CHAPTER 15: ADMINISTRATIVE APPEALS

A. Introduction.

This Chapter discusses appeals from final orders in administrative law cases governed by Florida's Administrative Procedure Act (the "APA"), in Chapter 120 Florida Statutes. Florida citizens usually have a right to seek judicial review by a higher court of a state administrative agency's final action or decision.[1]

First, it is important to understand what types of agency actions or orders may be subject to judicial review. Often, a person affected by a state agency's actions is entitled to a hearing before an administrative tribunal, which is similar to a trial in court. The hearing may be a formal hearing before an administrative law judge at the Division of Administrative Hearings ("DOAH"), or an informal hearing before a hearing officer appointed by the agency. *See* Chapter 120, Florida Statutes. Typically, the administrative law judge or hearing officer listens to the witnesses, considers the evidence, and then issues a recommended or proposed order, which often makes findings of fact, conclusions of law, and recommends to the agency what the final outcome should be. An appeal generally cannot be taken from a recommended order or a proposed recommended order. Rather, an appeal usually can only be taken from the final agency order, which is usually entered after the recommended or proposed order.

If a party disagrees with a recommended or proposed order, he or she usually must file "exceptions," which are written objections. Exceptions should be filed to preserve the objections for the appeal from the later final agency order. Objections not made by exceptions to the recommended/proposed order may be waived. Exceptions generally must be filed with the clerk

[1] Although beyond the scope of this Chapter, it is important to note that non-final state administrative actions are generally not reviewable under the APA, Chapter 120, Florida Statutes. Local government administrative actions also generally are not reviewable under the APA, unless another state statute specifically says they are. Local government administrative actions are usually reviewed by extraordinary writs filed in the circuit court. *See also* Chapter 9 on Appeals From Non-Final Orders, and Chapter 10 on Extraordinary Writs.

of the specific agency no later than 15 days after the date of the recommended/proposed order. The exceptions will be addressed or ruled on by the agency in its final order.

B. Orders that Can Be Appealed.

Final agency orders. 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. An agency order is generally final when it brings an end to the administrative process, it is in writing, and it is filed with the agency clerk. *See* Section 120.52(7), Florida Statutes.

If a formal hearing was held, the agency usually has to enter its final order within 90 days of the administrative law judge's recommended order. If an informal hearing was held before a hearing officer, the agency should usually enter its final order within 90 days of the informal hearing. The agency is generally required to send a copy of the final order to every person involved in the hearing. It is the final agency order that can be appealed. (Note: If the order does not advise a party of their appeal rights, it might not be a final order, so the party wanting to appeal should promptly ask the agency for a final order stating the appeal rights).

Final orders of an administrative law judge. Only a few types of orders entered by administrative law judges are considered final and appealable. Those orders include: (1) an order in a proceeding challenging an agency's rule, and (2) an order awarding one party attorney's fees at the end of the case.

C. Procedures for an Administrative Appeal.

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); *see also* Chapter 8 on the Appellate Process Concerning Final Appeals, and Chapter 3 on Pulling Together the Record on Appeal.

While many of the requirements are similar to those for taking an appeal from a civil action, there are also some important differences. The main differences are described in Florida Rules of Appellate Procedure 9.190(b)(1) and 9.110(c). The following addresses general appellate procedures and some of the important differences in an administrative appeal.

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

Final agency orders. To appeal a final order of an agency, an appellant must file a notice of appeal with the clerk of the agency identified at the top of the final order. In addition, unlike in a regular appeal, the appealing party (appellant) must also file a copy of the notice of appeal with the district court of appeal. As with any appeal, the appellant must also pay the required appellate filing fee. The notice of appeal must be filed within 30 days of the agency's final order, or the appeal will be barred. *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(e) can be used. An appeal of an agency's final order is brought in the district court of appeal where the agency has its headquarters, or where a party lives. It should be noted that, unlike in most other types of cases, a party usually cannot file a motion for rehearing asking the agency or administrative law judge to reconsider its final order.

If either the notice of appeal filed in the agency or the copy filed in the appellate court is timely filed within 30 days of the final order, the appeal will generally be allowed to go forward. But it is bettor to make sure both are timely. If both are late, the appeal will be dismissed. "Filed" means actually received by the agency clerk or appellate court, not just sent in the mail. Because a late appeal will be barred, it is always better to file an appeal early, well before the 30 days are up.

Final orders of an administrative law judge. To appeal a final order of an administrative law judge, the appellant must file the notice of appeal with the clerk of the Division of

Administrative Hearings (not the agency). The notice of appeal must be filed within 30 days of the administrative law judge's final order. To be "filed" within 30 days means the notice of appeal must be actually received by the clerk of the Division of Administrative Hearings within 30 days (not just sent in the mail). So it is always better to file the notice of appeal well before that 30th day.

E. The Appellate Record.

The record in an administrative appeal contains the pleadings, motions, transcripts and other documents that were filed in the lower tribunal, which an appellate court will consider when deciding the appeal. The record on appeal is prepared by the clerk of the agency that issued the final order, or by the clerk of the Division of Administrative Hearings if the final order was issued by an administrative law judge. Within 10 days of the notice of appeal, the appellant generally must file "directions to the clerk," identifying what documents the clerk should include in the record on appeal. *See* Florida Rules of Appellate Procedure 9.200(a)(3), 9.190(c), and Form (g) in Florida Rule of Appellate Procedure 9.900; *see also* Chapter 3 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.

Obtaining and filing hearing transcripts. 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. It is usually very important to have the transcript included in the record. Without a transcript, the appellate court usually will only review clear errors apparent on the face of the final order. Very few errors can be determined from the face of an order, so a transcript should be obtained if at all possible.

If the appeal will be from a final agency order, the party wanting to appeal should generally file the hearing 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. Similarly, if the appeal will be from an administrative law judge's final order, the party wanting to appeal should generally file the transcript with the clerk of the Division of Administrative Hearings before the administrative law judge issues the final order. In any case, the appellant should at least make sure the hearing transcript is included in the record on appeal.

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 who will order and pay for the transcript.

Costs of record preparation. 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 currently $3.50 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 issues 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 3 on Pulling Together the Record on Appeal.

Often, the appellant will only receive a copy of the index to the record on appeal, and not a copy of record with the actual documents. This may change as more courts and agencies transition to electronic filing. The record index lists each document in the record with the corresponding page numbers. The parties will use the record index to cite to the pages of the record in his or her appellate brief. *See* Chapter 120, Florida Statutes.

F. Stays While the Appeal is Pending.

"Stays," which can stop enforcement of an order during an appeal, are discussed in a separate chapter of the Handbook. *See* Chapter 11 on Stays Pending Review. Below is a summary of the key points concerning stays in administrative appeals.

During an appeal, a final order is still effective and will be enforced. The order will not be stopped unless a motion to stay is both filed and granted. In most cases, the motion must be filed first 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 directly with the district court of appeal. A stay, if granted, will stop the final order until the appeal is over. If the motion is filed with the agency, the agency will issue an order granting or denying the stay. The agency may require the appellant to post a bond or money as a requirement of granting a stay. If the stay is denied, or if the appellant disagrees with a required bond, the appellant may file a motion in the appeal asking the appellate court to review the agency's decision on the stay motion. The appellate court's decision on the stay motion will be final on the issue of the stay.

G. The Appellate Briefing Process in an Administrative Appeal.

The requirements for 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 5 on Writing an Appellate Brief. Below is a summary of the requirements in an administrative appeal.

The party appealing (appellant) has to file and serve his or her initial brief within 70 days of filing the notice of appeal. If more time is needed, a motion for more time (an extension) should be filed in the appellate court before the deadline. After the initial brief is filed, the other side (appellee), usually the agency, has 20 days in which to file and serve an answer brief. The appellant may then file and serve a reply brief, responding to the answer brief, within 20 days of the answer brief. The initial and answer briefs generally cannot be longer than 50 pages each, and the reply

brief cannot be more than 15 pages. *See* Florida Rules of Appellate Procedure 9.110, 9.210, and 9.420, as well as Florida Rules of Judicial Administration 2.514 and 2.516; *see also* Chapter 7 on the Timeline for Appeals From Final Orders of Lower Tribunals.

Service of briefs by e-mail may be available for pro se parties if certain procedures and requirements are followed. *See* Florida Rules of Judicial Administration 2.514 and 2.516. In addition, most courts now allow (but do not require) electronic filing by pro se parties. *See* Florida Rule of Judicial Administration 2.525(c)-(d). The requirements for electronic filing, even when it is available, often vary in different courts. Accordingly, pro se parties interested in electronic filing should consult the website or clerk's office of the particular court to find out if electronic filing is allowed, and, if so, the requirements for electronic filing and service by e-mail. *See also* Florida Rules of Judicial Administration 2.516 and 2.525(c)-(d).

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