(d)(2). If the pro se brief is typed, it must be typed in one of two different fonts and a certificate saying the brief is typed in one of those fonts must be included at the end of the brief. The fonts are listed in Florida Rule of Appellate Procedure 9.210(a)(2). If the brief is handwritten, it is not necessary to include a certificate of typeface compliance.

**Page Limit:** The pro se brief cannot exceed 50 pages.
I. Motions for Extension of Time in the *Anders* Situation.

The appellate court informs the pro se party of how many days the pro se party has to serve his/her pro se brief. As a general rule, the appellate court allows 30 days. The pro se party completes the brief and mails it to the court and opposing counsel within that time limit.

If it will take longer to read the record, do the legal research, and write the brief than the time (usually 30 days) that the appellate court allows in the order, the pro se party must file a motion for extension of time to serve the pro se brief. The motion for extension must be served before the brief is due and it must ask the court for additional time to serve the brief.

J. Serving the Pro Se Brief.

After the pro se party has finished writing the pro se brief, he/she must mail one copy to opposing counsel. As for who is opposing counsel, the State of Florida Attorney General’s Office represents the State in criminal appeals, and an Assistant Attorney General will be opposing counsel. The pro se party completes the certificate of service at the end of the brief and indicates the day that the pro se party gave the brief to the prison authorities for mailing. The pro se party also mails the original and three copies of the brief to the appellate court.

K. Answer Briefs.

The State may file an answer brief, to respond to the arguments raised in the pro se brief. As a general rule, however, the State does not file an answer brief. If the State does file an answer brief, opposing counsel representing the State must mail a copy of the answer brief to the pro se party, just as the pro se party must mail a copy of the initial brief to the State opposing counsel. Answer briefs are addressed in more detail in a separate Chapter on Writing an Appellate Brief.

L. Reply Brief.
If the State files an answer brief, the pro se party must carefully read it and take notes to outline the arguments that are made in the answer brief. The pro se party is not required to file a reply brief and, therefore, determines if he/she needs to respond to any of the State’s arguments. If the pro se party decides that he/she needs to respond, then the pro se party does so by filing a reply brief.

The reply brief is due 20 days after the answer brief is served. If the answer brief was mailed, then 5 more days are added to the due date of the reply brief. Like the initial brief, it should also contain a table of contents, table of citations, summary of argument, argument, conclusion, a certificate of service, and certificate of typeface compliance. It is not necessary to include another statement of the case or facts. The reply brief may do so, however, if doing so is necessary to disprove facts stated in the answer brief. The reply brief is limited to 15 pages, not including the table of contents, the table of authorities and the certificate of service. The reply brief is supposed to present argument that disproves the State’s argument; it is not supposed to restate argument in the initial brief or raise new arguments that were not raised in the initial brief. Reply briefs are addressed in more detail in a separate Chapter on Writing an Appellate Brief.

M. Disposition in the Appellate Court.

After all the briefs have been filed in the appellate court, the case will be assigned to a panel of 3 appellate judges for review. The exact procedure for handling Anders appeals varies from court to court. As a general rule, however, a law clerk or staff attorney will review the record on appeal and the briefs and prepare a memorandum for the judges to review. Each judge will review the memorandum, briefs and case file. If the panel of judges determines that a debatable issue was raised in the case (that there is an argument with at least some merit), the court will order court-appointed counsel (who had filed the motion to withdraw) to file a brief, in
addition to the already-filed *Anders* brief, usually on that debatable issue. The State of Florida will then be given an opportunity to respond. The appellate court will then consider those supplemental briefs and decide how to rule in the case. A written decision, or opinion, indicating the appellate court’s ruling will then be sent to the defendant and all the attorneys.

N. Motions for Rehearing, Clarification & Certification.

After the appellate court issues its decision, a post-decision motion, such as a motion for rehearing, clarification, or certification, may be filed with the appellate court (not mailed) within 15 days. These motions are unusual in that they should only be filed if a legitimate argument for relief can be made. They are rarely granted. Florida Rule of Appellate Procedure 9.330 provides that 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.” It should not raise issues that were not previously presented in the briefs. “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.” Many times the court will issue a decision without opinion, which is commonly called a “per curiam affirmed” or “PCA.” If that occurs and the pro se party believes “a written opinion would provide a legitimate basis for supreme court review,” that party may file a motion to request that the court issue a written opinion. Post-decision motions are addressed in more detail in a separate Chapter on Post-Decision Motions—Appellate.

O. Mandate.

The appellate court will issue and mail its mandate 15 days after it issues its decision or 15 days after it rules on any post-decision motions that are filed. The mandate is the appellate court’s last official act in the case and signals the end of the appeal.
CHAPTER 13: APPEALS OF MOTIONS FOR POST-CONVICTIO

A. Introduction.

Generally, there are two different types of post-conviction relief motions: 1) a motion to correct, reduce, or modify a sentence pursuant to Rule 3.800 of the Florida Rules of Criminal Procedure; or 2) a motion to vacate, set aside, or correct a sentence pursuant to Rule 3.850 (for non-capital cases) and Rule 3.851 (for death penalty cases) of the Florida Rules of Criminal Procedure. Though the rules for post-conviction motions under Rule 3.850 and 3.851 are similar, a defendant should be careful to consult with the rule that applies to the type of sentence imposed in his/her case. The Florida Supreme Court has created a form to file a motion for post-conviction relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure, but there is no model form for motions filed under Rule 3.800, Florida Rules of Criminal Procedure. The model form for a motion for post-conviction relief under Rule 3.850 is found at Rule 3.987, Florida Rules of Criminal Procedure.


1. Rule 3.800(a).

Generally, a court may correct 1) an illegal sentence (a sentence that is longer than that allowed by law), 2) a sentencing score sheet error, or 3) a sentence that does not give a defendant proper credit for time served, at any time. See Florida Rules of Criminal Procedure 3.800(a). To be entitled to such a correction of sentence under Rule 3.800(a) of the Florida Rules of Criminal Procedure, however, a defendant must be able to show that the court records plainly demonstrate on their face that the defendant is entitled to this relief. See Florida Rules of Criminal Procedure 3.800(a). It is important to remember that a defendant does not seek relief on appeal under Rule 3.800(a) while the direct appeal is pending or if the defendant has not filed first in the lower
tribunal a motion to correct a sentencing error under Rule 3.800(b) of the Florida Rules of Criminal Procedure. It is also important to note that Rule 3.800(a)(1) was amended in 2007, and that change added the following language to the rule: "All orders denying motions under this subdivision shall include a statement that the movant has the right to appeal within 30 days of rendition of the order."

2. Rule 3.800(b).

A defendant may file a motion for post-conviction relief under Rule 3.800(b) of the Florida Rules of Criminal Procedure to ask the court to correct any sentencing error, including an illegal sentence. A defendant may not proceed under Rule 3.800(b) if a death sentence has been imposed against him/her and his/her direct appeal is pending in the Florida Supreme Court. If the defendant has not been sentenced to death and his/her appeal is not in the Florida Supreme Court, then the defendant may file a motion under Rule 3.800(b). The defendant’s motion must specifically describe the error in his/her sentence and recommend a proposed correction to his/her sentence. The State may file a response to that motion within 15 days, and that response must either admit or deny the alleged sentencing error. The State may also file a motion to correct a sentence under Rule 3.800(b), but only if the correction of the sentencing error would benefit the defendant or correct a typographical error.

a. Filing a 3.800(b) Motion Before the Direct Appeal.

A defendant may file a motion to correct, reduce, or modify his/her sentence before filing the direct appeal. Generally the motion is filed during the thirty (30) day time frame in which he/she would have to file a notice of appeal of the judgment of conviction and sentence. See Florida Rule of Criminal Procedure 3.800(b)(1). If the defendant files the motion under Rule 3.800(b) before the notice of appeal is due, the filing of that motion will stop the running of the
clock on the appeal deadline, and the defendant will not have to file a notice of appeal until after the lower tribunal court rules on the motion to correct, reduce, or modify a sentence. See Florida Rule of Criminal Procedure 3.800(b)(1)(A).

Unless the court decides that the motion can be decided as a matter of law, and without a hearing, the court must hold a calendar call no later than 20 days from the filing of the motion, with notice to all parties, for the purpose of either ruling on the motion or deciding whether the court needs to hold an evidentiary hearing and then ruling on the motion. See Florida Rule of Criminal Procedure 3.800(b)(1)(B). If the lower tribunal decides that it needs to hold an evidentiary hearing to determine whether the defendant’s sentence should be corrected, reduced, or modified, the lower tribunal court must hold that hearing no more than 20 days after the calendar call. See Florida Rule of Criminal Procedure 3.800(b)(1)(B). Then, the lower tribunal court must file an order ruling on the motion within 60 days after the defendant filed it. See Florida Rule of Criminal Procedure 3.800(b)(1)(B). If the lower tribunal court does not enter an order on the motion within 60 days, the motion is treated as if it were denied. See Florida Rule of Criminal Procedure 3.800(b)(1)(B).

If a defendant files a motion to correct, reduce, or modify his/her sentence under either Rule 3.800(a) or Rule 3.800(b), a defendant may file a motion for rehearing within 15 days of the date of the service of the order or 15 days of the expiration of the time period for filing an order if no order is filed. See Florida Rule of Criminal Procedure 3.800(b)(1)(B).

b. Filing a 3.800(b) Motion During Direct Appeal.

A defendant may also file a motion to correct, modify, or reduce sentence under Rule 3.800(b) (but not 3.800(a)) while the direct appeal is pending. See Florida Rule of Criminal Procedure 3.800(b)(2). A defendant wanting to file a motion under Rule 3.800(b)(2) must serve
the motion before the first brief is due. See Florida Rule of Criminal Procedure 3.800(b)(2). A defendant must also file a notice of pending motion to correct sentencing error in the appellate court. See Florida Rule of Criminal Procedure 3.800(b)(2). If a defendant files a notice of pending motion to correct sentencing error, the time for filing the first brief will automatically be extended until 10 days after the clerk of the lower tribunal transmits the supplemental record described in Rule 9.140(f)(6) of the Florida Rules of Appellate Procedure. See Florida Rule of Criminal Procedure 3.800(b)(2).

The motion must be served on the lower tribunal (trial) court and on all trial and appellate counsel of record. Unless the motion expressly states that the trial counsel will not represent the defendant in the lower tribunal, trial counsel is supposed to represent a defendant on the motion under Rule 9.140(b)(5) of the Florida Rules of Appellate Procedure. See Florida Rule of Criminal Procedure 3.800(b)(2)(A).

The same procedures regarding the calendar call, hearing, and ruling on a 3.800(b) motion filed during the pendency of the direct appeal apply to the consideration of a 3.800(b) motion filed before an appeal. See Florida Rule of Criminal Procedure 3.800(b)(2)(B).

Under Rule 9.140(f)(6) of the Florida Rules of Appellate Procedure, the clerk of the lower tribunal must supplement the appellate record related to the direct appeal with that 3.800(b) motion, the order granting or denying it, any amended sentence, and if told them to, a transcript of the hearing on the 3.800(b) motion. See Florida Rules of Criminal Procedure 800(b)(2)(C).


A defendant may file a motion to vacate, set aside, or correct sentence under Rule 3.850 of the Florida Rules of Criminal Procedure, if the defendant has been tried and convicted of a
crime that did not result in imposition of the death penalty or if the defendant has entered a plea of guilty or nolo contendere before a Florida court. See Florida Rule of Criminal Procedure 3.850. The grounds for relief under Fla. Rule Crim. P. 3.850 include: 1) the judgment or the sentence was in violation of the United States or Florida Constitutions or laws; 2) the court did not have jurisdiction to enter the judgment against the defendant; 3) the court did not have jurisdiction to sentence the defendant; 4) the sentence exceeded the maximum allowed by law; 5) the plea was not voluntary; and 6) the judgment or sentence is otherwise subject to collateral attack. See Florida Rule of Criminal Procedure 3.850(a).

The most common ground for a motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850 is that a defendant received ineffective assistance of counsel at trial. To establish ineffective assistance of counsel at trial, a defendant must show that his/her trial counsel’s performance was not as good as it should have been and that a defendant was prejudiced or suffered harm as a result of that attorney’s poor performance. To show that a defendant suffered harm as a result of his/her attorney’s acts or failure to act, a defendant must show that there is a reasonable probability that the outcome of his/her case would have been different if it had not been for what that attorney did or did not do.

In the motion for post-conviction relief under Rule 3.850, a defendant must swear that the facts stated in that motion are true and correct. In other words, a defendant must give an oath concerning the truth of the matters stated in his/her motion. A defendant does not, however, have to attach any affidavits or sworn testimony to his/her motion. If a defendant does not swear to his/her motion under oath, it will be dismissed. A defendant is not necessarily entitled to a free copy of his/her trial transcript for the purposes of preparing his/her motion.
A defendant is not entitled to court-appointed counsel for the filing of a motion for post-conviction relief under Rule 3.850. If the court orders an evidentiary hearing on the defendant’s motion, a defendant may request court-appointed counsel if the issues are complicated or may require expert testimony, and states in his/her request that he/she does not have the education or the sophistication to proceed pro se in those matters. However, a defendant is entitled to appointment of postconviction counsel for a death penalty case. See Florida Rule of Criminal Procedure 3.851(b).

A defendant must be in custody at the time he/she files his/her motion for relief under Rule 3.850, or the motion will be denied. A defendant is considered to be in custody even if he/she is on parole or probation or on work release. As a result, if a defendant is on parole, probation, or on work release, the defendant may still seek relief under Rule 3.850. Similarly, a defendant serving consecutive sentences who has finished one of those sentences may still file a 3.850 motion while serving the other sentence. A defendant may also file a motion for post-conviction relief if he/she is in prison in a state other than Florida.

Like Rule 3.800, if a defendant is arguing under Rule 3.850 that he/she received a sentence that is greater than that provided by law, a defendant may file the motion for post-conviction relief under Rule 3.850 at any time. See Florida Rule of Criminal Procedure 3.850(b). Otherwise, in a non-death-penalty case, a defendant must file his/her motion within 2 years of when his/her judgment and sentence became final. In a capital case in which a defendant has received a death sentence, a defendant must file his/her motion under Rule 3.851 within 1 year of when the judgment and sentence became final. See Florida Rule of Criminal Procedure 3.850(b) and 3.851(d).
The only ways to get around the one- or two-year deadlines for filing a motion for post-conviction relief (that is not based upon an illegal sentence) is to truthfully state in the motion that: 1) the facts on which the claim for relief is based were unknown to the defendant or his/her attorney and the defendant could not have discovered those facts if the defendant had reasonably and actively tried to do so; 2) the fundamental constitutional right the defendant asserts in the motion was not established within the applicable time period and that the right has been held to apply back (to retroactively apply) to the date of your case; or 3) the defendant hired an attorney to file a 3.850 motion for him/her, but his/her attorney did not file the motion on time. See Florida Rule of Criminal Procedure 3.850(b)(1)–(3), and 3.851(2)(A)–(C). A “fundamental constitutional right” is one that is given to a defendant under the United States or Florida Constitutions. A good example of a fundamental constitutional right is the right to be free from illegal searches and seizures.

Unlike Rule 3.800(b), a defendant may not file a motion for post-conviction relief under Rule 3.850 or Rule 3.851 while his/her direct appeal is still pending. A defendant must wait until his/her direct appeal has been decided and the mandate has issued before a post-conviction motion can be filed. The one- or two-year deadline for filing a motion does not begin to run until the judgment and conviction becomes final, which is after the direct appeal has been concluded, or if a direct appeal was not filed, until 30 days after the filing of the judgment and sentence in the clerk’s office.

Once a defendant files a motion for post-conviction relief under Rule 3.850 on the model form (see the form at Rule 3.987, Florida Rules of Criminal Procedure), the clerk of the lower tribunal must send the defendant’s motion and his file to the lower tribunal. See Florida Rule of Criminal Procedure 3.850(d). If the motion, the files, and the records in the case show without
doubt that the defendant is not entitled to relief, the lower tribunal may deny the motion without a hearing. See Florida Rule of Criminal Procedure 3.850(d).

If the lower tribunal’s decision that the defendant is not entitled to relief is based on the files and the record, and not the legal sufficiency of the motion, the lower tribunal must attach to the court’s order denying the motion those pages from the file or the record that show that the defendant is not entitled to relief. See Florida Rule of Criminal Procedure 3.850(d). If the motion, files, and record do not conclusively show that the defendant is not entitled to relief, the lower tribunal is required to order the state attorney to respond to the motion within the time that the lower tribunal sets or to take any other action the court deems appropriate. See Florida Rule of Criminal Procedure 3.850(d).

If the lower tribunal has not otherwise denied the defendant’s motion, after the State of Florida files its response/answer, the lower tribunal must determine whether the defendant is entitled to an evidentiary hearing on his/her motion. If the lower tribunal determines that an evidentiary hearing is not required, the lower tribunal must rule on the defendant’s motion. If the lower tribunal determines that an evidentiary hearing is required, the lower tribunal must promptly set a hearing and serve notice of the hearing on all parties and make findings of fact and conclusions of law on the motion. See Florida Rule of Criminal Procedure 3.850(d).

A defendant is not necessarily entitled to be present at the hearing on his/her motion. See Florida Rule of Criminal Procedure 3.850(e). The lower tribunal has the authority and power to resolve his/her motion at a hearing without the defendant being at that hearing. See Florida Rule of Criminal Procedure 3.850(e).

A defendant is generally permitted to file a second or multiple motions for post-conviction relief under Rule 3.850 and 3.851. But that is true only if each and every motion after
the first one is timely and raises new grounds for relief not previously asserted and decided on the merits in any prior motion under Rule 3.850 or 3.851. See Florida Rule of Criminal Procedure 3.850(f). If a defendant files a second motion for post conviction relief that states a ground that the defendant raised in his/her first motion for post conviction relief, the second motion will be dismissed. See Florida Rule of Criminal Procedure 3.850(f). The lower tribunal may also dismiss his/her second motion (or other motions following the first motion), if the lower tribunal determines that the defendant’s motion for post conviction relief raises new grounds that could have been raised in an earlier motion and that the filing of the second motion was an abuse of the procedure provided for by the rules. See Florida Rule of Criminal Procedure 3.850(f).

If the lower tribunal denies the defendant’s motion for relief under Rule 3.850, the defendant may appeal that denial. See Florida Rule of Criminal Procedure 3.850(g). In fact, the lower tribunal’s order denying the defendant’s motion must advise the defendant of his/her right to appeal the denial within 30 days of the rendition of the order (the date the order was filed with the clerk’s office). See Florida Rule of Criminal Procedure 3.850(g). If the defendant hired an attorney to file an appeal for him/her, but the attorney did not file the appeal on time, the defendant may file a motion to file an appeal after the 30-day deadline has passed, but the defendant must allege in that motion that he/she instructed his/her attorney to appeal and that his/her attorney did not do so. See Florida Rule of Criminal Procedure 3.850(g).

A defendant may also file a motion for rehearing of any order denying the motion for post-conviction relief under Rule 3.850. See Florida Rule of Criminal Procedure 3.850(g). That motion for rehearing must be filed within 15 days of the date of the service of the order denying the defendant’s motion. See Florida Rule of Criminal Procedure 3.850(g). The clerk of the
lower tribunal must promptly serve the defendant with a copy of any order denying his/her motion for post-conviction relief or denying his/her motion for rehearing. See Florida Rule of Criminal Procedure 3.850(g). The clerk must also note on the order the date that the clerk served the defendant with that order. See Florida Rule of Criminal Procedure 3.850(g).
CHAPTER 14: APPEALS OF ORDERS FROM DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES

A. Introduction.

This Chapter is intended to aid parents with children who are involved in dependency and termination of parental rights proceedings when that parent has to represent him/herself in an appeal. Although attorneys may be appointed by the court to represent indigent parents in dependency and termination appeals, sometimes the court-appointed attorney will withdraw from the appeal without filing a brief in support of the parent’s position on appeal. Under those circumstances, the parent will be allowed a short period of time to file his/her own pro se brief. This Chapter provides guidance to those indigent parents who file their own briefs in the appellate courts in these kinds of cases.

B. The Right to Counsel in Dependency and Termination Cases.

All dependency and termination of parental rights cases are handled in circuit courts without a jury. Dependency proceedings are very serious matters, because they often can lead to termination proceedings; those termination proceedings can permanently sever the legal bond between a parent and child. Because of the serious nature of these proceedings, it is always best to be represented by a lawyer.

As a general rule, an indigent parent has the right to be represented by a court-appointed lawyer in dependency and termination matters, both in the trial court and in the appellate court. To have an attorney appointed, the parent must appear in court and ask for an attorney. If the parent does not appear in court, and does not ask for an attorney, no attorney will be appointed.

Courts generally appoint one attorney to represent the parent during the dependency proceeding. That attorney’s duties are met once an order adjudicating the child dependent is
entered. A new appointment of counsel is required for a termination proceeding. The court may appoint the same lawyer who represented the parent in the dependency proceeding or a different lawyer. The lawyer who represents the parent in the termination proceeding stays on the case until the termination order is entered.

C. The Right to Counsel on Appeal from Dependency and Termination Orders.

If the court enters an order adjudicating a child dependent or one terminating parental rights and the parent wants to appeal that decision, the parent should tell the court-appointed attorney that he/she wants to appeal. The attorney is then required to file a notice of appeal, no later than 30 days after the order being appealed is entered. The attorney must also file directions to the clerk to order the record and designation to court reporter to order any hearing transcripts required for the record. (See Chapter 3: Pulling Together the Record on Appeal.) The notice of appeal is filed with the circuit court clerk, where the trial was held. That clerk will then send the appeal to the district court of appeal that handles the appeals filed in that circuit court.

Once the notice of appeal, directions to clerk, and designation to court reporter are filed, the circuit court will appoint an attorney to represent the parent in the appeal. This may be the same attorney who represented the parent in the dependency or termination matter, or it may be another attorney.

Even though dependency and termination cases are similar to criminal appeals in many ways, they are civil cases and the appellate rules concerning civil cases generally apply. There is one important difference: the law requires appeals from dependency and termination orders to be handled in an expedited or speedy manner. This means that district courts of appeal give dependency and termination appeals first priority and consider them before other types of
appeals. Because the court expedites dependency and termination cases, the typical appeal can be decided in as little as six months.

To ensure that dependency and termination cases are given priority and moved through the appellate system quickly, the clerk of the district court of appeal will send a standard form order classifying the appeal as a “child case.” To speed the case along, the appellate court may assign shorter time limits for compiling the record and filing the briefs. Alternatively, the court may use the regular time limits, but then not allow any extensions of time to file briefs.

Each district court of appeal has its own rules on how to expedite the case. For example, the First District Court of Appeal shortens the time for compiling the record to 50 days, instead of the usual 70 days. It allows parties to file their briefs according to the usual time periods of 20 days, plus 5 days for service by mail; but it will not allow extensions of time to file the briefs.

The Fourth and Fifth District Courts of Appeal generally issue a form order that shortens all the time frames. The clerk is allowed only 25 days to prepare the record, instead of the usual 50 days permitted for civil appeals. It allows the appellant only 40 days from the date of the order to serve the initial brief, rather than the usual 70 days permitting in civil appeals. The time allowed for serving an answer brief is shortened to 15 from the usual 20, and the time for serving a reply brief is shortened from 20 to 5 days. The 5 days permitted for service by mailing may also be added.

Because the time limits can differ, the parties should be sure to review the standard form order issued by the particular appellate court where the appeal is pending. Whatever time periods and limits stated in the appellate court’s order control over the general time periods and limits that apply in ordinary civil appeals.
D. Representation During the Appeal.

Once the record is prepared, the attorney representing the parent must review the record. In the majority of cases, the attorney will find valid issues to raise on appeal. Also, the attorney will in most cases represent the parent all the way through the end of the appeal proceeding. The attorney will file the required briefs, respond to any motions, and represent the parent at oral argument, if granted. The attorney should keep the parent fully informed of the progress of the appeal.

E. What Happens When the Attorney Withdraws from Representation?

Sometimes the court-appointed attorney cannot find any valid issues to appeal based on his/her judgment as an attorney. If that happens, that attorney will file a motion to withdraw from representing the parent in the appeal. The court-appointed counsel does not owe the parent the duty of a perfect appeal. But the attorney does owe the parent a duty to support and advance the appeal to the best of his/her ability. The Rules Regulating The Florida Bar (the code of ethics that regulates all attorneys who practice law in Florida) require that an attorney who is deciding whether to advance an appeal must examine the record to determine what, if any, issues should be appealed. Attorneys are forbidden by their code of ethics from filing “frivolous” documents in courts. Frivolous documents are ones that have no serious purpose or meaning or lack research of the law and facts before filing them.

Sometimes, the attorney representing a parent finds that the case does not have any issues to raise in an appeal that are not frivolous. In other words, the attorney may be unable to find any valid issues with serious purpose or meaning. This usually occurs when the only dispute in the appeal concerns a conflict in evidence. For example, the Department of Children and Families produces evidence that shows the parent did not complete a case plan task, but the
parent testifies that he/she did complete that task. The court decides which evidence it believes. The appellate court does not get to reweigh the evidence and make its own decision about who to believe. If the court believes the Department’s evidence, then it will not be a valid issue on appeal to contend that the parent completed the case plan task.

When the court-appointed attorney finds no valid issues, Florida law allows the attorney to file a motion to withdraw from representing the parent in the appeal. The motion to withdraw must be served on the parent and all the opposing attorneys. The attorney must certify in the motion that he/she has reviewed the record and has determined in good faith that there are no grounds that have merit on which to base an appeal.

If this motion is granted by the appellate court, the attorney must provide the parent with the record and all the court documents; this is so that the parent can begin his/her self-representation. In granting the motion to withdraw, the appellate court will give the parent a period of time, usually 30 days, to file his/her pro se brief. The court will warn the parent that if no brief is timely filed, the appeal will be dismissed for failure to prosecute.

The parent may, if he/she can obtain the funds, seek to retain a new attorney to represent the parent in the appeal after the court-appointed attorney withdraws. If the parent wants to hire a new attorney, that parent must do so before the 30-day period for filing the initial brief ends, and the new attorney must inform the appellate court that he/she has been hired to represent the parent.

Parents who will be filing their own briefs should consult Chapters 5 and 6 on Writing an Appellate Brief and the Checklist for Appellate Briefs for guidance on how to write their briefs. The parent’s pro se brief must comply with Florida Rule of Appellate Procedure 9.210. The pro
A se brief must also be served on the attorney who represents the Department of Children and Families and the attorney who represents the Guardian ad Litem Program.

F. Appealing Orders in Dependency Proceedings.

Appeals are most commonly filed in dependency proceedings from orders of adjudication of dependency and from orders of disposition of dependency. These orders are usually entered after an evidentiary hearing at which the Department of Children and Families has the burden to prove the child is “dependent.” For a trial court to adjudicate a child dependent, the department must prove by a preponderance of the evidence that the child (1) has “been abandoned, abused, or neglected by the child’s parent,” or (2) is “at substantial risk of imminent abuse, abandonment, or neglect by the parent.” The order of adjudication of dependency and the order of disposition are considered “final orders” for appeal purposes.

Appeals from final dependency orders must be filed in accord with Florida Rule of Appellate Procedure 9.146. To be timely, an appeal notice must be filed within 30 days after rendition of either the order adjudicating a child dependent or 30 days after rendition of the disposition order following the dependency adjudication. The safest thing to do to preserve your right to appeal is to file an original and one copy of the notice of appeal, both with copies of the appealed-from order attached, in the juvenile division of the clerk’s office of the circuit court within 30 days of rendition of the dependency order and not to wait for the disposition order.

A parent may also appeal from a non-final order provided the order is one of those listed in Florida Rule of Appellate Procedure 9.130. The most common kinds of non-final orders that are appealed in dependency cases are those listed in rule 9.130(a)(4), which are classified as non-final orders entered after final order. Examples of orders in this category (classified as non-final orders entered after final order) are an order changing the placement of a child or changing the
parent’s contact with the child after the child has been adjudicated dependent. Consult Chapter 9 “Appeals from Non-final Orders: What Can Be Appealed, When and How.” Appeals from non-final orders must also be filed within 30 days of the order being appealed.

If a non-final order does not fall within the types described in rule 9.130, it is not appealable. For example, a shelter order is not appealable, but it may be reviewed by a petition for writ of certiorari. Consult Chapter 10 “Extraordinary Writs – Civil” regarding the limited situations in which review of a non-final order may be had in the district court of appeal by petition for writ of certiorari and the time limits applicable to those petitions. The 30-day time limit for filing appeals also applies to petitions for writ of certiorari – the petition must be filed within 30 days after rendition of the order being appealed.

G. Appeals from Orders Terminating Parental Rights.

The most common order appealed in termination proceedings is the final judgment of termination of parental rights. This order permanently severs the legal bond between the parent and child and allows the Department of Children and Families to make a permanent placement of the child. Another common order appealed in termination proceedings is a post-judgment order that ends the Department’s protective supervision of a child.

For a trial court to terminate parental rights, it must find that grounds exist for termination. The Department of Children and Families must prove one of the following grounds listed in Florida Statutes by clear and convincing evidence: (1) the parent abandoned the child; (2) the parent engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services; (3) the parent has been convicted of certain violent or sex crimes or the
parent will be incarcerated for a substantial period of the child’s minority; (4) the parent has failed to substantially comply with the case plan for at least 12 months; (5) the parent engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling; (6) the parent has subjected the child to aggravated child abuse, sexual battery, sexual abuse, or chronic abuse; (7) the parent committed murder, voluntary manslaughter, or felony assault of another child; (8) the parent’s rights to a sibling have been terminated involuntarily; (9) the parent has a history of extensive, abusive, and chronic alcohol or drug use that renders the parent incapable of caring for the child and the parent has refused or failed to complete alcohol or drug treatment during the three years before the termination; (10) a test administered at birth shows that the child has alcohol or drugs in his/her blood, urine, or meconium, and the biological mother has had at least one other child adjudicated dependent based on harm due to alcohol or drugs and the mother has been provided with an opportunity to have substance abuse treatment; and (11) on three or more occasions the child has been placed in out-of-home care and the reason that led to the child being placed outside the home was caused by the parent.

In addition to finding at least one of the above grounds for termination, the court must also find that termination is in the manifest best interest of the child. In deciding the best interest of the child, the court must consider factors such as (1) any suitable permanent custody arrangement with a relative of the child; (2) the parent’s ability to care for the child and to provide the child with food, clothing, and medical care; (3) the child’s mental and physical health; (4) the love, affection, and other emotional ties existing between the child and parent, siblings, and other relatives, and the degree of harm to the child if parental rights are terminated;
(5) the likelihood the child will remain in long-term foster care if parental rights are terminated;  
(6) the child's ability to form a strong relationship with a parental substitute and be able to enter  
into a more stable and permanent family relationship;  
(7) the length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;  
(8) the depth of the relationship existing between the child and the present custodian;  
(9) the reasonable wishes of the child; and  
(10) the recommendations for the child provided by the guardian ad litem. 

Finally, the court must also find that termination of parental rights is the least restrictive 
means of protecting the child from serious harm. This least restrictive means element involves 
due process concerns. It requires the Department of Children and Families to show that it has 
made a good faith effort to rehabilitate the parent and reunite the family, such as through a case 
plan for the child (except in extraordinary cases, such as those involving egregious abuse).

In addition to final orders terminating parental rights, there may be non-final orders in 
termination proceedings that can be appealed if they are included in the list in Florida Rule of 
Appellate Procedure 9.130 or by petition for writ of certiorari. The 30-day filing rule applies to 
both appeals from non-final orders in termination cases and petitions for writ of certiorari. 
Consult Chapters 9 and 10 for these types of review.

H. Getting Started in Writing the Pro Se Brief.

The parent’s job in writing the pro se brief is to show that reversible error occurred 
during the trial court proceeding. In a dependency case, it is the Department’s burden to show 
that the child has “been abandoned, abused, or neglected by the child’s parent,” or is “at 
substantial risk of imminent abuse, abandonment, or neglect by the parent.” In termination
cases, the Department must show one or more of the grounds for termination and that termination is in the manifest best interest of the child.

The pro se brief must comply with Florida Rule of Appellate Procedure 9.210. Please refer to Chapters 5 and 6 about how to write the pro se brief.

To write the pro se brief, first read the entire the record on appeal from the lower court case, including all the legal documents that were filed, and the transcripts from the hearings and trial, if any. When writing the pro se brief, do not rely on memory of what happened in the lower tribunal court. The appellate court will only consider the facts that appear in the record on appeal. Notes taken while reading the record will assist in later citing the correct page number for the document and testimony when referring to the record in the brief.

Second, decide what the issues are to be raised and argued in the brief by thinking about what occurred during the proceedings. Did the trial attorney make a motion or an objection the lower tribunal ruled against? Did the trial attorney state that something would happen and it did not? Did the Department’s attorney or Guardian’s attorney do or say something wrong? Did the trial judge do or say something wrong?

Third, consider whether the record is missing any documents or transcripts needed to present the issues to be raised on appeal. Sometimes, a hearing transcript, notice or motion needed for the appeal will not be included in the record. If that occurs, then a party wanting to include the document may need to file a motion to supplement the record under Florida Rule of Appellate Procedure 9.200(f). The motion to supplement is discussed in more detail in Chapter 3 on Pulling Together the Record on Appeal. The motion briefly explains what document or transcript is missing and why it is needed. The appellate court will issue an order granting or denying the motion to supplement. If granted, the appellate court will generally allow 30 days to
have the documents filed. The appellate court will send a copy of its order to the lower tribunal clerk, who should file the documents. However, it remains the party’s responsibility to be sure the missing documents are filed within the allowed time. If the missing documents are not filed, that party will ask for an extension of time in the appellate court and contact the lower tribunal court clerk. If the missing document is a hearing transcript, the party will file a motion to transcribe in the lower tribunal court so that an order can be entered directing the court reporter to transcribe the hearing.

Fourth, the parent does legal research to find case law and statutes that support his/her argument. Sometimes the legal research will show that an issue is not a valid one. On the other hand, the legal research might show that there is an issue to raise that the parent had not thought of by him/herself. Law schools and courts have law libraries where any parent can do the legal research.

Fifth, the party appealing determines the standard of review for each issue being raised on appeal. The cases will often explain what standard of review should be applied for the type of error being discussed.

There are several different review standards. For example, if the lower tribunal court applied the wrong law, then the appellate court applies the “de novo” standard. A court’s interpretation of a statute is an example of a legal issue subject to the de novo review standard. When the de novo standard is applied, the appellate court is not bound by what the lower tribunal court ruled and it considers the issue anew.

In other instances, the lower tribunal court has discretion to make a ruling. The decisions to admit evidence or continue a case are discretionary rulings. These issues will be reviewed under the “abuse of discretion” standard. To prove that the lower tribunal court abused its
discretion, it must be shown that no reasonable judge would have made the same ruling.

A third standard of review is whether there is competent substantial evidence to support the court’s factual findings. This is the hardest standard to satisfy, because it only requires that there be some evidence in the record to support the court’s findings. The fact that you believe the evidence you presented is more believable than the evidence the Department presented is not a basis for reversing the order.

Sixth, the party drafting the brief makes an outline of the argument section of his/her brief. That outline lists the issues the pro se party intends to raise and the standards of review for each of those issues. The party makes notes about the facts that support his/her argument which he/she will want to include in the brief. The party makes similar notes about the case law and statutes that support the argument. This outline will help organize the arguments and present it to the appellate court in a clear and concise manner.

In deciding what issues to raise in the pro se brief, remember the role and limitations on the functions of the court of appeal. The court of appeal will not reweigh the evidence which the circuit court heard and received into the record. If the record includes evidence presented in accordance with the rules of evidence and the circuit court applied the correct law, the dependency or termination order will not be reversed.

I. The Parts of the Pro Se Brief.

Statement of the Case and Facts: The pro se brief must contain a statement of the facts, but it should not simply restate all the facts. Instead, the parent will limit the statement of the facts to those that are needed to understand the issues raised in the pro se brief. For example, if the parent believes in a dependency proceeding that he or she did not abandon, abuse or neglect the child, the pro se brief will include facts about the acts found in the dependency order that the
court relied on in finding the child was abandoned, abused or neglected. In a termination case, if the parent believes that the grounds for termination were not proven, then the statement of the facts should include facts about the ground relied on by the court in making its ruling. Each fact statement in the brief must include a citation to the page in the record where the fact is contained.

**Summary of Argument:** The summary of argument is located before the argument in the pro se brief. But it is normally written last. It summarizes the argument and does not exceed five pages. Once the argument is written, the pro se parent goes back and picks out the key ideas from the argument and uses those key points as the summary of argument.

**Argument:** The pro se parent uses the outline he/she made to organize the argument into sections for each issue. The pro se parent states the first issue. The pro se parent tells the appellate court what the standard of review is for that issue. He/she explains the general law that applies to that issue. He/she cites a few cases and statutes that support the argument. A lot of cases need not be cited. Then the pro se parent explains how the facts in his/her case show that an error was made. He/she cites to the volume and page number in the record to direct the appellate court to the facts that support his/her case. Cases with facts similar to his/her appeal are cited. After the pro se parent explains how the facts in the case show that a legal error was made, the parent then tells the appellate court what relief it should give, which will generally be that the dependency or termination order should be reversed.

This same procedure is repeated for each issue raised in the pro se brief.

**Conclusion:** At the end of the brief, one paragraph is included that tells the appellate court what relief the pro se parent should receive. For instance, the parent will ask that the dependency order or the termination order be reversed.

**Table of Contents:** After the pro se parent has completed writing his/her brief, each
section of the brief is listed in the table of contents with the page numbers where each section, including issues within the Argument section, begins. The heading for each issue should be listed in the table of contents.

**Table of Citations:** List all the cases cited in the brief in alphabetical order. Then list all statutes cited in the brief. If other authority is cited, such as books or articles, they are listed. The page numbers where each authority is cited are also listed.

**Certificate of Service and Certificate of Typeface Compliance:** Include a certificate of service at the end of the pro se brief to show you have mailed a copy of the brief to the Department of Children and Families and the Guardian ad Litem Program. An example of a certificate of service for a pro se litigant is included in Florida Rule of Appellate Procedure 9.420(d)(3). If the pro se brief is typed, it must be typed in one of two different fonts and a certificate saying the brief is typed in one of those fonts must be included at the end of the brief. The fonts are listed in Florida Rule of Appellate Procedure 9.210(a)(2). If the brief is handwritten, it is not necessary to include a certificate of typeface compliance.

**Page Limit:** The pro se brief cannot exceed 50 pages.

J. **Motions for Extension of Time.**

The appellate court informs the pro se parent of how many days he or she has to serve the pro se initial brief. As a general rule, the appellate court allows 30 days. The pro se parent completes the brief and mails it to the court and opposing counsel within that time limit.

Because dependency and termination cases are expedited in the appellate court, extensions of time are generally only granted in the case of an emergency. If an emergency, such an illness, prevents you from completing the brief in the time allowed, the pro se parent must file a motion for extension of time to serve the pro se brief, before the brief is due, to ask
the court for additional time. Before filing the motion, the pro se parent must call each party’s attorney to determine if those attorneys object to the extension. In the motion, the pro se parent must inform the court of the other parties’ position. If a party does object, the parent only needs to say in the motion that the party objects. The parent does not need to give a reason. It is the duty of the objecting party to let the court know why he or she objects.

K. Serving the Pro Se Brief.

After the parent has finished writing the pro se brief, he/she must mail one copy to Department of Children and Families and one to the Guardian ad Litem. The attorneys who represent the Department and Guardian and their addresses will be included in the certificate of service in the parent’s former attorney’s motion to withdraw. The pro se parent completes the certificate of service at the end of the brief and indicates the day that the parent mails the brief to the court and the opposing attorneys. The pro se parent also mails the original and three copies of the brief to the appellate court.

L. Answer Briefs.

The Department of Children and Families and the Guardian ad Litem may each file an answer brief to respond to the arguments raised in the pro se brief. A copy of all answer briefs filed must be mailed to the parent, just as the pro se parent must mail a copy of the initial brief to the opposing counsel. Answer briefs are addressed in more detail in a separate Chapter on Writing an Appellate Brief.

M. Reply Brief.

If the Department and Guardian file answer briefs, the pro se parent must carefully read those briefs and take notes to outline the arguments that are made in the answer brief. The pro se parent is not required to file a reply brief and, therefore, determines if he/she needs to respond to
any of the Department and Guardian’s arguments. If the pro se parent decides that he/she needs to respond, then the parent does so by filing a reply brief. Even if there are two answer briefs, the parent may file only one reply brief. That one reply brief should respond to the arguments made by both the Department and the Guardian.

Be sure to check the time the court allows for serving the reply brief, because it could be as little as 5 days. If the answer brief was mailed, then 5 more days are added to the due date of the reply brief.

Like the initial brief, it should also contain a table of contents, table of citations, summary of argument, argument, conclusion, a certificate of service, and certificate of typeface compliance. It is not necessary to include another statement of the case or facts. The reply brief may do so if it is necessary to disprove facts stated in the answer brief. The reply brief is limited to 15 pages, not including the table of contents, the table of authorities and the certificate of service. The reply brief is supposed to present argument that disproves the arguments in the answer briefs; it is not supposed to restate argument in the initial brief or raise new arguments that were not raised in the initial brief. Reply briefs are addressed in more detail in a separate Chapter on Writing an Appellate Brief.

N. Disposition in the Appellate Court.

After all the briefs have been filed in the appellate court, the case will be assigned to a panel of 3 appellate judges for review. A law clerk or staff attorney will review the record on appeal and the briefs and prepare a memorandum for the judges to review. Each judge will review the memorandum, briefs and case file. A written decision, or opinion, indicating the appellate court’s ruling will then be sent to the pro se parent and all the attorneys.
O. Motions for Rehearing, Clarification & Certification.

After the appellate court issues its decision, a post-decision motion, such as a motion for rehearing, clarification, or certification, may be filed with the appellate court (not mailed) within 15 days. These motions are unusual in that they should only be filed if a legitimate argument for relief can be made. They are rarely granted. Florida Rule of Appellate Procedure 9.330 provides that 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.” It should not raise issues that were not previously presented in the briefs. “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.” Many times the court will issue a decision without opinion, which is commonly called a “per curiam affirmed” or “PCA.” If that occurs and the pro se party believes “a written opinion would provide a legitimate basis for supreme court review,” that party may file a motion to request that the court issue a written opinion. Post-decision motions are addressed in more detail in a separate Chapter on Post-Decision Motions--Appellate.

P. Mandate.

The appellate court will issue and mail its mandate 15 days after it issues its decision or 15 days after it rules on any post-decision motions that are filed. The mandate is the appellate court’s last official act in the case and signals the end of the appeal.

Q. Belated Appeals: What Happens When Your Attorney Fails to Timely File a Notice of Appeal?

Florida has established a strong public policy in favor of protecting the relationship between parents and their children. Consequently, an attorney’s mistake in failing to timely file a notice of appeal within 30 days will not be held against the parent.
Rather, when a parent asks the attorney to file an appeal and the attorney fails to timely file the notice of appeal within 30 days, the parent will be entitled to belated appeal. The proper method for obtaining a belated appeal is to file a petition for writ of habeas corpus in the trial court. This procedure will permit the trial court to resolve any factual issues, as well as any defenses including those predicated upon laches.

The writ of habeas corpus was designed as a speedy method of affording a judicial inquiry into the cause of the alleged unlawful custody of an individual. For that reason, habeas corpus has been authorized as a remedy for determining a parent’s right to custody of his or her children.

R. What Can Be Done If Your Attorney Did Not Do a Good Job?

In criminal cases, when trial counsel does not provide effective representation, procedures have been developed to allow the criminal defendant to file a post-conviction motion claiming that trial counsel rendered in effective assistance of counsel. Because parents also must depend on court-appointed counsel, the question exists as to whether a parent may seek to overturn a dependency or termination order based on a claim that the parent’s counsel did not provide effective assistance.

In dependency proceedings, the Florida Supreme Court has held, so far, that the parent cannot make a claim for ineffective assistance of counsel.

Whether a claim for ineffective of assistance of counsel can be made as a way to overturn a termination order is not clear. The Fourth District Court of Appeal has found that a parent has a constitutional right to counsel in a termination proceeding and that a claim for ineffective assistance can be made. Nevertheless, the court did not adopt a procedure for asserting such a
claim. It did rule that a petition for habeas corpus was not a proper method to make an ineffectiveness claim, but it stopped short of developing a procedure to make a claim.

This is an area of law that is currently unsettled so this should be thoroughly researched as this may be changing.
CHAPTER 15: ADMINISTRATIVE APPEALS

A. Introduction.

This Chapter concerns final, as opposed to non-final, appeals in administrative law cases. See also and compare with Chapter on Appeals From Non-Final Orders: What Can Be Appealed, When and How, the Section on Special Issues for Non-final Appeals in Administrative Law Cases, and Chapter on Extraordinary Writs—Civil (regarding writs of prohibition, mandamus and certiorari, which can also be advanced to review an agency’s action or decision). Florida citizens have a right under the Florida Constitution to judicial (higher court) review of agency action. The Administrative Procedure Act (the “APA”), in Chapter 120 Florida Statutes, allows for broad review of final administrative actions that the state takes.25

Under Florida law, a person whose substantive interests are adversely affected by the actions of a state agency may be entitled to a hearing, which is similar to a trial in court. The hearing may be a formal hearing held before an administrative law judge at the Division of Administrative Hearings (“DOAH”), or an informal hearing, before a hearing officer appointed by the agency that took the action that affected the person’s substantial interests. See Chapter 120, Florida Statutes.

The administrative law judge or the hearing officer is like a judge, who listens to all of the witnesses, receives all of the evidence, and decides who wins and who loses. Some time after the end of the hearing, the administrative law judge or hearing officer will issue a “recommended order” or a “proposed recommended order.” In a recommended order or a

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25 Beyond the scope of this Chapter on Administrative Appeals, it is important to clarify that non-final state administrative action and local government administrative actions are generally not reviewable under the APA, Chapter 120, Florida Statutes. In the case of local government administrative actions, they are generally not reviewable under the APA unless there is another state statute that specifically says those local government
proposed recommended order, the administrative law judge or the hearing officer makes “findings of fact” and “conclusions of law,” and recommends to the agency what the final outcome of the hearing should be.

B. Administrative Orders.

An appeal generally cannot be taken from a recommended order or a proposed recommended order. If a party disagrees with what is contained in a recommended order or a proposed recommended order, they generally must file “exceptions.” Chapter 120, Florida Statutes, allows a party to file exceptions to the statements made in a recommended order issued by an administrative law judge. If a party disagrees with the findings of fact contained in the recommended order, they generally must file exceptions to the findings of fact or the party may not be able to argue those points on appeal. Exceptions to the administrative law judge’s recommended order generally must be filed with the clerk of the agency no later than 15 days after the date of the recommended order. The exceptions will be addressed by the agency in its final order.

C. What Can Be Appealed.

A party generally cannot file an appeal until the agency that took the initial action which resulted in the hearing enters a “final order.” See Chapter 120, Florida Statutes, particularly Sections 120.574 & 120.68, Florida Statutes. See also and compare with Chapter 9 on Appeals From Non-Final Orders: What Can Be Appealed, When and How, the Section on Special Issues for Non-final Appeals in Administrative Law Cases. An agency order is generally final when it

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administrative actions are reviewable. Local government administrative actions are reviewed by way of extraordinary writs, which are writs generally filed in the circuit court.
concludes or brings an end to the administrative process, it is in writing and it is filed with the agency clerk. Section 120.52(7), Florida Statutes.

If there was a formal hearing before an administrative law judge, the agency must generally enter a final order within 90 days of a recommended order. If there was an informal hearing held before a hearing officer, the final order must be entered within 90 days of the date of the informal hearing. The agency is required to send a copy of the final order to every person involved in the hearing. A party may generally appeal this “final order.”

By law, final orders must contain a statement advising an adversely affected party of the procedure to be followed to appeal the final order. If the final order does not contain this statement, it is not considered final and an appeal cannot be taken from it. If the agency issuing the final order does not issue another order that contains the statement, the party who wants to appeal must ask the agency to enter a new final order containing the statement to begin the process of an appeal.

Although agencies issue most final orders, there are a few orders that an administrative law judge may enter that may be considered final and will require no other final order from the agency before a party may appeal the order. Those orders include (1) an order that the administrative law judge entered in a proceeding challenging an agency’s rule and (2) an order of the administrative law judge awarding someone attorney’s fees at the end of the case. These orders are generally considered final and can be appealed by following the procedure described below.

An appeal of a final order of an agency or of an administrative law judge is controlled by the same general rules that apply in appeals from orders and judgments in civil cases. See Florida Rules of Appellate Procedure 9.190(b)(1) and 9.110(c), the Chapter on the Appellate
Process and Final Appeals, and the Chapter on Pulling Together the Record on Appeal. The differences between the two types of appeals are described in Florida Rules of Appellate Procedure 9.190(b)(1) and 9.110(c).

The Sections below contain a short review of appellate requirements and the requirements that may be different for an administrative appeal. While many of the requirements are similar to those for taking an appeal from a civil action, there are also some important differences.

D. Starting the Administrative Appeal: What to File, Where and When.

To appeal a final order of an agency, an appellant must file the original of a notice of appeal with the clerk of the agency identified at the top of the final order, and a copy of the notice of appeal and the filing fee filed with the district court of appeal. See Florida Rules of Appellate Procedure 9.190(b)(1) and 9.110(c), and Section 120.68, Florida Statutes. The form notice of appeal contained in the Florida Rule of Appellate Procedure 9.900(a) can be used.

The notice of appeal must be filed within 30 days of the date that the agency filed the final order in its official records. This may be the same date that appears on the final order, but it may be different. The date on the recommended order cannot be used to determine the 30th day. To be timely filed, a notice of appeal must be received by the clerk of the agency no later than the 30th day after the date the final order was filed with the agency. The date that an appellant mails the notice of appeal is not important. The date the notice of appeal is received by the agency is the important date. For that reason, it is best to file the notice of appeal of a final order well before the 30th day.
Florida law generally does not allow a party to file a motion for rehearing of a final agency order, which would ask the agency to change the result or come to a different conclusion. Motions for rehearing are allowed in civil actions, but not in administrative actions.

An important difference between final agency appeals and final civil appeals is that the same day that an appellant files a notice of appeal with the agency, the appellant must also file a copy of the notice of appeal in the district court of appeal to which the appeal is being taken. The required filing fees must be paid to the district court of appeal, not to the agency. Also, by law, an appeal of an agency’s final order must be taken to the district court of appeal where the agency has its headquarters, or where a party lives.

If either the original notice of appeal to the agency or the copy of the notice to the district court of appeal is timely filed, the appeal will generally be allowed to go forward, even if the other notice is filed late; but it is always better to make sure that all notices are filed before the time required. This is because, if both notices are filed late, the appellate court will not have jurisdiction over the appeal and the appeal will be dismissed for lack of jurisdiction.

To appeal an order of an administrative law judge, in contrast to a final order of an agency, the appellant must file the original of a notice of appeal with the clerk of the Division of Administrative Hearings, not with the agency (the lower tribunal) with which the appellant disagrees. The notice of appeal must be filed within 30 days of the date the Division of Administrative Hearings filed the order in its official records. This may be the same date that appears on the final order, but it may be different. To file a notice of appeal on time, the appellant must be sure the clerk of the Division of Administrative Hearings receives the notice of appeal no later than the 30th day after the date the administrative law judge filed the final order with the Division of Administrative Hearings. The date the appellant mails the notice of appeal
is not what is important. The notice of appeal must be received by the Division of Administrative Hearings on or before 30th day, and the better course of action is to file the notice of appeal well before that 30th day.

The record on appeal is the information presented and filed in the lower tribunal that an appellate court will consider when deciding the appeal. The record on appeal is prepared by the clerk of the agency issuing the final order or the clerk of the Division of Administrative Hearings, if the final order was issued by an administrative law judge. Within 10 days of filing the notice of appeal, the appellant must file the document called “directions to the clerk”. The directions tell the clerk which documents should be included in the record on appeal and sent to the appellate court to consider in the appeal. See Florida Rule of Appellate Procedure 9.200(a)(3), Form (f) in Florida Rule of Appellate Procedure 9.900 and Chapter on Pulling Together the Record on Appeal. Directions to the clerk are filed with the clerk of the agency or with the clerk of the Division of Administrative Hearings. If a party wants a transcript of the hearing to be a part of the record, they must order it from the court reporter who attended the hearing and pay for it.

If the agency is going to issue the final order, a party with a transcript of the administrative hearing should generally file the original of the transcript with the clerk of the agency and give a copy to the administrative law judge before the recommended order is issued so that the administrative law judge can use it to prepare the recommended order.

If the administrative law judge is going to issue the final order, the party should generally file the transcript with the clerk of the Division of Administrative Hearings before the administrative law judge issues the final order.
Although the agency usually orders and files the transcript and provides for the other party to get a copy, not all agencies do so. Therefore, immediately after the hearing, a party considering an appeal should determine immediately who will order and pay for the transcript.

In addition to the cost of the transcript, there may be a charge for preparing the record on appeal, which the appellant must pay. That charge is $3.00 for each document that is included in the record as authorized by Section 28.24, Florida Statutes. Payment should be made directly to the agency issuing the final order or, if the administrative law judge issued the final order, to the Division of Administrative Hearings. After the appellant has paid the required fee, the agency clerk or the clerk of the Division of Administrative Hearings sends the record to the district court of appeal. See Chapter on Pulling Together the Record on Appeal.

The appellant will not receive a copy of the record, but will receive a copy of the index to the record, which describes each of the documents in the record and gives each page in the record a consecutive number. The parties will cite to this index to the record (“record index”) and the page numbers assigned to the documents in the record in their briefs that they file with the district court of appeal. See Chapter 120, Florida Statutes.

E. Stays While the Appeal Is Pending.

A stay of the enforcement of the order being appealed is described in more detail in a separate chapter of the Handbook. See Chapter on Stays Pending Review. Below is a summary of the key points concerning stays in administrative hearings.

During the appeal, the decision contained in the final order is effective and will be enforced. If a party wants the agency’s action to be stopped while the appeal is pending, that party must file a “motion for stay”. In most cases, the motion must be filed with the agency that issued the final order. However, if an administrative hearing resulted in a license revocation or a
license suspension, the appellant can file a motion for stay with the district court of appeal instead of the agency. A stay, if granted, will stop the agency’s action from taking place until the appeal is over. If the motion is filed with the agency, the agency will issue an order granting or denying the stay. If granted, the agency may, by law, require the appellant to post a bond or money as a requirement of the stay. If the stay is denied, or if the appellant disagrees with having to post a bond or with the amount of the bond, they may file a motion with the district court of appeal asking the court to review the agency’s decision. Whether initially filed with the agency or directly filed with the district court of appeal, the court will make the final decision and will issue an order granting or denying the stay. The district court of appeal’s decision will be final on the issue of the stay.

F. The Appellate Briefing Process in an Administrative Appeal.

The requirements for filing briefs in an administrative appeal are generally the same as for appeals in civil actions, and are addressed in more detail in a separate chapter of this Handbook. See Chapter on Writing an Appellate Brief. Below is a summary of the requirements in the administrative appeal context.

The person filing the notice of appeal, the appellant, must serve (mail) an initial brief within 70 days of the filing of the notice of appeal. The other party, the agency, is the appellee, and is required to serve (mail) an answer brief that addresses the matters and arguments raised in the initial brief within 20 days after the service of the initial brief. The appellant may (reply briefs are not mandatory) then serve (mail) a reply brief addressing matters in the answer brief. If the appellant decides to prepare and serve a reply brief, the reply brief must be served within 20 days of the service of the answer brief. The mailing of the appellate briefs generally adds five
days to these time limits. *See Chapter on Timeline for Appeals From Final Orders of Lower Tribunals.*

The initial brief and answer brief generally cannot be longer than 50 pages. The reply brief generally cannot be longer than 15 pages. Only if the appellate court grants a motion to file a longer brief can appellate briefs be longer than the page limits that the Rules of Appellate Procedure impose. Motions to exceed the page limits, however, are rare, and rarely granted.
CHAPTER 16: UNEMPLOYMENT COMPENSATION APPEALS

A. Introduction

The Agency for Workforce Innovation (AWI) runs Florida’s unemployment compensation program. The Unemployment Appeals Commission (Commission) is the top level of administrative review of unemployment cases. The Commission is an independent body within the AWI. The law and rules regarding unemployment claims are in Chapter 443, Florida Statutes, and Titles 60BB-3, 60BB-5, 60BB-6 and 60BB-7 of the Florida Administrative Code. Information about proceedings before the AWI, including filing unemployment claims and hearings before an appeals referee, can be found on the AWI website at: http://www.floridajobs.org. Information about the Commission, including appeals of the referee’s decision to the Commission and appeals of the Commission’s decisions to the District Court of Appeal, can be found at the Commission’s website at: http://www.uac.fl.gov.

B. The Initial Claim and Hearing Process.

Workers who lose their jobs can file a claim for unemployment benefits with the AWI. The AWI makes an “initial determination” or decision for each claim and sends a notice of that decision to the parties. If the claim is granted, the notice states the amount of benefits the claimant will receive. If the claim is denied, the AWI must give a reason. There are many reasons to deny benefits. The most common reasons are: (1) quitting work for personal reasons, and (2) being fired for misconduct at work. The AWI’s initial decision is final unless the claimant or employer asks for an appeal hearing within 20 days.

An “appeal hearing” is like a trial when evidence is given. An appeal information booklet and hearing notice will be sent to the claimant, who should read both carefully. At the hearing, the parties present evidence to support their view. The evidence may include documents
and testimony from witnesses. For example, if the claim was denied based on misconduct or quitting for a personal reason, the claimant must present evidence which shows that was not the case. After the hearing, the “Appeals Referee” will make a written decision and send it to the parties. The written decision is final unless one party seeks review by the Commission within 20 days after the date of the appeals referee’s decision.

When the Commission reviews the appeal referee’s decision, it relies on the evidence given at the hearing. The Commission does not hold a second trial. It only looks to see whether the facts stated by the appeals referee are supported by evidence presented at the hearing and whether the legal conclusions are supported by the law. At the end of its review, the Commission will issue an order that affirms, modifies or reverses the appeals referee’s decision. The clerk of the Commission will mail a copy of that order to the parties. The Commission’s order, is the end of the administrative stage in unemployment cases. The Commission’s decision can only be reviewed by filing a notice of appeal with the Commission and in the appropriate district court of appeal.

C. Review by the District Court of Appeal.

Appeals from the Commission are controlled by the Florida Rules of Appellate Procedure 9.010-9.900. Unlike filing unemployment claims and proceedings before appeals referees and the Commission, much of which can be done on-line or by telephone and fax, appeals to the district court cannot be conducted on the internet or by telephone or fax.

To appeal the Commission’s order an appellant must file the original “notice of appeal” with the clerk of the Commission. The appellant must also file a copy of the notice of appeal with the clerk of the district court of appeal. This notice of appeal cannot be filed on the internet or by fax.
Which district court of appeal to file the notice of appeal in is a matter that is in dispute around the state. The Third District Court of Appeal allows claimants to file the notice of appeal in the jurisdiction where the appeals referee’s office is located or where the claimant resides. For example, if the claimant lives in Miami and the hearing was conducted by telephone by an appeals referee located in Tallahassee, the claimant could file the appeal in either the First or the Third District Court of Appeal. The Second District Court of Appeal, however, requires that appeals be filed only in the jurisdiction where the appeals referee who issued the written decision is located. For instance, if the hearing was conducted by telephone by an appeals referee located in Tallahassee and the claimant in Tampa, the notice of appeal must be filed with the First District Court of Appeal. The safest procedure is to file the notice of appeal with the Commission and with the district court of appeal in the jurisdiction where the appeals referee’s office is located.

The notice of appeal must be filed within 30 days of the date the Commission’s order. This time period cannot be extended. The district court of appeal will not be able (will not have jurisdiction) to hear the appeal if the notice of appeal is not filed on time. The date of mailing cannot be considered. The notice of appeal must be actually received by the clerk of the Commission and/or the district court of appeal no later than 30 days after the order was filed by the clerk. A sample notice of appeal is provided in Florida Rule of Appellate Procedure 9.900, Form (e).

When the employer files the copy of the notice of appeal with the district court of appeal, it must also pay a filing fee of $300. Claimants do not need to pay filing fees.

Within 10 days of filing the notice of appeal, the appellant must file a document called “Directions to the Clerk” which tells the Commission’s clerk what documents to include in the
record on appeal. A sample of the directions to the clerk is in Florida Rule of Appellate Procedure 9.900, Form (g).

For most appeals, the appellant will also include a typed copy of the tape-recorded trial before the appeals referee. That typed copy (or “transcript”) is ordered by filing a “Designation to Reporter” with the clerk of the Commission along with the directions to the clerk. A sample of the designation to reporter appears in Florida Rule of Appellate Procedure 9.900, Form (h). Employers must pay someone to type a transcript of the hearing, but claimants are not required to pay this cost.

The record on appeal should include (1) the record before the Commission (for example, all notices, pleadings and evidence considered by the appeals referee and the written decision of the appeals referee); (2) the transcript of the trial before the appeals referee; and (3) the written order of the Commission. The clerk of the Commission will make the record and send it to the clerk at the district court of appeal within 50 days after the notice of appeal is filed.

The party who files the notice of appeal, the “appellant,” must file an initial brief at the district court of appeal within 70 days after the notice of appeal was filed. See Chapter on Writing an Appellate Brief for the contents of a brief. The facts stated by the appeals referee are reviewed to see if there is “competent, substantial evidence” or proper evidence in the record to support them. If there is evidence to support the facts, they will be affirmed, even if there is other evidence to the contrary. The district court of appeal reviews the conclusions of law under the “clearly erroneous” standard. This means that the court will decide if the correct rules of law were applied. In writing the argument part of the briefs, the appellant should show how the facts are not supported by the evidence and/or how the wrong law was applied.

The other parties (usually the employer and the Commission) will be the “appellees.”
Corporate employers must have an attorney. The Commission almost always files a brief. If the employer filed the notice of appeal, then the claimant below will be the appellee. An appellee may file an answer brief telling why the Commission’s decision is correct. The answer brief must be filed within 20 days, plus 5 days for mailing, after the initial brief is mailed.

After the answer brief is filed, the appellant may file a reply brief within 20 days, plus 5 days for mailing.

Each party must file the original and 3 copies of all briefs with the district court of appeal. Page limits and type size for briefs are controlled by Florida Rule of Appellate Procedure 9.210(a) and are explained in the Chapter on Writing an Appellate Brief.

After all the briefs have been filed, the case will be assigned to a panel of 3 judges. Either party may file a request to come to court and make an “oral argument.” The request must be filed no later than by the time the reply brief is due. The Third District Court of Appeal is the only court that regularly grants requests for oral argument in unemployment cases. Florida’s other district courts of appeal do not regularly grant requests for oral argument. In reviewing the appeal, the district court of appeal does not have another trial.

After reading all of the briefs, and hearing oral argument, if any, the district court of appeal will issue a written decision. That decision will either affirm or reverse the Commission’s order. A limited number of post-decision motions are allowed. See Chapter on Post-Decision Motions--Appellate. The district court of appeal’s decision is the final step in the appeal process.
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 order” in workers’ compensation cases. See Florida Rules of Appellate Procedure 9.180(h)(2), 9.220, 9.210.

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 Rules 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 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” 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 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 stated on the order. For example, if the order states that “a true copy of the foregoing was furnished by mail on October 3, 2007 to the following parties,” the notice of appeal must be filed (not mailed) 30 days from October 3, 2007, the date the judge’s office stated on the order that it mailed the order to the parties.

To start the appellate process, 2 copies of the notice of appeal must be filed (not mailed) 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, 2007 through May 31, 2007 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, 2007 through May 31, 2007, 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.

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” 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.” 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 sworn 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) is the type of information an appellant must include in both the verified petition to be relieved of costs and the sworn financial affidavit. The appellant must send a copy of both the verified petition to be relieved of costs and the sworn 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.

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 (mailed) within 20 days after service (the date mailed) 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 on Pulling Together the Record on Appeal.
The appellee’s answer brief must be served (mailed) 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 on Motion Practice in the Appellate Courts, Chapter on Checklist for Appellate Briefs and Generally Petitions in the District Courts of Appeal, and Chapter on Oral Argument in Florida’s Appellate Courts and the Florida Supreme Court.
CHAPTER 18: ORAL ARGUMENT IN FLORIDA’S APPELLATE COURTS
AND FLORIDA’S SUPREME COURT

Oral argument is a chance for the parties to formally and respectfully talk, in an orderly way, about the parties’ appeal or petition with the appellate judges and supreme court justices. More important, oral argument is a chance for the parties to the appeal or petition (the appellate litigants) to answer all questions that the judges and justices may have about the case before them.

Not all cases in the appellate courts have oral argument. Meaning, the Second, Third, Fourth, and Fifth District Courts of Appeal regularly grant timely requests for oral argument in cases involving final orders. In the First District Court of Appeal and in the Florida Supreme Court, oral argument is not always granted. If oral argument is requested and granted, then it happens after all the parties have filed their initial and answer briefs (and after their reply brief). During oral argument, the appellant and the appellee will explain the important points of the case from the appellant’s or appellee’s particular position. The appellate court will also ask the appellate litigants questions about some of the more difficult or unclear issues.

Rule 9.320 of the Florida Rules of Appellate Procedure concerns and describes oral arguments. Tracking Rule 9.320, if a party to an appeal wants oral argument in the appeal, that party must ask for it by filing a motion for oral argument or a request for oral argument.

The party must generally file the motion or request no later than the date that the party’s last brief is due. For example, if a party is the appellant or petitioner, the party must file the motion for oral argument no later than the time to file the appellant’s reply brief or the petitioner’s initial petition-brief. If the appellate rules do not allow that party to file a reply brief, then the party must file the motion no later than the date that the party must file his/her initial
brief. If the party is an appellee or respondent, then that party files his/her request for oral argument by the deadline to serve the answer or response brief.

In Florida’s state courts, oral argument is generally not requested in the appellate brief, but requested in a separate motion or separate request. The court does not have to grant a request for oral argument.

If there is oral argument, the court will send an order notifying when the argument will happen. The Florida Supreme Court generally holds oral arguments the first week of each month, except in July and August. The arguments take place at the Florida Supreme Court courthouse in Tallahassee. Each side of the appeal has 20 to 30 minutes for their oral argument, depending on the type of case. The appellant/petitioner goes first. The appellant can save some of his/her time for rebuttal, which occurs after the appellee argues. Rebuttal is a chance to respond to any arguments made during the appellee’s oral argument. The appellee/respondent goes second and has no rebuttal time.

The order scheduling a case for oral argument usually has a list of other cases (a schedule or scheduling order) that the court will hear that same day. The arguments usually begin first thing in the morning (8:30 or 9:00 a.m.). An appellate litigant who is going to oral argument should be at the courthouse earlier than the time listed for argument, usually at least 30 minutes before the designated time. This is because the court sometimes calls cases in a different order than listed in the schedule. During oral argument, parties do not talk about anything that is not contained in the record on appeal. Therefore, it is important that the parties are very familiar with the record on appeal when attending oral argument.

If an appellate litigant is going to oral argument in his/her case, it is a good idea if he/she can go to the court a day or two earlier and watch an argument or two from other cases to see the
courthouse and how the process works in that court. Any person can also watch the Florida Supreme Court’s oral arguments live via satellite, by logging into the internet (www.flcourts.org) or by watching some local cable TV stations. People can also watch past oral arguments from the court’s archives. Information on viewing the arguments is contained on the Florida Supreme Court’s website, www.floridasupremecourt.org under “Oral Arguments.” People can also watch oral arguments before the First and Fifth District Courts of Appeal live on the internet and can view past oral arguments from the archives of those courts. Information on viewing the arguments is contained on those courts’ websites, www.1dca.org and www.5dca.org, under “Oral Arguments.”

Unlike a lower tribunal, which may decide issues right after a hearing, the Florida Supreme Court and the district courts of appeal will not give the parties a decision in the case immediately after the oral argument finishes. The courts will send an opinion, a written order or decision on the appeal, which is often many months to more than a year later. The length of time that it takes the court to send an opinion is also not a reflection of how seriously the court weighed the issue. Generally, the length of time that it takes the court to send an opinion is a reflection of how important the issue is to the public as a whole and how settled, clear, or unsettled the law is in that particular area.
CHAPTER 19: POST-DECISION MOTIONS—APPELLATE

A. Introduction.

Once an appellate court makes a decision, it will issue a written ruling, also known as the court’s “opinion.” The appellate court’s ruling may be written in a “published opinion”, which explains the reasons for the appellate court’s decision, or it may be written only as an order, which affirms the decision of the lower tribunal without explanation. Such an order, which only affirms (or reverses) the decision of the lower tribunal without explaining the appellate court’s reasoning, is known as a per curiam affirmed (or per curiam reversed or “PCR”), or “PCA,” opinion.

In a civil case, after the appellate court publishes its opinion, the losing party has the right to ask the appellate court to reconsider or clarify the opinion. The losing party also has the right to ask the appellate court to write an opinion which the appellate court has the power to deny. The losing party also has the right to suggest further review of the opinion, called certification, by a higher court. This process is called the post-decision motions process. See Florida Rules of Appellate Procedure 9.330 and 9.331.

Most final appellate decisions can be challenged for rehearing and clarification. The decisions that cannot be challenged are decisions of the Florida Supreme Court that grant or deny discretionary review under Florida Rules of Appellate Procedure 9.120. Motions for rehearing or clarification generally need to be filed within 15 days of the appellate decision. If the losing party files a post-decision motion, then the other party is generally allowed 10 days to serve a response. In the response, the party must explain to the appellate court why the opinion should stand and why the losing party’s motion should be denied. The losing party is not required to file a written reply to the response unless the appellate court orders it.
Unless the case is in the Florida Supreme Court, there are five post-decision motions that a party can use. These motions are listed in Florida Rules of Appellate Procedure 9.330 and 9.331. They are:

- a motion for rehearing
- a motion for clarification
- a motion for certification
- a motion for rehearing en banc; and
- a motion asking that the appellate court write a full opinion explaining its reasoning, if the appellate court did not write an opinion explaining its reasoning when deciding the case.

A party is limited in the number of post-decision motions it can file. A party cannot file separate motions for rehearing and clarification. A party is limited to one motion for rehearing and/or clarification. Thus, the motion should raise all of the issues a party would have raised if it were filing both. Whatever motion a party chooses to file, it can only file that type of motion once. Likewise, a party can only file one motion for certification. See Florida Rules of Appellate Procedure 9.330(b).

There are some exceptions to this rule. For example, if a new opinion, resulting from a first rehearing motion, changes the original opinion, then a party may file a second rehearing motion to discuss that change. This Chapter describes how and when to begin the post-decision motion process.

B. What, Where and When to File Post-Decision Motions and What to Expect.

Before filing a post-decision motion, a party should first carefully review and research the issues presented by the appellate court’s opinion. A party must also ask five questions,
honestly thinking about what the appellate court’s answers would be:

- Is the opinion a written opinion as opposed to a PCA?
- Does the opinion refer to cases not cited by the parties?
- Does the opinion fail to mention truly important cases that the losing party cited in his/her appellate brief(s)?
- Does the opinion refer to facts that the parties did not cite?
- Does the opinion fail to mention truly important facts that the losing party cited in its appellate brief(s)?

If the answer to any of these questions is “no”, probably no post-decision motion should be filed.

If the answer to any of those questions is “yes”, a party still may be better off not filing a post-decision motion.


   a. Motion for Rehearing.

   The purpose of a motion for rehearing is very limited. Under Florida Rule of Appellate Procedure 9.330(a), a motion for rehearing cannot entirely reargue the issues raised in the appellate briefs. However, the appellate rules do allow some reargument of a certain point raised in the appeal. The only grounds for a motion for rehearing are to point out specific facts or specific legal issues the court may have missed or misunderstood, also known as facts or issues which the court has “overlooked or misapprehended”. The motion for rehearing is not a chance for a party to complain about the appellate court or to tell the court how much it disagrees with the decision or how unfair it thinks the court is.
If a party cannot point to specific facts or law already brought to the appellate court’s attention to show why the appellate decision is wrong, then there are generally no grounds to file a motion for rehearing. Florida Rule of Appellate Procedure 9.410 gives the appellate court the ability to sanction a party who files a motion for rehearing that is without any basis or is insulting to the court or the opposing party.

b. Motion for Clarification.

A motion for clarification is used to clarify something in a written opinion. For example, if the appellate panel stated its opinion, but missed a key fact, a party may want to file a motion for clarification. If the appellate court only partially explained the reason for its decision, then a party may want to file a motion for clarification. A party must follow the same procedures and standards in preparing a motion for clarification as when preparing a motion for rehearing. A party must also point to specific facts or legal issues that it believes need to be clarified.

c. Motion for Certification.

A motion for certification asks the appellate court that decided the appeal to send the case to the Florida Supreme Court based on a specific and important question which needs to be answered or based on a conflict among the appellate courts, or an appellate court and the Florida Supreme Court, or, on federal law decision, the Florida Supreme Court and the U.S. Supreme Court.

If certification is sought based on an important question, that question must be an issue of great importance from the appellate court’s outlook, not the party’s that could have a great impact on the general public. So, before filing a motion for certification, a party must honestly ask whether the issue it would like to have certified to the Florida Supreme Court is an issue that is not just important to the party, but is important to most, if not all, Florida citizens.
For example, a breach of contract question may only be important to the parties in that case, but not important to all Florida citizens. On the other hand, whether or not a person should get a hearing before having his/her property taken away by someone who said he breached a contract, may not only be important to that person. It might also be an issue of great importance to all Florida citizens. As another example, getting a speeding ticket may be very important to the person who gets the ticket, but not important to all Florida citizens. On the other hand, the fact that one person was part of a specific group of people who were given speeding tickets while not even in a car may not only be important to that one person. It might also be an issue of great importance to all Florida citizens.

A party must follow the same procedures and standards in preparing a motion for certification as when preparing a motion for rehearing. A party must present a question or conflict which points to specific facts or legal issues that need to be clarified in the opinion.

d. Motion Requesting That the Appellate Court Issue a Written Opinion.

When the appellate court issues a PCA decision without a written opinion, a party can file a motion asking the appellate court to write an opinion explaining its reasoning. However, to make that request, the motion must explain why the party believes that a written opinion would provide a basis for later Florida Supreme Court review. A party must follow the same procedures and standards for this motion as when preparing a motion for rehearing.


The appellate courts of Florida are divided into five districts covering specific counties: First District Court of Appeal, Second District Court of Appeal, Third District Court of Appeal, Fourth District Court of Appeal, and Fifth District Court of Appeal. Imagine how frustrating it would be for a party and for lower tribunal judges if the appellate court reviewing the lower
tribunal’s decisions decided a breach of contract case one way, and then, the next day, decided an almost identical breach of contract case in a different way. To avoid that confusion and to help everyone to know what should happen in future cases, each district court of appeal works to make sure that its opinions are consistent with its earlier decisions. In that way, the lower tribunals that are located in an area controlled by that particular district court of appeal are given clear guidance on what their decisions should be at the lower tribunal level in future cases. That is why the Florida Rules of Appellate Procedure have what are called “motions for rehearing en banc.” “En banc” means “the full court.”

A motion for rehearing en banc is filed under Florida Rule of Appellate Procedure 9.331. It asks the full court – all appellate judges serving on that appellate court, not just the three appellate judges who decided the case – to review the opinion and consider it, as a full court. There are two grounds upon which a party can ask the appellate court to do this: (1) because the issue is one of exceptional importance, or (2) because the opinion in the case in question conflicts with other opinions of this same appellate court on this same issue, or both.

Motions for rehearing en banc ask the entire appellate court to take a highly unusual step and review the opinion and compare it with other previous decisions of that same appellate court. It is highly unusual for an appellate court to do this. For that reason, a motion for rehearing en banc should only be filed after careful study of the current opinion and the law and facts controlling it. Good judgment must be used.

It is advisable to file a combined motion for rehearing/rehearing en banc as a matter of courtesy and common sense to the judges who originally decided the appeal. Before going to the entire court, the judges who issued the decision should first be given the opportunity to reconsider their own decision. Those judges are most familiar with the facts and legal issues of
the appeal. Therefore, those judges would be the best place to start when trying to get an error corrected.
CHAPTER 20: FLORIDA SUPREME COURT JURISDICTION AND SEEKING REVIEW

A. Overview of the Florida Supreme Court.

The Florida Supreme Court is the highest court in the State of Florida. There are seven justices who preside over this Court. The Court is located at:

Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399.

The telephone number of its clerk’s office is (850) 488-0125.

B. What Types of Cases the Florida Supreme Court Hears.

According to the Florida Constitution, the Florida Supreme Court has the power or “jurisdiction” to hear cases dealing with the following:

1. Direct Jurisdiction – Mandatory Review.

The Florida Supreme Court has the power to review certain kinds of cases directly. That is, if an order deals with the following listed areas, then there may be a right of appeal directly to the Florida Supreme Court and, in given situations, it is not necessary to appeal to one of the District Courts of Appeal. Pertinent here, the most frequent direct appeals to the Florida Supreme Court concern the following:

(a) final orders of courts imposing sentences of death;

(b) decisions of District Courts of Appeal or lower tribunals declaring invalid a state statute or a provision of the state constitution;

If provided for by Florida general law, the Supreme Court shall review:

(a) final orders entered in matters for the validation of bonds or certificates of indebtedness; and
(b) action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

2. Discretionary Jurisdiction.

The Florida Supreme Court also has discretionary jurisdiction to hear certain matters. In other words, there is no automatic guarantee the Court will review certain issues presented before it. According to the powers vested in it, the court may hear the following issues; however, it is up to the court to decide, in its discretion, whether the court will hear those issues:

(a) decision of District Courts of Appeal that expressly declare valid a state statute;
(b) expressly construe a provision of the state or federal constitution;
(c) expressly affect a class of constitutional or state officers;
(d) expressly and directly conflict with a decision of another District Court of Appeal or of the Florida Supreme Court on the same question of law;
(e) pass upon a question certified to be of great public importance;
(f) are certified to be in direct conflict with decisions of other District Courts of Appeal.

C. What Is Needed to Appeal a Decision from the Appellate Court to the Florida Supreme Court.

It is always best to consult with an appellate attorney and retain his/her services in the handling of the appeal. If unable to do so, a party wishing to appeal must first determine whether the issue concerns a matter even reviewable by the Florida Supreme Court. A party wanting to appeal must obtain a copy of the opinion issued by the District Court of Appeal and/or the final order of the lower tribunal court.
As set out above in section B, there are certain cases that the court is required to review and certain cases that it has the discretion to review. A party wanting Florida Supreme Court review must look at the order/opinion and determine which category that ruling/opinion/order falls under.

As set out above, the court has the discretion to hear cases dealing with the following:

1. A decision of District Courts of Appeal that expressly declares valid a state statute:
   
   The ruling, opinion, order must have language which expressly declares a state statute valid. The term “expressly” requires some written representation or expression of the legal grounds which support the decision under review.

2. Expressly construes a provision of the state or federal constitution:
   
   The ruling/opinion/order must contain language explaining the meaning of a provision of the state or federal constitution. Again, the term “expressly” requires some written representation or expression of the legal grounds which support the decision under review.

3. Expressly affects a class of constitutional or state officers:
   
   The ruling/opinion/order must contain language which affects a class of constitutional or state officers. Again, the term “expressly” requires some written representation or expression of the legal grounds which support the decision under review.

4. Expressly and directly conflicts with a decision of another District Court of Appeal or of the supreme court on the same question of law:
   
   The opinion from the District Court of Appeal must contain language which is contrary to the opinion of another District Court of Appeal or of the Florida Supreme Court. It is not necessary that the District Court of Appeal explicitly identify a conflicting appellate opinion in
its decision for conflict to be demonstrated; however, it, at least, should address any legal principles applied as a basis for its decision.

5. Pass upon a question certified to be of great public importance:

The opinion or order must contain language to the effect that the issues presented contain a question certified by the authoring court to be of great public importance.

6. Are certified to be in direct conflict with decisions of other District Courts of Appeal:

The opinion or order must contain language to the effect that the issues presented contain a question certified by the authoring court to be of great public importance.

D. What Is Needed to Invoke the Discretionary Jurisdiction of the Florida Supreme Court.

The jurisdiction of the Florida Supreme Court must be invoked within 30 days from the rendition of the order or opinion to be reviewed. “Rendition” is when a signed, written order is filed with the clerk of the lower tribunal. The party wanting to invoke the Florida Supreme Court’s jurisdiction must file 2 copies of a “notice to invoke jurisdiction,” along with the filing fee, and a copy of the opinion or order being reviewed with the clerk at the lower tribunal that issued the order being appealed. The notice must contain the name of the lower tribunal (the court being appealed from), the name and designation of the party(ies) on each side and the case number of the lower tribunal. The notice must also contain the date that the order was rendered, for which review is being sought, and the basis for invoking the jurisdiction of the Florida Supreme Court. The basis would be one of the issues addressed above. A sample form of a notice to invoke can be located in the form sections in Florida Rules of Appellate Procedure 9.900(d).

The time period for invoking the Florida Supreme Court’s jurisdiction is jurisdictional. That means that the “notice to invoke discretionary jurisdiction” must be filed no later than 30
days from the rendition of the order and filed in the court that issued the opinion. Failure to do so will bar the appeal to the Florida Supreme Court.

The party invoking the jurisdiction of the Florida Supreme Court is called the petitioner and the person who will be responding to the petition is the respondent.

E. What a Party Does Once that Party Has Invoked the Discretionary Jurisdiction of the Florida Supreme Court.

Within 10 days from the date the notice to invoke discretionary jurisdiction was filed, the filing party must serve a brief limited solely to the issue of the Supreme Court's jurisdiction and an appendix containing only a conformed copy of the decision of the District Court of Appeal with the Florida Supreme Court. See Fla. R. App. P. 9.120(d). “Serving the brief” requires that the party place it in the mail to the Clerk of the Supreme Court and to the opposing parties.

The brief shall be printed, typewritten, or duplicated on letter-size paper. The brief shall be submitted in either the font of Times New Roman 14-point font or Courier New 12-point font in black lettering, double spaced, with margins no less than one inch. See Fla. R. App. P. 9.210(a)(1), (2). In the body of the brief immediately following the certificate of service, the party seeking review in the Supreme Court must certify that the brief complies with the font requirements. See Chapter on Writing an Appellate Brief for more details.

The brief on jurisdiction must not exceed ten pages excluding the table of contents and citations. See Fla. R. App. P. 9.210(a)(5). It must contain the following information:

1. Title Page

The title page should include the style, name of brief, the pro se party’s name, and address.

2. Table of Contents
This shall include a table of the sections of the brief listing the issues presented for review, with the referencing page number.

3. Table of Citations

This shall include an alphabetical listing of citations for all cases, statutes, rules, and other authorities relied upon in the brief, with the pages of the brief on which each citation appears. Refer to Florida Rule of Appellate Procedure 9.800 to determine the proper citation form.

4. Statement of the Case and the Facts

This shall include information pertaining to the reason for the appeal, the course of the proceedings, and the disposition in the lower tribunal. This portion must include references to the appropriate volume and pages of the record or transcript.

5. Summary of Argument

This is a condensed version of the argument made in the body of the brief and should seldom exceed 2 and never 5 pages.

6. Argument

This portion explains why the Florida Supreme Court should review this matter. References should be made to cases, statutes, and rules showing why the Florida Supreme Court has authority to review the case.

7. Conclusion

The conclusion states the relief sought. What should the Florida Supreme Court do? It should not be more than 1 page.

8. Certificate of Service
Sample language: “I hereby certify that a copy of the foregoing was mailed on (Date of Mailing) to (Name, Address of opposing party).


An appendix should be filed with the brief on jurisdiction. The appendix must include a copy of the order to be reviewed.

See the general filing procedures for the quantity of briefs and appendix to be served.

F. What Happens After the Brief on Jurisdiction is Filed.

The opposing party, called the “respondent,” shall serve his/her brief on jurisdiction within 20 days from the date reflected in the certificate of service contained in petitioner’s brief on jurisdiction. If the brief was received by mail, then the respondent shall have an additional 5 days within which to serve its brief on jurisdiction. The respondent’s brief shall follow the same guidelines as set out in the chapter on Writing an Appellate Brief; however, in the case of the respondent’s brief, an appendix would not need to be filed to include the order being appealed. Respondent’s brief, of course, would include argument with appropriate citations to case law, statutes, rules, etc., and why the Supreme Court does not have jurisdiction to review this matter.

After the briefs on jurisdiction have been completed and filed with the Supreme Court, the parties would wait for an order from the Florida Supreme Court advising whether it will review this matter. If the Florida Supreme Court will review this matter, an order will be entered which provides the time period for filing the petitioner and respondent’s briefs. It may also advise whether this matter will be heard for oral argument.

G. What Happens if the Florida Supreme Court Accepts Jurisdiction.

Petitioner’s brief shall be served within 20 days from the rendition of the order accepting jurisdiction. Petitioner’s brief would include the following sections:
1. Title Page

The title page should include the style, name of brief, the pro se party’s name, and address.

2. Table of Contents

This shall include a table of the sections of the brief listing the issues presented for review, with the referencing page number.

3. Table of Citations

This shall include an alphabetical listing of citations for all cases, statutes, rules, and other authorities relied upon in the brief. Refer to Florida Rule of Appellate Procedure 9.800 to determine the proper citation form.

4. Statement of the Case and the Facts

This shall include information pertaining to the reason for the appeal, the course of the proceedings, and the disposition in the lower tribunal. Proper references shall be made to the record on appeal.

5. Summary of Argument

This is a condensed version of the argument made in the body of the brief and should seldom exceed 2 and never 5 pages.

6. Argument

This shall include a discussion as to why the opinion/order from the lower tribunal is incorrect or discussion as to the relief being sought and the legal reasons for it. References should be made to cases, statutes, and rules relied on in the discussion of why the lower tribunal decision was incorrect.

7. Conclusion
This shall include the type of relief sought and should not be more than 1 page. What is it the Florida Supreme Court should do?

8. Certificate of Service

Sample language: “I hereby certify that a copy of the foregoing was mailed on (Date of Mailing) to (Name, Address of opposing party).


The respondent would then have to serve his/her brief within 20 days from the date reflected in the certificate of service contained in the petitioner’s brief. If the brief was received by mail, then the respondent shall have an additional 5 days within which to serve his/her brief. The respondent’s brief shall follow the same guidelines as set out in the chapter on Writing an Appellate Brief. However, if the respondent agrees with the statement of facts and the case as recited by the petitioner, this statement of facts and case section may be omitted. Respondent’s brief, of course, would include argument with appropriate citations to case law, statutes, rules, and other authorities to show why the lower tribunal opinion is correct and should not be reversed. Then the petitioner may serve a reply brief within 20 days from the service of the respondent’s brief. If the brief was served by mail, then an additional 5 days would be added.

Petitioner’s reply brief would address the issues raised in the respondent’s brief. It would include the following sections.

1. Title Page

The title page should include the style, name of brief, the pro se’s name, and address.

2. Table of Contents

This shall include a table of the sections of the brief listing the issues presented for review, with the referencing page number.
3. Table of Citations

This shall include an alphabetical listing of citations for all cases, statutes, rules, and other authorities relied upon in the brief. Refer to Rule 9.800 to determine the proper citation form.

4. Summary of Argument

This is a condensed version of the argument made in the body of the brief and should seldom exceed 2 and never 5 pages.

5. Argument

This shall include a discussion addressing the issues raised in respondent’s brief and why those issues are the incorrect findings of law. References should be made to cases, statutes, and rules relied on in the discussion.

6. Conclusion

This shall include the type of relief requested and should not be more than 1 page. What should the Florida Supreme Court do?

7. Certificate of Service

Sample language: “I hereby certify that a copy of the foregoing was mailed on (Date of Mailing) to (Name, Address of opposing party).


H. What is the Record on Appeal.

What follows is a discussion of the record on appeal for Florida Supreme Court review. The clerk of the court of the lower tribunal shall prepare a document called the “record on appeal.” That document contains an index listing all documents filed in the lower tribunal file and the appellate file with references to each page. Additionally, the record on appeal may
include the lower tribunal transcript. See chapter on Pulling Together the Record on Appeal for more detailed discussion.

I. A Case Which Requires Mandatory Review by the Florida Supreme Court.

Again it is always best to consult with an appellate attorney and retain his/her services in the handling of your appeal. If you have a matter which falls under the authority of the Florida Supreme Court requiring a mandatory review as set out in section B of this Chapter, it is commenced by filing an original and 2 copies of a document entitled “Notice of Appeal,” with the clerk of the lower tribunal issuing the order or opinion appealed. The notice shall contain the following: a caption containing the name of the lower tribunal, the name and designation of at least one party on each side and the case number in that lower tribunal; name of the court to which the appeal is taken, the date of rendition, and the nature of the order to be reviewed (this would be the area listed in section 3 requiring mandatory review by the court). Again, an original and two copies should be filed at the lower tribunal within 30 days, along with a copy of the order or opinion being reviewed.

The petitioner would then have 70 days from the date of the filing of the notice of appeal within which to file its brief. The brief would contain the same information as set out in section G above.

J. The General Filing Requirements.

The Florida Supreme Court provides the general filing requirements. These guidelines, however, can be accessed by going to the Florida Supreme Court website (www.floridasupremecourt.org).

K. How to Check on the Status the Florida Supreme Court Case.
A party may inquire into the status of his/her case by contacting the clerk’s Office at (850) 488-0125 or by accessing the docket online at www.floridasupremecourt.org.
CHAPTER 21: BASED ON
SEEKING REVIEW IN THE U.S. SUPREME COURT
FROM THE OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

A. Guide for Prospective Indigent Petitioners for Writs of Certiorari.

1. Introduction.

These instructions and forms are from the U.S. Supreme Court and are designed to assist petitioners who are proceeding in forma pauperis and without the assistance of counsel. A copy of the Rules of the U.S. Supreme Court, which establish the procedures that must be followed, can be found at http://www.supremecourtus.gov/ctrules/ctrules.html. Be sure to read the following Rules of the U.S. Supreme Court very carefully:

- Rules 10-14 (Petitioning for certiorari)
- Rule 29 (Filing and service on opposing party or counsel)
- Rule 30 (Computation and extension of time)
- Rules 33.2 and 34 (Preparing pleadings on 8½ x 11 inch paper)
- Rule 39 (Proceedings in forma pauperis)

B. Nature of U.S. Supreme Court Review.

It is important to note that review in the U.S. Supreme Court by means of a writ of certiorari is not a matter of right, but of judicial (the Court’s) discretion. The biggest concern of the U.S. Supreme Court is not to correct errors in lower tribunal decisions, but to decide cases presenting issues of great importance beyond the particular facts and parties involved. The Court grants and hears argument in only about 1 percent of the cases that are filed each term. The vast majority of petitions are simply denied by the Court without comment or explanation. The denial of a petition for a writ of certiorari reflects only that the Court has chosen not to accept the
case for review and does not express the Court’s view of the merits of the case.

Every petitioner for a writ of certiorari is advised to read carefully the Considerations Governing Review on Certiorari set forth in Rule 10. Important considerations for accepting a case for review include the existence of a conflict between the decision of which review is sought and a decision of another appellate court on the same issue. An important function of the U.S. Supreme Court is to resolve disagreements among lower tribunals about specific legal questions. Another consideration is the importance to the public of the issue.

1. Time for Filing.

You must file your petition for a writ of certiorari must be filed within 90 days from the date of the entry of the final judgment in the U.S Court of Appeals or highest state appellate court (for example, the Florida Supreme Court) or 90 days from the denial of a timely filed petition for rehearing. The issuance of a mandate or remittitur after judgment has been entered has no bearing on the computation of time and does not extend the time for filing. See U.S. Supreme Court Rules 13.1 and 13.3.

Filing in the U.S. Supreme Court means the actual receipt of documents by the Clerk; or their deposit in the U.S. mail, with first-class postage prepaid, on or before the final date allowed for filing; or their delivery to a third-party commercial carrier, on or before the final date allowed for filing, for delivery to the clerk within 3 calendar days. See U.S. Supreme Court Rule 29.2

2. What To File.

Unless you are an inmate confined in an institution and not represented by counsel, file:

—An original and 10 copies of a motion for leave to proceed in forma pauperis and an original and 10 copies of an affidavit or declaration in support thereof. See U.S. Supreme Court Rule 39.

—An original and 10 copies of a petition for a writ of certiorari with an appendix consisting of a
copy of the judgment or decree you are asking the U.S. Supreme Court to review including any
order on rehearing, and copies of any opinions or orders by any courts or administrative agencies
that have previously considered your case. See U.S. Supreme Court Rule 14.1(i).

—One affidavit or declaration showing that all opposing parties or their counsel have been
served with a copy of the papers filed in the U.S. Supreme Court. See U.S. Supreme Court Rule
29.5.

If you are an inmate confined in an institution and not represented by counsel, you need
file only the original of the motion for leave to proceed in forma pauperis, affidavit or
declaration in support of the motion for leave to proceed in forma pauperis, the petition for a writ
of certiorari, and proof of service.

The attached forms may be used for the original motion, affidavit or declaration, and
petition, and should be stapled together in that order. The proof of service should be included as
a detached sheet, and the form provided may be used.


The petition for a writ of certiorari may not exceed 40 pages, not including the pages that
precede Page 1 of the form. The documents required to be contained in the appendix to the
petition do not count toward the page limit. See U.S. Supreme Court Rule 33.2(b).


All documents to be filed in the U.S. Supreme Court must be addressed to the Clerk,
Supreme Court of the United States, Washington, D. C. 20543, and must be served on opposing
parties or their counsel in accordance with Rule 29.

C. Instructions for Completing Forms.

1. Motion for Leave to Proceed In Forma Pauperis- Rule 39
a. On the form provided for the motion for leave to proceed *in forma pauperis,* leave the case number blank. The number will be assigned by the U.S. Supreme Court clerk when the case is docketed.

b. On the line in the case caption for “petitioner,” type your name. As a *pro se* petitioner, you may represent only yourself. You may not also represent another. On the line for “respondent,” type the name of the opposing party in the lower tribunal. If there are multiple respondents, enter the first respondent, as the name appeared on the lower tribunal decision, followed by “et al.” to indicate that there are other respondents. The additional parties must be listed in the LIST OF PARTIES section of the petition.

c. If the lower tribunals in your case granted you leave to proceed *in forma pauperis,* check the appropriate space and indicate the court or courts that allowed you to proceed *in forma pauperis.* If none of the lower tribunals granted you leave to proceed *in forma pauperis,* check the block that so indicates.

d. Sign the motion on the signature line.

2. Affidavit or Declaration in Support of Motion for Leave to Proceed *In Forma Pauperis.*

On the form provided, answer fully each of the questions. If the answer to a question is “0,” “none,” or “not applicable (N/A),” enter that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper, identified with your name and the question number. Unless each question is fully answered, the U.S. Supreme Court clerk will not accept the petition. The form must either be notarized or be in the form of a declaration. *See* Title 28 U. S. Code Section 1746.

3. Cover Page - Rule 34.

When you complete the form for the cover page:
a. Leave case number blank. The number will be assigned by the clerk when the case is docketed.
b. Complete the case caption as you did on the motion for leave to proceed in forma pauperis.
c. List the court from which the action is brought on the line following the words “on petition for a writ of certiorari to.” If your case is from a state court, enter the name of the court that last addressed the merits of the case. For example, if the highest state court denied discretionary review, and the state court of appeals affirmed the decision of the lower tribunal, the state court of appeals should be listed. If your case is federal, the United States Court of Appeals that decided your case will always be listed here.
d. Enter your name, address, and telephone number in the appropriate spaces.

4. Question(s) Presented.

On the page provided, give the question or questions that you wish the Court to review. The questions must be concise. Questions presented in cases accepted for review are usually no longer than two or three sentences. The purpose of the question presented is to assist the Court in selecting cases. State the issue you wish the Court to decide. State the issue clearly and without unnecessary detail.

5. List of Parties.

On the page provided, check either the box indicating that the names of all parties appear in the caption of the case on the cover page or the box indicating that there are additional parties. If there are additional parties, list them. Rule 12.6 states that all parties to the proceeding whose judgment is sought to be reviewed shall be deemed parties in the U.S. Supreme Court, and that all parties other than petitioner shall be respondents. The court whose judgment you seek to
have the U.S. Supreme Court review is not a party.

6. Table of Contents.

On the page provided, list the page numbers on which the required portions of the petition appear. Number the pages consecutively, beginning with the “Opinions Below” page as page 1.

7. Index of Appendices.

List the description of each document that is included in the appendix beside the appropriate appendix letter. Mark the bottom of the first page of each appendix with the appropriate designation, e.g., “Appendix A.” See Rule 14.1 pertaining to the items to be included in the appendix.


If you are asking the Court to review a decision of a federal court, the decision of the United States Court of Appeals should be designated appendix A. Appendix A should be followed by the decision of the United States District Court and the findings and recommendations of the United States magistrate judge, if there were any. If the United States Court of Appeals denied a timely filed petition for rehearing, a copy of that order should be appended next. If you are seeking review of a decision in a habeas corpus case, and the decision of either the United States District Court or the United States Court of Appeals makes reference to a state court decision in which you were a party, a copy of the state court decision must be included in the appendix.

b. State Courts.

If you are asking the Court to review a decision of a state court, the decision of which review is sought should be designated appendix A. Appendix A should be followed by the
decision of the lower tribunal or agency that was reviewed in the decision designated appendix A. If the highest court of the state in which a decision could be had denied discretionary review, a copy of that order should follow. If an order denying a timely filed petition for rehearing starts the running of the time for filing a petition for a writ of certiorari pursuant to Rule 13.3, a copy of the order should be appended next.

As an example, if the state lower tribunal ruled against a pro se party, the intermediate court of appeals affirmed the decision of the lower tribunal, the state supreme court denied discretionary review and then denied a timely petition for rehearing, the appendices should appear in the following order:

Appendix A—Decision of State Court of Appeals
Appendix B—Decision of State Trial Court
Appendix C—Decision of State Supreme Court Denying Review
Appendix D—Order of State Supreme Court Denying Rehearing

8. Table of Authorities.

On the page provided, list the cases, statutes, books, and articles that are referenced in the petition and the page number in the petition where each authority appears.


In the space provided, indicate whether the opinions of the lower tribunals in your case have been published, and if so, the citation for the opinion below. For example, opinions of the U.S. Courts of Appeals are published in the Federal Reporter. If the opinion in your case appears at page 100 of volume 30 of the Federal Reporter, Third Series, indicate that the opinion is reported at 30 F. 3d 100. If the opinion has been designated for publication, but has not yet been published, check the appropriate space. Also indicate where in the appendix each decision,
reported or unreported, appears.

10. Jurisdiction.

The purpose of the jurisdiction section of the petition is to establish the statutory source for the U.S. Supreme Court’s jurisdiction and the dates that determine whether the petition is timely filed. The form sets out the pertinent statutes for federal and state cases. You need provide only the dates of the lower tribunal decisions that establish the timeliness of the petition for a writ of certiorari. If an extension of time within which to file the petition for a writ of certiorari was granted, you must provide the requested information pertaining to the extension. If you seek to have the Court review a decision of a state court, you must provide the date the highest state court decided your case, either by ruling on the merits or denying discretionary review.


Set out word-for-word the constitutional provisions, treaties, statutes, ordinances and regulations involved in the case. If the provisions involved are lengthy, provide their citation and indicate where in the appendix to the petition the text of the provisions appears.


Provide a concise statement of the case containing the facts material to the consideration of the question(s) presented; you should summarize the relevant facts of the case and the proceedings that took place in the lower tribunals. Attach additional pages if needed, but the statement should be concise and limited to the relevant facts of the case.

13. Reasons for Granting the Petition.

The purpose of this section of the petition is to explain to the Court why it should grant certiorari. It is important to read U.S. Supreme Court Rule 10 and address what compelling
reasons exist for the exercise of the Court’s discretionary jurisdiction. Try to show not only why the decision of the lower tribunal may be erroneous, but the national importance of having the U.S. Supreme Court decide the question involved. It is important to show whether the decision of the court that decided your case is in conflict with the decisions of another appellate court; the importance of the case not only to you but to others similarly situated; and the ways the decision of the lower tribunal in your case was erroneous. Attach additional pages if required, but the reasons should be as concise as possible, consistent with the purpose of this section of the petition.

14. Conclusion.

Enter the pro se party’s name and the date that you submit the petition.

15. Proof of Service.

You must serve a copy of the petition on counsel for respondent(s) as required by U.S. Supreme Court Rule 29. If you serve the petition by first-class mail or by third-party commercial carrier, you may use the proof of service form below. If the United States or any department, office, agency, officer, or employee thereof is a party, you must serve the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D. C. 20530—0001. The lower tribunals that ruled on the case are not parties and need not be served with a copy of the petition. The proof of service may be in the form of a declaration pursuant to Title 28 U.S. Code Section 1746.
U.S. Supreme Court Forms

No. ____________________________

______________________________________

IN THE

SUPREME COURT OF THE UNITED STATES

______________________________________

__________________________—PETITIONER
(Your Name)

vs.

__________________________—RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in forma pauperis.

[ ] Petitioner has previously been granted leave to proceed in forma pauperis in the following court(s):

______________________________________

[ ] Petitioner has not previously been granted leave to proceed in forma pauperis in any other court.

Petitioner’s affidavit or declaration in support of this motion is attached hereto.

__________________________ (Signature)
AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, ____________________, am the petitioner in the above-entitled case. In support of my
motion to proceed in forma pauperis, I state that because of my poverty I am unable to pay the
costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of
the following sources during the past 12 months. Adjust any amount that was received
weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross
amounts, that is, amounts before any deductions for taxes or otherwise.

<table>
<thead>
<tr>
<th>Income source</th>
<th>Average monthly amount during the past 12 months</th>
<th>Amount expected next month</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>You</td>
<td>Spouse</td>
</tr>
<tr>
<td>Employment</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>Self-employment</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>Income from real property (such as rental income)</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>Interest and dividends</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>Gifts</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>Alimony</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>Child Support</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>Retirement (such as social security, pensions,</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>annuities, insurance)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disability (such as social security, insurance</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>payments)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unemployment payments</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>Public-assistance (such as welfare)</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>Other (specify):</td>
<td>$________</td>
<td>$_______</td>
</tr>
<tr>
<td>Total monthly income:</td>
<td>$________</td>
<td>$_______</td>
</tr>
</tbody>
</table>
2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

<table>
<thead>
<tr>
<th>Employer</th>
<th>Address</th>
<th>Dates of Employment</th>
<th>Gross monthly pay</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
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<tr>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

3. List your spouse’s employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

<table>
<thead>
<tr>
<th>Employer</th>
<th>Address</th>
<th>Dates of Employment</th>
<th>Gross monthly pay</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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<td>$</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

4. How much cash do you and your spouse have? $ __________________________

Below, state any money you and your spouse have in bank accounts or in any other financial institution.

<table>
<thead>
<tr>
<th>Financial Institution</th>
<th>Type of account</th>
<th>Amount you have</th>
<th>Amount your spouse has</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
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<tr>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

- **Home**
  - Value _______________

- **Other real estate**
  - Value _______________

- **Motor Vehicle #1**
  - Year, make & model _______________
  - Value _______________

- **Motor Vehicle #2**
  - Year, make & model _______________
  - Value _______________

- **Other assets**
  - Description ____________________________________
  - Value _______________
6. State every person, business, or organization owing you or your spouse money, and the amount owed.

<table>
<thead>
<tr>
<th>Person owing you or your spouse money</th>
<th>Amount owed to you</th>
<th>Amount owed to your spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$__________________</td>
<td>$__________________</td>
</tr>
<tr>
<td></td>
<td>$__________________</td>
<td>$__________________</td>
</tr>
<tr>
<td></td>
<td>$__________________</td>
<td>$__________________</td>
</tr>
</tbody>
</table>

7. State the persons who rely on you or your spouse for support.

<table>
<thead>
<tr>
<th>Name</th>
<th>Relationship</th>
<th>Age</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

8. Estimate the average monthly expenses of you and your spouse. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

Rent or home-mortgage payment (include lot rented for mobile home)
- Are real estate taxes included? Yes No
- Is property insurance included? Yes No

Utilities (electricity, heating fuel, Water, sewer, and telephone)

Home maintenance (repairs and upkeep)

Food

Clothing

Laundry and dry-cleaning

Medical and dental expenses

<table>
<thead>
<tr>
<th>You</th>
<th>Your spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td>$_______</td>
<td>$__________</td>
</tr>
<tr>
<td>$_______</td>
<td>$__________</td>
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<td>$_______</td>
<td>$__________</td>
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<tr>
<td>$_______</td>
<td>$__________</td>
</tr>
<tr>
<td>Category</td>
<td>You</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Transportation (not including motor vehicle payments)</td>
<td>$_________</td>
</tr>
<tr>
<td>Recreation, entertainment, newspapers, magazines, etc.</td>
<td>$_________</td>
</tr>
<tr>
<td>Insurance (not deducted from wages or included in mortgage payments)</td>
<td></td>
</tr>
<tr>
<td>Homeowner’s or renter’s</td>
<td>$_________</td>
</tr>
<tr>
<td>Life</td>
<td>$_________</td>
</tr>
<tr>
<td>Health</td>
<td>$_________</td>
</tr>
<tr>
<td>Motor Vehicle</td>
<td>$_________</td>
</tr>
<tr>
<td>Other: _________________________</td>
<td>$_________</td>
</tr>
<tr>
<td>Taxes (not deducted from wages or included in mortgage payments)</td>
<td></td>
</tr>
<tr>
<td>(specify): _________________________</td>
<td>$_________</td>
</tr>
<tr>
<td>Installment payments</td>
<td></td>
</tr>
<tr>
<td>Motor Vehicles</td>
<td>$_________</td>
</tr>
<tr>
<td>Credit card(s)</td>
<td>$_________</td>
</tr>
<tr>
<td>Department store(s)</td>
<td>$_________</td>
</tr>
<tr>
<td>Other: _________________________</td>
<td>$_________</td>
</tr>
<tr>
<td>Alimony, maintenance, and support paid to others</td>
<td>$_________</td>
</tr>
<tr>
<td>Regular expenses for operation of business, profession, or farm (attach detailed statement)</td>
<td>$_________</td>
</tr>
<tr>
<td>Other (specify): _________________________</td>
<td>$_________</td>
</tr>
<tr>
<td>Total monthly expenses:</td>
<td>$_________</td>
</tr>
</tbody>
</table>
9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

   Yes    No    If yes, describe on an attached sheet.

10. Have you paid—or will you be paying—an attorney any money for services in connection with this case, including the completion of this form?    Yes    No

   If yes, how much? _________________________

   If yes, state the attorney’s name, address, and telephone number:

   _______________________________________________________________________

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

   Yes    No

   If yes, how much?

   If yes, state the person’s name, address, and telephone number:

   _______________________________________________________________________

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: ________________________________ , 20_____  

______________________________  
(Signature)
No. ______________________

IN THE

SUPREME COURT OF THE UNITED STATES

___________________________________

—PETITIONER

(Your Name)

vs.

RESPONDENT(S)

___________________________________

ON PETITION FOR A WRIT OF CERTIORARI TO

___________________________________

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

___________________________________

(Your Name)

___________________________________

(Address)

___________________________________

(City, State, Zip Code)

___________________________________

(Phone Number)
QUESTION(S) PRESENTED

[ ]

[ ]

[ ]

[ ]

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

[ ]

[ ]

[ ]

[ ]
TABLE OF CONTENTS

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JURISDICTION ......................................................................................................................#

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ........................#

STATEMENT OF THE CASE...............................................................................................#

REASONS FOR GRANTING THE WRIT............................................................................#

CONCLUSION ......................................................................................................................#

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APPENDIX C
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**CASES**

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<tr>
<th>Case name and citation.</th>
<th>PAGE NUMBER</th>
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</table>

**STATUTES AND RULES**

<table>
<thead>
<tr>
<th>Statute number or Rule number and citation.</th>
<th>PAGE NUMBER</th>
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<tbody>
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**OTHER**

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<th>PAGE NUMBER</th>
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</tbody>
</table>
IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from federal courts:
The opinion of the United States Court of Appeals appears at appendix ______ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States District Court appears at appendix ______ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from state courts:

The opinion of the highest state court to review the merits appears at appendix ______ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ______________________________ court appears at appendix ______ to the petition and is

[ ] reported at ______________________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.
1.
JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was ________________________________.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: ________________, and a copy of the order denying rehearing appears at appendix ________.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ________________ (date) on ________________ (date) in Application No. ________

The jurisdiction of the U.S. Supreme Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from state courts:

The date on which the highest state court decided my case was ________________.
A copy of that decision appears at appendix ________.

[ ] A timely petition for rehearing was thereafter denied on the following date: ________________, and a copy of the order denying rehearing appears at appendix ________.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ________________ (date) on ________________ (date) in Application No. ________.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U. S. C. §1257(a).
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

[ ]
[ ]
[ ]
[ ]
[ ]
STATEMENT OF THE CASE

[ ]
[ ]
[ ]
[ ]
[ ]

REASONS FOR GRANTING THE PETITION

[ ]
[ ]
[ ]
[ ]
[ ]

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_________________________________________

Date: ___________________________
No. ________________________

____________________________________

IN THE
SUPREME COURT OF THE UNITED STATES

____________________________________—PETITIONER
(Your Name)

vs.

____________________________________—RESPONDENT(S)

PROOF OF SERVICE

I, ____________________________, do swear or declare that on this date, ________________, 20____, as required by U.S. Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party’s counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:
____________________________________
____________________________________
____________________________________

I declare under penalty of perjury that the foregoing is true and correct.

Executed on ____________________________, 20____

____________________________________ (Signature)
CHAPTER 22: APPEALS-RELATED COURT CONTACT INFORMATION

This Chapter is intended to provide quick access to addresses and telephone numbers for the office of the clerk of the various courts. Many of the courts have websites that provide a wealth of additional helpful information, including information on proceeding pro se and on legal research links, as well as more specific addresses and telephone numbers that may have been left out of this Handbook due to space limitations.

Circuit Courts

First Judicial Circuit
http://www.firstjudicialcircuit.org
(Escambia, Okaloosa, Santa Rosa and Walton Counties)

Escambia County
190 Governmental Center
Pensacola, FL 32502
(850) 595-4310

Okaloosa County
Okaloosa County Courthouse
101 James Lee Blvd. East
Crestview, FL 32536
(850) 689-5000

Santa Rosa County
6865 S.W. Caroline Street
Milton, FL 32570
(850) 623-0135

Walton County
Walton County Courthouse
571 Hwy. 90 East
DeFuniak Springs, FL 32433
(850) 892-8115

Second Judicial Circuit
www.2ndcircuit.leon.fl.us/
(Franklin, Gadsden, Jefferson, Leon, Liberty and Wakulla Counties)
Franklin County
Franklin County Courthouse
33 Market Street, Ste. 203
Apalachicola, FL 32320
(850) 697-2122

Gadsden County
10 E. Jefferson St.
Quincy, FL 32351
(850) 875-8601

Jefferson County
Jefferson County Courthouse
1 Court House Circle
Monticello, FL 32344
(850) 342-0218

Leon County
301 S. Monroe St.
Tallahassee, FL 32302
(850) 577-4000

Liberty County
Liberty County Courthouse
P. O. Box 687
Bristol, FL 32321
(850) 643-2215

Wakulla County
Wakulla County Courthouse
3056 Crawfordville Highway
Crawfordville, FL 32327
(850) 926-0905

Third Judicial Circuit
http://www.jud3.flcourts.org/
(Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee and Taylor Counties)

Columbia County
173 N.E. Hernando St.
Lake City, FL 32055
(386) 719-7546

Dixie County
214 N.E. Highway 351
Cross City, FL 32628
(352) 498-1200

Hamilton County
207 First Street NE
Jasper, FL 32052
(386) 792-1719

Lafayette County
100 N. Main St.
Highway 27 and 51
Mayo, FL 32066
(386) 294-1600

Madison County
125 S.W. Range Ave.
Madison, FL 32340
(850) 973-1500

Suwannee County
Suwannee County Courthouse
200 S. Ohio Ave. / MLK Jr. Ave.
Live Oak, FL 32064
(386) 362-0526

Taylor County
108 N. Jefferson St.
Perry, FL 32348
(850) 838-3506

Fourth Judicial Circuit
www.coj.net/Departments/Fourth+Judicial+Circuit+Court/
(Clay, Nassau and Duval Counties)

Duval County
Duval County Courthouse
330 E. Bay Street, Rm. 220
Jacksonville, FL 32202
(904) 630-2564

Clay County
Clay County Courthouse
825 North Orange Ave.
Green Cove Springs, FL 32043
(904) 269-6302

Nassau County
76347 Veterans Way
Yulee, FL 32097
(904) 548-4600

Fifth Judicial Circuit
www.circuit5.org/
(Hernando, Lake, Marion, Citrus and Sumter Counties)

Citrus County
Citrus County Courthouse
110 N. Apopka Ave.
Inverness, FL 34450
(352) 341-6700

Hernando County
20 N. Main Street
Brooksville, FL 34601
(352) 754-4284

Lake County
550 W. Main Street
Tavares, FL 32778
(352) 742-4100

Marion County
110 NW 1st Ave.
Ocala, FL 34475
(352) 401-7600

Sumter County
225 E. McCollum Ave.
Bushnell, FL 33513
(352) 658-6628 Fax: (352) 568-6608

Sixth Judicial Circuit
www.jud6.org
(Pasco and Pinellas Counties)

Pinellas County
Clearwater Courthouse
315 Court Street, Rm. 400
Clearwater, FL 33756
(727) 464-3341

Pasco County
7530 Little Road, Ste. 220
New Port Richey, FL 34654
(727) 847-8181
and
38053 Live Oak Ave.
Dade City, FL 33525
(352) 521-4542

Seventh Judicial Circuit
www.circuit7.org
(Flagler, Putnam, St. Johns and Volusia Counties)

Flagler County
1769 E. Moody Blvd.
Bunnell, FL 32110
(386) 437-7414

Putnam County
410 St. Johns Ave.
Palatka, FL 32177
(386) 329-0361

St. Johns County
4010 Lewis Speedway
St. Augustine, FL 32084
(904) 819-3600

Volusia County
101 N. Alabama Ave.
Deland, FL 32724
(386) 736-5915

Eighth Judicial Circuit
www.circuit8.org
(Alachua, Baker, Bradford, Gilchrist, Levy and Union Counties)

Alachua County
220 S. Main Street
Gainesville, FL 32601-6538 (criminal matters)
201 E. University Ave.
Gainesville, FL 32601-3456 (civil and family matters)
(352) 374-3636

Baker County
339 E. Macclenny Ave.
Macclenny, FL 32063-2294
(904) 259-8113 or 8449

Bradford County
945 N. Temple Ave.
Starke, FL 32091-2110
(904) 966-6280 ext 2201

Gilchrist County
Gilchrist County Courthouse
112 S. Main Street
Trenton, FL 32693
(352) 463-3170

Levy County
355 S. Court Street
Bronson, FL 32621-6520
(352) 486-5266

Union County
Union County Courthouse
55 W. Main Street, Rm. 103
Lake Butler, FL 32054-1600
(386) 496-3711

Ninth Judicial Circuit
www.ninthcircuit.org (contains legal research links)
(Orange and Osceola Counties)

Orange County
425 N. Orange Ave., Ste. 410
Orlando, FL 32801
(407) 836-2060

Osceola County
2 Courthouse Square, Ste. 2000
Kissimmee, FL 34741
(407) 343-3500

Tenth Judicial Circuit
www.jud10.org
(Hardee, Highlands and Polk Counties)

Hardee County
412 West Orange Street
P. O. Drawer 1749
Wauchula, FL 33873
(863) 773-4174

Highlands County
590 S. Commerce Ave.
Sebring, FL 33870
(863) 402-6565

Polk County
255 N. Broadway Ave.
Bartow, FL 33830
(863) 534-4000

Eleventh Judicial Circuit
www.jud11.flcourts.org
(Dade County)
Room 135, Dade County Courthouse
73 W. Flagler Street
Miami, FL 33130
(305) 275-1155

Twelfth Judicial Circuit
http://12circuit.state.fl.us
(DeSoto, Manatee and Sarasota Counties)

Sarasota County
2002 Ringling Blvd.
Sarasota, FL 34237
(941) 861-7800

Manatee County
1051 Manatee Ave. W.
Bradenton, FL 34205  
(941) 749-3600

DeSoto County  
115 E. Oak Street, Room 201  
Arcadia, FL 34266  
(863) 993-4644

Thirteenth Judicial Circuit  
http://fljud13.org  (contains discussion of pro se litigation and many useful links)  
(Hillsborough County)  
800 E. Twiggs Street  
Tampa, FL 33602  
(813) 272-5894

Fourteenth Judicial Circuit  
www.jud14.flcourts.org  
(Bay, Calhoun, Gulf, Holmes, Jackson and Washington Counties)

Bay County  
300 East 4th Street  
Panama City 32401  
(850) 747-5102

Calhoun County  
20859 E. Central Ave., # 130  
Blountstown, FL 32424  
(850) 674-4545

Gulf County  
1000 Cecil G. Costin, Sr., Blvd.  
Port St. Joe, FL 32456  
(850) 229-6113

Holmes County  
201 N. Oklahoma Street  
Bonifay, FL 32425  
(850) 547-1101

Jackson County  
4445 Lafayette Street  
Mariana, FL 32446
(850) 482-9552

Washington County
1293 Jackson Ave.
Chipley, FL 32428
(850) 638-6285

Fifteenth Judicial Circuit
www.co.palm-beach.fl.us/cadmin/
(Palm Beach County)
205 N. Dixie Hwy
West Palm Beach, FL 33401
(561) 355-2986

Sixteenth Judicial Circuit
www.keyscourts.net
(Monroe County)

Monroe County Courthouse
502 Whitehead Street
Key West, FL 33040
(305) 292-3423
Fax: (305) 292-3435

Upper Keys Branch
88820 Overseas Highway
Tavernier, FL 33070
(305) 852-1469
Fax: (305) 852-7146

Middle Keys Branch
3117 Overseas Highway
Marathon, FL 33050
(305) 289-6030
Fax: (305) 289-6089
Clerk’s Fax: (305) 289-1745

Seventeenth Judicial Circuit
www.17th.flcourts.org/
(Broward County)
Broward County Courthouse
201 SE 6th Street
Ft. Lauderdale, FL 33301
(954) 831-6565

Eighteenth Judicial Circuit
www.flcourts18.org (contains discussion of pro se litigation)
(Brevard and Seminole Counties)

Brevard County
2825 Judge Fran Jamieson Way
Viera, FL 32940
(321) 637-5413

Seminole County
301 S. Park Ave.
Sanford, FL 32771-1292
(407) 665-4211

Nineteenth Judicial Circuit
www.circuit19.org
(Indian River, Martin, Okeechobee and St. Lucie Counties)

Indian River County
2000 16th Ave.
Vero Beach, FL 32960
(772) 770-5185

Martin County
100 SE Ocean Blvd.
Stuart, FL 34994
(772) 288-5576

Okeechobee County
Room 101, County Courthouse
312 NW 3rd Street
Okeechobee, FL 34972
(863) 763-2131

St. Lucie County
218 S. 2nd Street
Ft. Pierce, FL 34950
(772) 462-6900
Twentieth Judicial Circuit
www.ca.cjis20.org
(Charlotte, Collier, Glades, Hendry and Lee Counties)

Charlotte County
350 E. Marion Ave.
Punta Gorda, FL 33950
(941) 637-2281
Fax: (941) 637-2283

Collier County
3301 E. Tamiami Trail
Naples, FL 34112
(239) 774-8800
Fax: (239) 774-9654

Glades County
Route 27, 500 Avenue J
Moore Haven, FL 33471
(863) 946-6031
Fax: (863) 946-2971

Hendry County
25 E. Hickpochee Ave.
LaBelle, FL 33935
(863) 675-5217
Fax: (863) 675-5248

Lee County
1700 Monroe St.
Ft. Myers, FL 33901
(239) 533-1700
Fax: (239) 533-1701

District Courts of Appeal

First District Court of Appeal
(First, Second, Third, Fourth, Eighth and Fourteenth Circuits)
301 Martin L. King, Jr., Blvd.
Tallahassee, FL 32399-1850
(850) 487-1000 (general number)
(850) 488-6151 (Clerk’s office)
www.1dca.org
Second District Court of Appeal
(Sixth, Tenth, Twelfth, Thirteenth and Twentieth Circuits)
1005 E. Memorial Blvd.
Lakeland, FL 33801
(863) 499-2290
Fax: (863) 413-2649
OR
1700 N. Tampa Street, Suite 300
Tampa, FL 33602
(813) 272-3430
Fax: (813) 229-6534
(All filings must be sent to the Lakeland address)
www.2dca.org

Third District Court of Appeal
(Eleventh and Sixteenth Circuits)
2001 S.W. 117 Ave.
Miami, FL 33175-1716
(305) 229-3200
Fax: (305) 229-3206
www.3dca.flcourts.org

Fourth District Court of Appeal
(Fifteenth, Seventeenth and Nineteenth Circuits)
1525 Palm Beach Lakes Blvd.
W. Palm Beach, FL 33401-2399
(561) 242-2000
www.4dca.org

Fifth District Court of Appeal
(Fifth, Seventh, Ninth and Eighteenth Circuits)
300 South Beach Street
Daytona Beach, FL 32114
(386) 947-1500
Fax: (386) 947-1562
www.5dca.org (contains link to the Florida Rules of Appellate Procedure)

Florida Supreme Court

Florida Supreme Court
GLOSSARY

When there is more than one definition that may apply, alternative definitions are listed beginning with the most common usage where those are pertinent to the Handbook.

**Absolute:** 1. With no restrictions. 2. Without conditions.

**Abuse of Discretion:** 1. A judge’s failure to use sound, reasonable, and legal decision making. 2. An appellate court uses this standard to review a lower tribunal’s decision that a party argues was greatly unsound, unreasonable, or illegal.

**Action:** A lawsuit or other legal proceeding.

**Adjudication:** 1. The resolution or end result of a matter heard by the lower tribunal. 2. A judge’s decision, ruling, award or sentence.

**Adjudicatory hearing:** A hearing held by lower tribunal, in the context of this Handbook, by a juvenile court to decide if a juvenile/youth has committed delinquent behavior; a trial of a youth accused of delinquency. E.g. Sue’s twelve year-old daughter went to an adjudicatory hearing because she was accused of shoplifting.

**Administrative Law:** Law created by federal or state government administrative agencies through making and enforcing rules and regulations and by issuing decisions and orders in any contested matter before the administrative agency hearing officer.

**Administrative Agency** A government body created by Congress or state or local legislatures to manage and enforce statutes on particular specific areas of law. E.g., Social Security Administration, Florida Unemployment Compensation Commission, local zoning boards.

**Affidavit:** A voluntary, sworn, signed and notarized written statement of facts based on the personal knowledge of the person giving the statement.

**Affirm:** (Affirmed) 1. To confirm or support on appeal the validity of a decision by the lower tribunal. E.g. The appellate judges affirmed the decision of the lower tribunal because they agreed with the outcome. 2. To formally declare something, but not under oath. E.g. affirm objections.

**Affirmative Defense:** An explanation for a defendant's actions that excuses or justifies his/her behavior. For example, in a criminal case, acting in self-defense is a common affirmative defense to a charge of battery or homicide. Other affirmative defenses include insanity and duress. In a civil action, common affirmative defenses are the other party breached the contract first and the other party is at fault for her/his injuries.
All Writs Jurisdiction: 1. The extraordinary, but rarely-used, power of a state or federal appellate court to fully decide a matter. An appellate court, however, will not use this power to review issues that should have been raised in an appeal.

Amend (Amended; Amendment): 1. To make right; to correct. E.g. The judge amended his order to fix a mistake made when the order was typed. 2. To change the wording of.

Answer Brief: A written response to the first or ”Initial Brief” that was filed by the party formally asking the appellate court to rule the lower tribunal was wrong about the law or the facts. An answer brief can also be a response to a party’s motion or brief in the lower tribunal.

Appeal: 1. The act of filing the documents necessary to ask a higher tribunal to review the proceedings and outcome in the lower tribunal, and then decide there was a legal or factual mistake important enough to require a new proceeding or a different outcome. 2. To seek appellate review of a lower tribunal’s decision or order. E.g. “Bob appealed his conviction because he thought the photographs should not have been shown to the jury.”

Appealable: Any act or order of a lower tribunal that may be reviewed by an appellate tribunal. With rare exceptions, an act or order of the lower tribunal is appealable only if it brings an end to the proceedings in the lower tribunal.

Appellant: Any party in the lower tribunal who appeals by filing a notice, an initial brief and, if necessary, a reply brief.

Appellate: Having to do with an appeal.

Appellee: The adversary of party opposing the appellant; the party who responds to an appeal in support of the lower tribunal’s decision or order. The appellee usually files only an answer brief, but may also file a cross-appeal, then becoming both an appellee and a cross-appellant.

Appendix: Documents added to the end of a brief, petition or motion, and submitted in support of and specifically referenced in the brief, petition or motion.

Arbitration: A proceeding where at least one neutral person unrelated to either side helps the parties resolve the issues and problems in the lawsuit. Arbitration is often ordered by the judge so the parties might settle their disagreements without having to go to trial. Usually the decision reached at an arbitration is binding on both parties. ‘Mediation’ is often used the same way. E.g. Bob and Sue settled their disagreement through arbitration so they did not have to go to a trial.

Archives: 1. A place or collection containing records or documents. 2. A place of storage where records or documents are kept after their usefulness is no longer apparent to those who maintain the records or documents.

Argument(s): A party’s presentation of the reasons he or she hopes will convince a tribunal his or her position is correct.
Authority: 1. The power of a tribunal. 2. The source of information or wisdom regarding how a tribunal might be persuaded to apply the law in a particular situation. ‘Authority’ includes statutes, published judicial decisions regarding similar issues, and scholarly writings.

Automatic Stay: A self-acting or self-regulating mechanism to stop efforts to collection on a money judgment.

Attorney: A lawyer; one who is licensed by the state to represent someone in that state’s courts of law or other legally authorized tribunals.

Bailable: A person or offense that is eligible for release from custody or prison in exchange for money or property as a promise that the person will show up at a future time.

Bankruptcy Court: The tribunal that applies the statutory law procedure to most debts if a person or company is not able to pay the debts.

Body of Evidence: Collection or sum of all the documents, testimony, objects, etc., presented at trial that help to prove or disprove an ultimate fact in question. E.g. The prosecutor showed by the body of evidence that the defendant robbed the bank.

Bond: 1. A secured obligation or promise. 2. A written promise to pay money or to do some act following certain events, or the passage of time.

Brief: 1. A written statement of the legal arguments of a party in a lawsuit, especially on appeal. 2. A written document that contains legal and factual arguments, supported by references to the record, case law or statutes and other authority.

Calendar Call: A court hearing session in a criminal case when the judge calls each case waiting for a trial date, determines the status of the case, and assigns a trial date.

Caption: The introduction of a court paper stating the names of the parties, the name of the court, the docket or file number, and the title of the action. Also referred to as the ‘style’.

Case: All proceedings regarding a matter filed with a tribunal.

Certificate: A document showing a right, interest or permission about which the parties disagree.

Certificate of Service: The part of a written document verifying with a signature.

Certification of a Class: 1. An order issued by a court allowing one or two people to bring a lawsuit on behalf of a class, or group, of people with a common interest. 2. To create a class for the purposes of a class action lawsuit.
Certify: 1. To verify or prove something in writing is genuine. 2. To make a written document valid and effective by verifying with a signature the doing of some act.

Certiorari (Cert): An extraordinary writ issued by an appellate court, at its discretion, telling the lower tribunal to deliver the record in the case for review. The U.S. Supreme Court uses certiorari to review most of the cases it decides to hear.

Citation: In the context of this Handbook, a reference to a legal authority, such as a case or statute. The citation provides the way to find a case or statute within a book or law library.

Civil Case: A non-criminal lawsuit relating to private rights and remedies. E.g., a breach of contract action or an action to collect a debt owed.

Claim: 1. To say a person or entity is entitled to something. 2. Assertion of a legal right.

Claimant: A person or entity having a claim.

Clarification: Further explanation.

Class: 1. A group of people, things, qualities or activities that have something in common. 2. An uncertain number of people in a group. E.g. Bob was a member of a class action lawsuit against Ford because he was one of ten thousand others who bought a defective car.

Clerk: The individual who is responsible for accepting and maintaining documents filed with a court.

Collateral: Not on point or going to the heart of a subject, but rather supplementary. E.g. “Whether Bob was wearing a seat belt is a collateral issue”; or “After his sentencing, the inmate filed a collateral post-conviction motion, arguing that his guilty plea was illegal.”

Commence: To begin or to start.

Compensable: Entitled or able to be paid for an injury.

Complaint: The first document filed in a civil (non-criminal) case that states the facts and law on which the plaintiff depends for relief and supports his or her claim.

Conclusions of Law: A judge’s or administrative agency’s application of relevant statutes, rules, or legal principles to the facts of a case that form the basis of a decision.

Conformed: 1. To comply or be in agreement with. 2. According with contractual obligations. 3. An identical copy of a document.

Consolidate: To combine, through a court order, two or more actions (lawsuits) involving the same parties or issues into a single action.
Construe: To analyze and explain the meaning of. E.g. The court construed the language of the statute.

Contract: A legally enforceable promise to do something in exchange for the receipt of something in return.

Contrary Intent: 1. Opposed, as in character or purpose. 2. Having an opposing or opposite state of mind.

Correct the Record: To add a pleading, document, or transcript that was filed in the lower tribunal, but accidentally left out from the record on appeal.

Costs (motion for costs): Certain expenses incurred by a party during the case. Florida law provides that certain limited costs may be recovered by the winning party.

Counsel: An attorney; a lawyer.

Court: A tribunal of the government that interprets and applies the laws to specific cases within its jurisdiction. A ‘court’ is one of the ‘tribunals’ referenced herein.

Court Costs: The amount paid or charged for the preparation of a lawsuit. Court costs include, for example, compilation of the record, certified copies, filing fees, etc., and are typically limited by statutes or court rules.

Crime: The act of breaking a law.

Cross Appeal(s): The claim of an appellee in an appeal that the lower tribunal made a mistake in not granting all of the relief requested.

Debatable: 1. Subject to more than one legitimate point of view. 2. Open to dispute; questionable.

Decision: A tribunal’s ruling based upon the law applied to the facts of a dispute.

Default Judgment: 1. A judgment entered against a defendant who has failed to plead or defend against a plaintiff’s claim, often by not appearing at trial. 2. A judgment entered as a penalty against a party for not complying with an order.

Defendant: 1. The person against whom a complaint or lawsuit is filed and who must, therefore, respond to avoid a default judgment. 2. The party against whom the government has filed criminal charges.

Defense: The facts, legal theories and evidence raised in opposition to a claim.
**Deference:** The extent to which an appellate court respects the authority or validity of a lower tribunal’s decision.

**Denial:** 1. The act of saying a claim is not true. 2. A statement that a person responding to a claim does not know enough to respond to the truth or falsity of the claim.

**De Novo:** 1. Anew. 2. The standard by which the appellate court uses the lower tribunal’s record but reviews the evidence and law without deference to the lower tribunal’s rulings. E.g. Bob has a better chance for a reversal on appeal because the appellate court is reviewing the case de novo.

**Deposition:** 1. A witness’s out of court, sworn testimony that is put into writing by a court reporter so it can be used later in court or discovery. 2. The session or meeting where testimony is recorded.

**Designation:** The act of identifying, listing or naming.

**Direct Appeal:** 1. A proceeding in which a convicted person asks a higher court to overturn a conviction or sentence received in the trial court based on errors which appear in the trial record. 2. An appeal from a lower tribunal’s decision directly to the jurisdiction’s highest court, bypassing the intermediate appellate court. A direct appeal may be used when the case involves the constitutionality of a state law.

**Directions (to the clerk):** The document filed at the beginning of an appeal requesting that the clerk of the lower tribunal prepare the index, or list, of the items previously filed with the lower tribunal in the case.

**Discovery:** The fact-finding process that takes place after a lawsuit has been filed and before trial, that allows the parties to obtain information from each other that relates to the disputed claims. Generally discovery includes depositions, interrogatories, requests for admissions, document production requests and requests for inspection.

**Discretion:** 1. A public official’s power or right to act in certain circumstances according to personal judgment. 2. The exercise of judgment by a judge or court based on what is fair and guided by the rules of law. 3. A court’s power to act or not act when a party to a lawsuit is entitled to demand the act.

**Dismiss(ed):** To end without further hearing.

**Dismissal:** The end of an action or claim without further hearing.

**Disposition:** A final settlement or determination. E.g. The court’s disposition of the case.

**Docket:** 1. A formal record where a judge or court clerk briefly notes all the proceedings and filings in a court case; a schedule of pending cases. 2. To make a brief entry in the docket of the proceedings and filings of the court.
Document: 1. A piece of paper with written words. 2. To support with written evidence or legal authorities.

Due Process: A basic constitutional guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty, or property.

En Banc: (“on the bench”): All judges of an appellate court participating in the decision, rather than the usual three-judge panel.

Entitlement: A right to benefits or property that cannot be withheld without due process.

Equitable: 1. Just, fair; consistent with principles of justice and right. 2. Fairness, impartiality, natural law.

Err(ed): To make an error; to be incorrect or mistaken. E.g. The court erred in denying the motion.

Error: 1. A mistake of law or fact in a court’s judgment, opinion or order.

Erroneous: Being wrong or inaccurate; involving error.

Evidence: Testimony, documents or other things presented in the lower tribunal to support a party’s position.

Exceptions: A legal pleading filed in an administrative tribunal to contest the facts or law on which a judge or hearing officer based a recommended order, and made to protect the objection for appeal.

Exhibits: 1. A document, record, or other object formally introduced as evidence in court. 2. A document attached to the end of a pleading, motion, or other written document.

Expedited Proceeding: A hearing or other court proceeding that happens as soon as the court may allow.

Extraordinary Writ: A rare order writ issued by a higher court to grant relief not otherwise available by commanding a lower tribunal or official to take a certain action or to stop from taking a certain action. E.g. Certiorari, habeas corpus, mandamus, prohibition.

Fact(s): A piece of information that is presented as being true or actually occurring.

File(d): 1. To begin a lawsuit. 2. To deliver a legal document to the court clerk for placement into the official record. 3. A court’s complete and official record of a case.
Final: A decision which ends the issue or case.

Final Judgment Rule: A party may appeal only from a lower tribunal’s final decision that ends the lawsuit or proceeding. Under this rule a party must raise all claims of error in a single appeal.

Findings of Fact: A determination by a judge or administrative agency supporting the existence of a facts shown by the evidence in the record of a trial or hearing.

Florida Rule(s) of Appellate Procedure: The rules which govern the bringing and maintaining of an appeal in the Florida State Courts.

Frivolous: 1. Lacking a legal basis; not serious. 2. Frivolous Appeal: an appeal having no legal basis.

Fundamental: Basic; relating to the foundation of.

Guardian Ad Litem: A person, usually a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party. Also called a “next friend”.

Habeas corpus: (“that you have the body”) A writ or order used to bring a person before a court, usually to be sure that the person is not in prison or being detained illegally.

Hearing: 1. A session before a judge, usually open to the public, in order to decide issues of fact or law, sometimes with witnesses testifying. 2. Any setting where an affected person makes arguments to an agency decision-maker. 3. A trial.

Holding: The part of an appellate court’s written opinion that applies the law or laws to the specific facts of a lawsuit or a criminal matter.

Illegal: In violation of the law.

Incompetent: 1. Referring to a person who is not able to manage his/her affairs because of a mental lacking (lack of I.Q., deterioration, illness or psychosis). 2. In criminal law, the inability to understand the meaning of a trial.

Incur(red): To suffer or bring upon yourself, as in a liability or expense.

Index (to the record on appeal): The list of the documents filed in the lower tribunal proceeding, and is prepared by the clerk of the lower tribunal after a notice of appeal is filed.

Indigent: 1. A poor person. 2. A person who is too poor to hire a lawyer or to pay for certain costs, and who a lower tribunal rules is in need of a lawyer or waiver of costs. E.g. The court determined that Sue was indigent, so it appointed her a lawyer to represent her in the termination of parental rights case.
Initial Brief: The first document containing the appellant’s arguments and the law supporting those arguments, generally explaining how the lower tribunal erred and why its decision or order should be reversed.

Insolvent: See definition of indigent.

Interrogatories: Written questions given to an opposing party in a lawsuit as part of discovery.

Intervenor: A person who voluntarily enters a lawsuit because he has a personal stake in it.

Irreparable: Not able to be repaired, fixed or cured.

Issue(s): In the context of this Handbook, an important question of law or fact that is in dispute and must be settled. E.g., One of the appellant’s issues was whether the trial court erred in granting the motion to dismiss with prejudice.

Judge: The person in control of a legal proceeding, including administrative proceedings. E.g., administrative law judge, judge of compensation claims or circuit court judge.

Judgment: A court’s final determination of the rights and obligations of the parties in a case.

Jurisdiction: 1. A court’s power to decide a case. E.g., the district courts of appeal do not have jurisdiction to review cases where the death penalty was given. 2. A geographic area within which judicial authority may be used. E.g. Bob lives in New York and he has never had any contact with another state, so the Florida court does not have jurisdiction over him. The shooting happened in Colorado and both parties are residents of Colorado, so the Florida court does not have jurisdiction to hear the case.

Law: The governing statutes, rules and appellate court opinions.

Lawsuit: A case where two or more people disagree and need a court to help them resolve their differences

Legal: 1. Relating to the law or lawyers. 2. Permitted by law.

Legal Sufficiency: Adequate fulfillment of the minimum requirements of the law.

Liability (Liabilities): 1. An obligation, debt or responsibility owed to another or to society, enforceable by a civil lawsuit or by criminal punishment.

Litigant: A party to a lawsuit. E.g. Plaintiff, defendant, appellant, appellee.

Litigate: To contest or engage in legal proceedings.
Magistrate: A judicial officer with strictly limited jurisdiction and authority, often on the local level and often restricted to criminal cases.

Mandate: An order from an appellate court directing a lower tribunal to take a specific action.

Ministerial: 1. An act that involves obedience to instructions or law instead of discretion, judgment, or skill. 2. A mandatory act or duty allowing no personal discretion or judgment in its performance.

Misapprehend: To not understand correctly.

Modify: To change or alter.

Motion: A written or oral request to a court to make a specific ruling or order.

Motions Practice: The filing of motions.

Movant: A party who makes a motion.

Municipality: 1. A political unit, such as a town, city, or county, incorporated for self-government. 2. A town, city, or local government unit.

Nolo Contendere: 1. No contest. 2. A criminal defendant’s plea that, while not admitting guilt, the defendant will not dispute or argue the charge.

Non-Appealable: An order or ruling which cannot be appealed.

Non-Final: An order or ruling which occurs during the case, but which does not end the case.

Notice: 1. A written or printed announcement. 2. The condition of being notified, whether or not actually aware. 3. Legal notification required by law. E.g. In order to give Sue notice that she was being sued by Bill, he published a notice in the local newspaper. Ted was able to get an extension to respond because he never received notice of the lawsuit, and Betty made no attempt to give him notice that she was suing him.

Notary Public: An individual authorized by the state to certify documents.

Notice of Appeal: The written document filed with the court announcing a party’s intention to seek review by a higher court of proceedings that took place in a lower tribunal.

Oath: The sworn pledge by a person that his or her statements are or will be true.

Object(ion): To assert disagreement.

Opinion(s): The written decision of the tribunal or appellate court.
Oral Argument: A spoken presentation before a court, especially an appellate court, supporting or opposing the legal issue in the case.

Order: 1. A command, direction, or instruction. 2. A written decision delivered by a court, judge, judicial officer or agency.

Partial Final Judgment: An order or decision which rules on one issue presented in the case, and brings that issue to an end, but does not end the case.

Party (parties): 1. A person who takes part in a transaction or proceeding. 2. A person by or against whom a lawsuit is brought. E.g. Plaintiff, defendant, appellant, appellee.

Penalty (non-death): A punishment.

Per Curiam: 1. By the court as a whole. 2. An opinion handed down by an appellate court without identifying the individual judge who wrote the opinion.

Petition: A formal written request presented to a court or other official body.

Petitioner: A party who presents a petition to a court or other official body, especially on appeal.

Plaintiff: The person who starts a lawsuit by filing a complaint in the court.

Plea: 1. An accused person’s formal response of “guilty”, “not guilty”, or “no contest” to a criminal charge.

Pleading(s): A formal document where a party to a legal proceeding, especially in a civil lawsuit, sets forth or responds to allegations, claims, denials, or defenses.

Plenary: 1. Full; complete; entire. E.g. Plenary authority.

Post(ed): To file.

Post conviction: Relating to the time after a criminal conviction. E.g. The prisoner asked for postconviction relief from his sentence because he thought that twenty years in jail was too long.

Praecipes: 1. A written motion or request seeking some court action, especially a trial setting or an entry of judgment. 2. At common law, a writ ordering a defendant to do some act or to explain why he cannot act.

Prejudice: 1. Damage, harm or detriment to a person’s legal rights or claims. 2. Dismissal with prejudice: a dismissal barring the plaintiff from prosecuting any later lawsuit on the same claim.
Preservation of Error (preserved): By objecting to or challenging an issue or error at the lower tribunal level, an appellant is able to raise that same argument in his appeal. The appellant must make the objection at the lower tribunal level in order to give the lower tribunal an opportunity to correct the mistake. If the appellant does not make the objection at the lower tribunal level, he may not make an argument on the same issue in his appeal.

Presumption of Correctness: A rule of law by which the finding of fact or ruling of law is presumed true subject to the presentation of other findings or rulings that may sometimes rebut the presumption.

Prevailing Party: A party in whose favor a judgment is given, regardless of the amount of damages awarded. In certain cases, a court will award attorney’s fees to the prevailing party.

Privileged: Documents or statements that are protected from disclosure in court. E.g., discussions between client and attorney are privileged communications.

Procedure: The judicial rule or manner for carrying on a civil lawsuit or criminal prosecution.

Proceedings: The regular and orderly progress of a lawsuit, including all acts and events between the time the lawsuit begins and when a judgment is entered.

Production of Documents: The act of sending formally requested documents to the opposing party during discovery.

Proffer(ed): To offer or tender something (usually evidence) for immediate acceptance to create a record of excluded evidence.

Prohibition (writ of): An extraordinary writ issued by an appellate court to keep a lower tribunal from going beyond its jurisdiction or to keep a non-judicial officer or group from exercising a power.

Proposed (proposed statement of evidence or proceedings): A suggestion, including suggested changes or additions.

Pro Se: 1. On your own behalf; without a lawyer. 2. A person who represents himself in a court proceedings without the help of a lawyer.

Qualified: Capable or competent.

Quash: To reverse.

Quo Warranto: 1. An action where citizens seek to enforce public rights. 2. A writ used to question the government authority.

Reasonable Probability: More likely than not.
Rebuttal: 1. An in-court argument against the opposing party’s position. 2. The time given to a party to show contradictory evidence or arguments. E.g. The court gave the appellant five minutes for rebuttal, so that he could show that the appellee’s arguments were not based on good law.

Reconstruct: To rebuild, recreate or reorganize something. E.g. In the absence of a transcript, the parties asked the court to reconstruct the record.

Record: The official report of the proceedings in a case, including the filed papers, the transcript of the trial or hearing, and any exhibits.

Relief: The act that a party asks the court to take; remedy.

Remand: 1. The act of sending something back for further action, such as a case, claim or person. 2. An order of an appellate court sending a case, claim, or person back to the lower tribunal.

Remedy: The thing, act or relief sought from a tribunal by a party.

Rendition (render): 1. The action of filing a signed written order with the clerk of the lower tribunal.

Reply Brief: A brief that responds to the arguments and facts alleged in the opposing party’s previously filed answer brief.

Respondent: 1. Appellee; the party who an appeal is filed against. 2. The party who a motion or petition is filed against.

Restitution: A remedy by which a party is returned to his or her original position.

Retroactive: Application of a tribunal’s decision to past events.

Reversal (reverse): An appellate court’s overturning of a lower tribunal’s decision; an appellate court entering a judgment opposite of the lower tribunal’s judgment.

Review: 1. To consider or examine. 2. The request made by a party to a higher tribunal to examine the proceedings in the lower tribunal.

Rule: 1. The governing law. 2. An order or finding made by a judge or tribunal.

Run: 1. To apply. 2. To expire or end after a certain period of time. E.g. The statute of limitations had run, so the plaintiff was unable to file his lawsuit.
Sanction: A penalty resulting from a failure to follow a law, rule, or order. E.g. The defendant was sanctioned for destroying discovery documents.

Serve(d): 1. To make legal delivery of a notice or process. 2. To give notice to someone as required by law. E.g. The plaintiff was required to serve the defendant with notice of the lawsuit within fifteen days.

Service: The formal delivery of a legal notice or document.

Standard(s) of Review: 1. The legal standard an appellate court uses to review a case on appeal. e.g. De novo; abuse of discretion. 2. This standard determines how much weight an appellate court will give to the lower tribunal’s decision, and determines how difficult it will be for the appellant to persuade the appellate court to overturn the lower tribunal’s decision.

Statute(s): A law passed by a legislative body; Congress or the state. E.g. The Florida Legislature created and passed a statute requiring all drivers to wear a seat belt.

Statute of Limitations: The time limit for filing a lawsuit. The law provides different statutes of limitations for different types of cases, i.e., negligence, breach of contract, professional liability.

Statutory: 1. Of or relating to legislation. 2. Created by a legislature. 3. Conforming to a statute.

Statutory Rate of Interest on Judgments: The legal amount of interest which will run on a judgment until the judgment is paid. The statutory rate of interest may change each year.

Stay (motion to stay) (ed): 1. An order to suspend all or part of a judicial proceeding or judgment. 2. The postponement or halting of a proceeding or judgment.

Style: The introduction of a court paper stating the names of the parties, the name of the court, the docket or file number, and the title of the action. Also referred to as the ‘caption’.

Stipulation: A voluntary agreement between opposing parties concerning a relevant issue. E.g. The defendant stipulated to his liability.


Subsequent: Occurring later, coming after something else.

Substantive: 1. Substantial, considerable. 2. Substantive law is the part of the law that creates, defines, and regulates the rights, duties and powers of parties. Opposite of procedural law.

Summary Judgment: A judgment granted on a claim when there is no question about any facts that would change the outcome, and the party asking for the summary judgment is entitled to win as a matter of law. E.g. The court granted summary judgment in favor of the defendant because the plaintiff’s claim was barred by the statute of limitations.
Summons: 1. A notice requiring a person to appear in court as a juror or a witness. 2. A writ of process beginning the plaintiff’s action and requiring the defendant to appear in court and answer to the plaintiff’s claims.

Supersedeas Bond: An appellant’s bond to stay the effect of a judgment while the appeal is pending.

Supplement the record: The addition of omitted parts of the record to give more information or correct a mistake.

Suppress: To end or put a stop to, prohibit; to keep something from being heard, seen, known, or discussed. E.g. The defendant tried to suppress the evidence of his past crimes.

Surety: 1. A formal pledge, bond, guarantee, or security given for the fulfillment of a promised action. 2. A person who is primarily liable for another person’s debt or obligations.

Sworn: Having taken – or to be bound by – an oath or affirmation.

Table: An index or list of things contained in a document, usually in alphabetical order.

Terminate: To end.

Testimony: Statements made by a person under oath.

Time-barred: A bar to a legal claim because a defined length of time has passed; usually a period set forth in a statute of limitations.

Timely: Within a reasonable time as determined by the court or within the period of time determined by a rule or statute. E.g. The plaintiff’s lawsuit was not time-barred because she filed a timely claim within the two year statute of limitations.

Toll(ed): To stop the running of a time period, especially a statutory one.

Transcript: A written copy of oral testimony; the official record of proceedings in a trial or hearing as taken down by a court reporter.

Treatise: A systematic, usually extensive, written discussion on a subject.

Trial: The proceeding when a judge or jury (lower tribunal) hears and sees the evidence and testimony, resulting in a final judgment or verdict.

Trial Court: The first court to consider a lawsuit.
Tribunal: One or more persons who conduct the business of a court or state agency. For example, a tribunal could be a lower tribunal or administrative agency. Another example is an appeal, which is an example of a “higher tribunal” reviewing whether the acts of a “lower tribunal” were correct.

Unconstitutional: In violation of the state or federal constitution.

Untimely: Not timely. E.g. The defendant’s appeal was untimely because the statutory time period passed before he filed his appeal.

Unlicensed Practice of Law: The practice of law by a person who is not licensed to practice law by the state.

Vacate: To cancel, or make void, invalidate. E.g. The court vacated the judgment.

Venue: 1. The proper or possible place for the trial of a lawsuit, usually because the place has some connection with the events that led to the lawsuit. 2. The statement in a pleading that establishes the place for trial. 3. The county or area where a lower tribunal has jurisdiction.

Verdict: The jury’s decision.

Verify: To confirm by oath or affidavit; to swear to the truth of.

Waive: 1. To give up voluntarily; to abandon, renounce or surrender a claim, privilege or right. 2. To not insist on, such as a strict rule or formality. E.g. By pleading guilty, the defendant waived his right to a jury trial.

Workers’ Compensation: Payment to an employee injured while working in the course and scope of his or her employment. Such payments are virtually automatic, but the injured worker may not sue the employer beyond what the workers’ compensation benefits provide unless it is shown the employer meant to cause the injury.

Writ(s): A court’s written order, commanding the person it is addressed to, to do or refrain from doing some specified act.

Writ of Mandamus: A writ issued by a higher court to compel a lower tribunal or government officer to perform mandatory or purely ministerial duties correctly.