

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. Its Chief Judge oversees the entire State Courts System. This includes many management functions and regulation of attorneys and The Florida Bar. In addition, the Florida Supreme Court is responsible for adopting rules for practice and procedure in all courts. The Florida Supreme Court's responsibilities, and its "jurisdiction" or power to hear cases, are defined by Florida's Constitution. *See* Florida Constitution Article V, sections 1-3. There are seven justices who preside over the Florida Supreme Court. The agreement of four of the justices is necessary to a decision. The Court is located at:

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

The Clerk's Office's telephone number is (850) 488-0125. A party may inquire into the status of his or her case by contacting the Clerk's Office or by accessing the docket online at www.floridasupremecourt.org.

B. Types of Cases the Florida Supreme Court Hears.

The Florida Supreme Court's power or jurisdiction to hear cases is defined by the Florida Constitution and further explained by the Florida Rules of Appellate Procedure. *See* Florida Constitution Article V, sections 1-3; Florida Rule of Appellate Procedure 9.030(a). There are two main types of supreme court jurisdiction, mandatory and discretionary. Mandatory jurisdiction generally means the supreme court can hear certain types of cases directly, or directly from a trial court, without the need for an intermediate appeal, such as to one of the District Courts of Appeal. Discretionary jurisdiction generally means the types of cases the supreme court can decide whether

or not it wants to accept for review, and usually involves a party wanting a higher appeal after receiving an unfavorable decision in one of the district courts of appeal.

1. Mandatory Jurisdiction.

The Florida Supreme Court's mandatory jurisdiction includes direct appeals or petitions seeking review of:

- (a) final orders of courts imposing sentences of death, and
- (b) decisions of District Courts of Appeal declaring invalid a state statute or a provision of the state constitution.

In addition, if provided by Florida general law, the Florida Supreme Court shall also review:

- (a) final orders entered in matters for the validation of bonds or certificates of indebtedness, and
- (b) actions 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. This means there are certain matters the court can, but does not have to, review. The supreme court's discretionary jurisdiction includes the power to review decisions of District Courts of Appeal that:

- (a) Expressly declare valid a state statute. The ruling, opinion, or order must have language that expressly declares a state statute valid.
- (b) Expressly construe a provision of the state or federal constitution. The ruling, opinion, or order must contain language explaining the meaning of a provision of the state or federal constitution.
- (c) Expressly affect a class of constitutional or state officers. The ruling, opinion, or

order must contain language that affects 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. The opinion from the District Court of Appeal must contain language 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 to demonstrate conflict. However, it should address any legal principles applied as a basis for its decision.

(e) Pass upon a question certified to be of great public importance. The ruling, 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.

(f) Are certified to be in direct conflict with decisions of other District Courts of Appeal. The ruling, 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.

The term “expressly,” as used above, generally requires some written representation or expression of the legal grounds that support the decision under review.

C. When to Seek Review in the Florida Supreme Court.

As discussed repeatedly in this Handbook, it is always best to consult with, and engage, an appellate attorney’s services in the handling of the appeal. If unable or unwilling to do so, a party wishing to appeal must first determine whether the issue concerns a matter reviewable by the Florida Supreme Court. So, most importantly, to seek review in the Florida Supreme Court a party must be able to show the supreme court has either mandatory or discretionary jurisdiction to hear the case in the first place. 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, and must comply with the rules of procedure and time requirements for seeking review in the Florida Supreme Court.

D. How to Seek Discretionary Review in the Florida Supreme Court.

The Florida Supreme Court's discretionary jurisdiction is the most commonly sought type of review, so it will be addressed first. This type of review proceeding pretty much always seeks review (a higher appeal) of an unfavorable decision of a District Court of Appeal. The party who seeks to invoke the jurisdiction of the Florida Supreme Court is called the petitioner and the person responding to the petition is the respondent. The procedures for seeking discretionary review in the Florida Supreme Court are set out in Florida Rule of Appellate Procedure 9.120. Special attention should be given to the time requirements, especially the time for seeking review. If a party seeks review too late, the right to do so may be forever waived.

To start a proceeding to seek discretionary review, a party must generally file a document called a "notice to invoke jurisdiction," which is similar to a notice of appeal. The notice to invoke jurisdiction must be filed: (a) in the District Court of Appeal where the case is pending, and (b) within 30 days of the date the order or decision sought to be reviewed was rendered by the District Court of Appeal. Along with the notice to invoke jurisdiction, the party seeking review must also pay the filing fee required by law. In addition, the notice must contain the name of the lower tribunal (the court being appealed from), the name and designation of the parties on each side, and the case number of the lower tribunal. It must also contain the date that the order for which review is being sought was rendered, and the basis for invoking the jurisdiction of the Florida Supreme Court. The basis would be one of the grounds discussed above. An example form of a notice to invoke discretionary jurisdiction can be located in the form sections of Florida Rule of Appellate Procedure 9.900(d).

The 30-day time limit 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.

E. Procedures After Filing a Notice to Invoke Discretionary Jurisdiction.

If the basis for seeking discretionary review is that the district court certified in its decision or on rehearing a question of great public importance to the supreme court, a jurisdictional brief is not filed, and the next step is briefing on the merits, discussed later in this chapter. In all other cases, within 10 days after filing a notice to invoke the Florida Supreme Court's discretionary jurisdiction, the party who filed the notice is required to serve a jurisdictional brief, which must be limited solely to addressing the issue of why the party believes the supreme court has jurisdiction over the case, and an appendix that only contains a conformed copy of the decision of the District Court of Appeal that the party wants to have reviewed. *See Fla. R. App. P. 9.120(d).*

In preparing the jurisdictional brief, or any other briefs, in the Florida Supreme Court, a person should consult the Florida Rules of Appellate Procedure, especially Rules 9.120 and 9.210, and Chapter 5 of this Handbook on Writing an Appellate Brief. A party is responsible for following all of the rules, whether or not they are specifically addressed in this Handbook. Again, this Handbook is a general guide and cannot cover all of the rules and requirements.

The same general rules for all brief apply to the jurisdictional brief. The brief shall be printed, typewritten, or duplicated on letter-size paper. The brief shall be submitted in either the Times New Roman 14-point font or Courier New 12-point font in black lettering, double spaced, with margins no less than one inch. Immediately following the certificate of service, the party seeking review in the supreme court must certify that the brief complies with the font requirements. The brief on jurisdiction must not exceed 10 pages, not including the tables of contents and citations, the certificates of service and compliance, and the signature block for the brief's author.

See Fla. R. App. P. 9.210. It must contain the following sections and information, as further discussed in Chapter 5, Writing an Appellate Brief:

1. Title Page. The title page should include the case 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 section 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 and should not be more than 1 page. What does the party want the Florida Supreme Court to do? What relief is being sought?

8. Certificate of Service. Sample language: "I hereby certify that a true and correct copy of the foregoing was served by (mail/e-mail/delivery) on (Date of Mailing) to (Name, Address of opposing party)."

9. Certificate of Compliance. This is a certification of the font and size type used in the brief.

10. An appendix. The appendix should only contain a copy of the order or decision to be reviewed.

F. What Happens After the Brief on Jurisdiction is Filed in Discretionary Review Cases.

Within 20 days after the petitioner (the party seeking review) files the jurisdictional brief, the respondent (the opposing party) shall serve his or her brief on jurisdiction. The respondent's brief on jurisdiction will follow the same format as the petitioner's brief, except without the appendix (which will be unnecessary). The respondent's brief will respond to the jurisdictional arguments made in the petitioner's brief, and, most often, will argue that the supreme court lacks jurisdiction to grant review of the case. The brief must be supported by citations to legal authorities, such as statutes and case law.

The petitioner does not file a reply brief. Instead, after the parties' briefs on jurisdiction have been filed in the supreme court, the parties wait for the supreme court to issue an order advising whether it will review the matter. If the Florida Supreme Court will review the matter, an order will be entered which provides the time for filing the petitioner and respondent's briefs on the merits. It may also advise whether the matter will be heard for oral argument.

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

If the Florida Supreme Court accepts discretionary review, the parties file briefs on the merits. The briefs will follow the same general format discussed above for the jurisdictional briefs (except that an appendix is unnecessary). Petitioner's brief on the merits goes first, and is served within 20 days from the date of the supreme court's order. Again, it includes all the same sections discussed above for the jurisdictional briefs (except the appendix), but the focus of the brief will

be the petitioner's arguments on the merits, i.e., why he or she believes the district court's decision was incorrect, or why he or she is entitled to the requested relief. So, for example, the statement of case and facts sections would still include the course of proceedings below, but would focus on the facts important to the merits of the case, not just the supreme court's jurisdiction. Likewise the summary of the argument and argument sections would address the merits of the case, rather than just the court's jurisdiction.

After the petitioner's brief on the merits is served, the respondent then has 20 days to serve his or her brief. The respondent's brief will follow the same guidelines, and have the same sections as the petitioner's brief on the merits. Of course, the big difference is that the respondent will most often be arguing why the petitioner is incorrect and will attempt to refute the petitioner's arguments. So the respondent's brief on the merits will also 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. A party who genuinely needs more time to file a brief, whether on jurisdiction or on the merits, should file a motion for an extension of time well before the deadline for filing the brief. Motions for extensions are further addressed in Chapter 4 of this Handbook, Motion Practice in the Appellate Courts.

H. The Record on Appeal in Discretionary Review Cases.

The clerk of the lower tribunal shall prepare a document called the "record on appeal." Often, especially with appeals seeking discretionary review, this will be the same as the record in the district court of appeal. More information regarding the appellate record can be found in Chapter 3 of this Handbook, Pulling Together the Record on Appeal.

I. How to Invoke the Mandatory Jurisdiction of the Florida Supreme Court.

To seek review in the Florida Supreme Court under its mandatory jurisdiction, a party will file a document called a “Notice of Appeal” within 30 days of the date the order for which review is sought was rendered, along with the filing fee and a copy of the order or opinion being appealed. The notice of appeal will contain: a case caption stating the name of the lower tribunal, the name and designation of the parties on each side, and the case number in the lower tribunal; the name of the court to which the appeal is taken; the date the order appealed was rendered; and the nature of the order to be reviewed, which would need to fall under one of the types of orders subject to mandatory review, discussed earlier in this Chapter. Again, the notice should be filed at the lower tribunal within 30 days, along with a copy of the order or opinion being reviewed and the filing fee. The briefing will follow the same general schedule for briefings in any other appeal, as further discussed in Chapter 5, Writing an Appellate Brief.

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