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THE PRO SE [SELF-REPRESENTED] APPELLATE HANDBOOK©

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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" or "Self-Represented Litigant" Handbook is not a comprehensive appellate guide, and it 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 and is not all-inclusive. The most current version can be found at: http://www.flabarappellate.org.

This is a very basic guide to assist someone unable 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, which apply to all types of appeals and extraordinary writs. Nor is it a substitute for retaining an appellate attorney skilled in the law and knowledgeable in appellate practice. 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 and any other Florida rules and statutes that may apply. A pro se party may also do well to consult *Florida Appellate Practice,* published by The Florida Bar, and *Florida Appellate Practice,* by Philip

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Padovano, as well as other Florida appellate manuals for additional information on appeals and petitions.

CAUTION: THE DANGERS OF SELF-REPRESENTATION

"Self-Representation" or proceeding "pro se" means the party does not have a lawyer in a legal matter and is representing himself or herself, regardless of whether the 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 himself or 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 the specific appellate court's internal or "local" rules and procedures. A pro se party who has no formal legal training is just as responsible as an attorney for following all of the rules.

3. The Florida Rules of Appellate Procedure set forth the pleadings and documents that must be filed in an appeal, along with the deadlines (number of days) in which to file the pleadings or documents, such as the notice of appeal and the appellate briefs.

4. All parties must comply with filing deadlines. No party is allowed to file an appeal or brief late simply because that party is representing himself or herself and does not have any formal legal training. No party is allowed to ask for

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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. For example, if a pleading, motion or other document was not filed in the lower tribunal before the appeal, or if a piece of evidence or an exhibit was not introduced into evidence in the lower tribunal, it cannot be argued or considered for the first time on appeal. This is because the document or evidence was not part of the record in the lower tribunal. The record on appeal is limited to the record that was made 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 the pro se party to pay the opposing party's attorney's fees and costs if that party wins the appeal. In certain special cases, such as family law appeals, attorney's fees may be awarded based on financial need without regard to who prevails.

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.

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9. The Rules Regulating The Florida Bar and the Florida Supreme Court forbid the “unlicensed practice of law.” That means a non-lawyer (or even a lawyer from another state or law student) cannot give legal advice or speak on behalf of 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, whether in written papers or in court appearances or otherwise. 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 have acted 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 an appellate attorney. 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.

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CHAPTER 1: 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.

B. The Final Judgment Rule and Why it is Important

A "final" judgment or order is a written order entered by a trial court (or "lower tribunal") which ends the case and leaves nothing left to be done except to follow what the final judgment or order requires the parties to do. In contrast, a "non-final" order does not end the case and usually cannot be appealed right away. For example, if the trial court rules against a party on an issue or motion before trial or at trial, the party normally has to wait, and often cannot appeal, 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 the final judgment, and, in the appeal from the final judgment, the party usually can also challenge any ruling or non-final order entered before the final judgment. So, with some exceptions, appeals generally can only be brought from a final judgment. This is called the "final judgment rule." Final judgments are discussed here, as well as in Chapter 8 on the Appellate Process Concerning Final Appeals. Some of the exceptions to the final judgment rule are covered in other Chapters of this Handbook, such as Chapter 9 on Appeals from Non-Final Orders, and Chapter 10, Extraordinary Writs.

The final judgment rule is very important to an appellant because an appeal has deadlines and time limits that must be followed. For example, there is a time limit for filing an appeal, and

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a party who fails to file an appeal within that time limit may lose or "waive" the right to appeal. Thus, one of the important reasons to consult or retain an appellate attorney, if one is available, is to find out whether a specific order can be appealed, and, if so, whether the appeal has to be filed right away.

C. The General Procedures for an Appeal

An appeal is begun by filing a "notice of appeal" within the deadline required by the Florida Rules of Appellate Procedure. 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. In Florida, the time limit for filing a notice of appeal from a final order or judgment generally starts to run when the lower tribunal enters or "renders" the final judgment or order ("rendition"). The appellant usually has 30 days from the date of "rendition" to file a notice of appeal. *See* Florida Rule of Appellate Procedure 9.110(b)&(c) (civil and final administrative law cases); Florida Rule of Appellate Procedure 9.140(b)(3) (criminal cases); *see also* Florida Rule of Appellate Procedure 9.020 (definitions); Florida Rule of Appellate Procedure 9.030 (jurisdiction of the courts).

The time limit for filing a notice of appeal is a "jurisdictional" deadline. This means that if the notice of appeal is not filed within the time limit, the appellate court usually will not have the power, or "jurisdiction," to hear the appeal, and the appeal will be dismissed. The rest of the deadlines, such as the time limits for filing the briefs, are also important and should be followed, but many are not "jurisdictional." This means the appellate court still has the power to hear the appeal, but it may decide to dismiss for a party's failure to follow the rules and procedures for the appeal.

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After filing a notice of appeal, 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)-(b). 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 Chapter 3 of this Handbook.

The party opposing the appeal, the "appellee," generally has 15 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 9.140(b)(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 only filed in cases where the appellee believes the lower tribunal made a mistake in not granting all of the relief the appellee wanted in the specific 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 did not grant all of the desired relief, then the appellee must file his or her own notice of appeal from that order, not a notice of cross-appeal. And, again, any 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

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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 Chapter 3, is made up of the documents—such as the pleadings, pre-trial motions, orders, discovery, and evidence ("exhibits")—that were filed and made part of the "record" in the lower tribunal. It usually also has transcripts of the hearings that the lower tribunal judge held and transcripts of any trial, if the hearing or trial was "transcribed" (typed-out by a court reporter), and if one of the parties filed those transcripts with the lower tribunal. *See* Florida Rule of Appellate Procedure 9.200.

There are also time limits for filing appellate briefs. Appellate briefs are the written arguments of the appellant and the appellee that are presented to the appellate court. The arguments in an appellate brief must be limited to the matters contained in the appellate record. The appellant's initial brief is generally due 70 days after filing the notice of appeal. *See* Florida Rule of Appellate Procedure 9.110(f). The appellee's answer brief is then due 30 days after the initial brief, and the appellant's reply brief is due 30 days after the answer brief. *See* Florida Rule of Appellate Procedure 9.210(g). If the appellant needs more time to file a brief, the appellant usually may file a motion for an extension of time with the appellate court (usually for 30 or 60 days), so long as the motion for extension is filed before the deadline for the brief. Before filing a motion for an extension, the appellant is generally required to contact the opposing party to ask if the opposing party will agree or object to the motion for an extension. The motion for extension should, in addition to requesting the extension, also state whether the opposing party objects or agrees to the extension. The same general procedure for seeking extensions would also apply to the answer brief and the reply brief.

The appellate briefs are filed with the appellate court before oral argument. Oral argument is like a formal hearing before a trial judge. The main differences are that appellate oral arguments

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are usually heard by a "panel" of three judges and arguments are limited to those contained in the appellate briefs and supported by the appellate record—no new evidence or arguments can be made. The party seeking to present oral argument must file a "request for oral argument" in a separate document, generally not later than 15 days after the reply brief is due. *See* Florida Rule of Appellate Procedure 9.320. After the parties have filed their briefs, and if a request for oral argument was made, the appellate court will decide whether to grant oral argument. Appellate courts do not always grant a request for oral argument. If oral argument is not granted, the case will be decided based on the arguments in the appellate briefs, without holding an 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 state the date and time of the oral argument and how many minutes each side will have to argue their case.

It is important to remember that appellate courts do not take new evidence or consider new arguments. An appeal is based on what happened in the lower tribunal. Appellate courts decide whether the trial judge made mistakes or "errors" below, such as in admitting or excluding evidence. Appellate courts also generally do not consider arguments that were not made to the lower tribunal. If an argument or objection was not made to the lower tribunal (at a time when the lower tribunal could "fix" the reason for the objection), the appellate court usually will not consider the argument for the first time on appeal, unless the error was "fundamental," meaning it usually must have destroyed the fairness of the whole case.

Litigants should also understand that there have been many changes in the appellate courts and rules over the years in Florida. These changes include limiting the number of words allowed in appellate briefs to 13,000 words for the appellant's initial brief, 13,000 words for the appellee's answer brief, and 4,000 words for the appellant's reply brief. *See* Florida Rule of Appellate

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Procedure 9.210. The appellate courts generally will not allow briefs that go over these word limits. Requests for an increase in the word limits can be made, but they are rarely granted. The time allowed to present any oral argument is very limited. Most appellate courts allow only a set number of minutes for oral arguments, usually 10 or 20 minutes per side. At oral argument, the parties must make their argument within the time allowed by the court.

An appellate court's consideration of the issues and arguments raised in an appeal will be framed by what is called "the standard of review." The standard of review determines how much weight or deference the appellate court will give to, or how strictly it will question, the 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 great 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 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 will or will not be allowed during trial. As to those kinds of matters, a lower tribunal has discretion, and appellate courts generally will not find such rulings to be mistaken unless an "abuse of discretion" is shown, meaning no reasonable judge would have made the same decision under the law and facts.

Finally, appellate courts review pure legal issues with the least amount of deference to the lower tribunal. This is called the "de novo" standard of review. Under this standard, appellate courts decide for themselves what the law says and what the decision of law should be.

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The reason so little deference is given when reviewing a pure legal issue is because appellate courts are in just as good a position to decide the law as lower tribunals.

D. Conclusion

Given the complex requirements and procedures for an appeal, it is important for an appellant to carefully consider whether to go ahead with an appeal without the help of an appellate lawyer. By hiring an experienced, qualified appellate lawyer who understands the law and rules of procedure, a party 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 and the procedures for doing so.

Finally, it must be remembered that the law and rules of procedure change frequently. A self-represented or "pro se" litigant is responsible for following the current laws and rules of procedure. Thus, a pro se litigant should review the most current laws and rules in addition to this Handbook, as some laws or rules may have changed. As just one example, the rules in the area of serving (sending) documents to other parties by e-mail and filing documents electronically with the court are still developing and changing, especially as to pro se litigants. Currently, service by e-mail is available for pro se parties if certain procedures and requirements are followed. *See* Florida Rule of Judicial Administration 2.516(b). In addition, most courts now allow (but do not require) electronic filing by pro se parties. *See* Florida Rule of Judicial Administration 2.525(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

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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).

Unless e-mail service or electronic filing is allowed, service or filing of a document must generally be done by mail or personal delivery (to the other party for service, and to the court for filing). So, in addition to consulting the most up-to-date version of the rules of procedure (available on The Florida Bar's website at http://www.floridabar.org/tfb/TFBLegalRes.nsf/) and other laws, a pro se litigant should also consult the website or clerk's office of the specific court to find out if electronic filing with the court and/or service of documents to other parties by e-mail may be allowed, and to find out if the court may have additional requirements specific to that court.

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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. A pro se litigant, meaning a party who is not an attorney and who is representing himself or herself, is not entitled to attorney's fees for his or her own time spent appealing a case. In contrast, a party represented by an attorney may be able to seek attorney's fees on appeal if there is a basis for awarding such fees. This means a pro se litigant may be responsible for the opposing party's appellate attorney's fees.

B. Can a Pro Se Litigant Be Responsible for the Opposing Party's Attorney's Fees?

Yes. A pro se litigant may be responsible or "liable" on appeal for the opposing party's attorney's fees, if the opposing party is represented by an attorney (or is an attorney). For the opposing party to seek attorney's fees in an appeal, there has to be a basis for awarding such fees in a statute and/or in a contract between the parties. Also, a party usually has to win, or "prevail," in the appeal before he or she will be entitled to an award of appellate attorney's fees. One exception is in family law cases, where, in some cases, appellate attorney's fees may be awarded based on the parties' relative financial need and ability to pay. *See* Section 61.16, Florida Statutes.

If there is a basis in a statute or a contract for awarding attorney's fees in the lower tribunal, that same statute or contract usually can also be a basis for an award of appellate attorney's fees. *See* Section 59.46, Florida Statutes. In the case of *Dade County v. Pena*, 664 So. 2d 959 (Fla. 1995), the court explained: "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."

Just a few examples of some Florida Statutes that provide for an award of attorney's fees include:

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1. Section 57.105(1), Florida Statutes (regarding attorney's fees to prevailing party for an opposing party's frivolous claims or defenses which had no basis in law or fact);

2. Section 61.16, Florida Statutes (regarding attorney's fees based on relative financial need in family law matters);

3. Section 78.20, Florida Statutes (regarding attorney's fees to prevailing defendant in a replevin action);

4. Section 83.49(3)(c), Florida Statutes (regarding attorney's fees to prevailing party in residential landlord-tenant dispute over security deposit);

5. Sections 120.69(7) and 120.595, Florida Statutes (regarding attorney's fees to prevailing party in some circumstances in certain administrative law cases);

6. Section 448.08, Florida Statutes (regarding attorney's fees to prevailing party in an employee's action for lost wages).

To seek an award of attorney's fees for an appeal, the party's attorney would file a motion for attorney's fees in the appellate court in accordance with Florida Rule of Appellate Procedure 9.400(b). Generally, a motion for attorney's fees in an appeal has to be filed no later than the time for service of the reply brief, or in original proceedings, the time for service of the petitioner's reply to the response to the petition. The motion is required to state the legal basis for seeking attorney's fees (i.e., a basis in a statute and/or contract).

C. Who is Entitled to or Responsible for Court Costs on Appeal?

The party who prevails in an appeal, including a pro se litigant, is entitled to seek an award of court costs. Thus, a pro se litigant may be entitled to court costs if he or she prevails in the appeal. But if the pro se litigant does not prevail, he or she will likely be responsible to pay the opposing party's court costs.

It is important to understand that court costs are different from attorney's fees, and different rules apply to costs. Costs include things like filing fees and the cost of the transcript or appellate record. More specifically, Florida Rule of Appellate Procedure 9.400(a) provides that the party who prevails in the appeal is entitled to recover certain costs incurred in the appeal, including:

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costs for filing and for service of process, charges for the lower tribunal clerk's preparation of the record, any necessary hearing or trial transcripts, bond premiums, and other costs that the law permits.

D. How Are Costs Incurred on Appeal Recovered?

A motion for appellate court costs is filed in the lower tribunal. To recover costs incurred on appeal, the prevailing party should file a motion for costs in the lower tribunal no later than 45 days after rendition of the appellate court's order or decision in the case. If the motion is not filed within this deadline, the right to seek costs will be lost. See Florida Rule of Appellate Procedure Rule 9.400(a).

In contrast, a motion for attorney's fees is filed in the appellate court. Then, if the appellate court awards attorney's fees, the party entitled to the fees generally has to file a motion in the trial court to determine the amount of the fees. Unlike with appellate costs, there is no set deadline in the rules for filing a motion to determine the amount of attorney's fees in the trial court after the appellate court awards entitlement to fees. But such a motion should probably still be filed within the same amount of time as a costs motion (i.e., within 45 days of the appellate court's decision).

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CHAPTER 3: ASSEMBLING THE RECORD ON APPEAL

A. Overview of the Record on Appeal

An appeal is decided based solely on the documents, evidence, arguments and proceedings that occurred in the lower tribunal. In general, the "record on appeal" or "appellate record" is a collection of the documents, pleadings, motions, evidence, and hearing or trial transcripts that were filed in the lower tribunal or trial court. The appellate court reviews the appellate record, i.e., the record of what happened in the trial court, in order to review whether the decision reached by the lower tribunal or trial court was correct or incorrect. Throughout this chapter, "lower tribunal" means the lower court, agency, or division that originally decided the case, through a trial or other proceeding. When the lower tribunal is a court, it is often called the trial court.

Most of the information an appellate party needs to know about the contents, timing, and requirements for the record on appeal can be found in Florida Rules of Appellate Procedure 9.200 (the record), 9.140 (criminal appeals), 9.141 (postconviction appeals), 9.180 (workers' compensation), and 9.900 (appellate forms). This chapter provides a general overview of these rules. It first addresses rule 9.200 and the appellate record generally. It will also address some of the main differences for a few of the different types of cases and appeals. An appellate party should remember that this chapter simply provides an overview of general requirements. Because there are important differences between the specific rules of procedure that apply to different types of cases and appeals (like civil, criminal, postconviction, workers' compensation, administrative, etc.), appellate parties must carefully study the specific rules of procedure that apply to the type case and type of appeal they are filing.

The record on appeal generally includes all of the pleadings, motions, documents, and exhibits that were filed in the lower tribunal or trial court. Fla. R. App. P. 9.200(a)(1). It also

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includes copies of the orders entered by the lower tribunal and transcripts of any hearings or trials. The record gives the appellate court a history of the case, and it is limited to what was actually filed in and considered by the lower tribunal. Parties cannot add new evidence or documents that were not filed with the lower tribunal prior to entry of the order being appealed.

Depositions and other discovery are only included in the record on appeal if a party filed them in the trial court before the order being appealed was entered. Physical evidence, meaning the actual object(s) entered into evidence (for example, a gun), is typically not included in the record on appeal at all. There are also some types of routine documents that usually will not be included in the record because they usually will not be relevant to the appeal. Such documents include summonses, praecipes, subpoenas, returns of service, and notices of hearing or depositions. A summons is a document served on defendants which notifies them of the lawsuit and what initial actions they need to take to defend against it. A return of service is the proof that the summons was properly served on the defendant. A praecipe is somewhat like a summons, but it tells the defendant to do something or to show why he or she has not done it. These types of documents will not be automatically included in the record. If these items are relevant in the specific appeal, a party will need to ask the clerk to include them in the record. Fla. R. App. P. 9.200(a)(1). For example, an appellant would want to ask the clerk to include the summons and any return of service documents in the appellate record if he or she wanted to argue on appeal that the judgment is invalid because the original service of the summons and lawsuit papers was invalid such that he or she did not receive proper notice of the lawsuit.

An appellate court cannot review what happened in the lower tribunal without a record. See Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979). An appellate court generally presumes that the lower tribunal's decision is correct (the "presumption of

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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. Without a complete record, the appellate court is limited to correcting errors that are apparent on the face of the order on appeal. See, e.g., Chirino v. Chirino, 710 So. 2d 696 (Fla. 2d DCA 1998). The party who filed the appeal and who is asking the appellate court to reverse, remand, or correct the lower tribunal's decision, is the party responsible for making sure the appellate court has everything it needs to review the lower tribunal's decision based on what happened below. Fla. R. App. P. 9.200(e).

B. Getting the Record on Appeal to the Appellate Court

1. The Record in Nonfinal Appeals and Original Proceedings

There is an important distinction between “final” appeals, “nonfinal” appeals, and original proceedings when assembling the appellate record. See Fla. R. App. P. 9.110 (final appeals), 9.130 (nonfinal appeals), and 9.100 (original proceedings). The difference between final and nonfinal appeals and original proceedings is discussed in greater detail in Chapters 1, 8, 9, and 10 of this Handbook. In nonfinal appeals and original proceedings, the parties submit record documents to the appellate court directly, not through the lower tribunal clerk, by filing an appendix with the initial or answer brief (nonfinal appeals) or the petition and response (original proceedings). Fla. R. App. P. 9.130(e) and 9.100(g). An appendix includes any documents relevant to the issues raised in the appeal and that are necessary for the appellate court to come to a decision. Fla. R. App. P. 9.220. An appendix must include an index or table of contents that gives the title of each document and the page number of the appendix where it can be found. The appendix should be separate from the brief or petition/response. Many appellate courts prefer that the parties identify the documents individually using bookmarks if they are submitting them electronically as a PDF.

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While this is a requirement for attorneys submitting an appendix, it is not currently a requirement for pro se litigants.

In most cases, parties should arrange all of the documents in chronological order, from the oldest to the newest. That is, the appendix should begin with the first document filed with the lower tribunal, then continue in the order in which the remaining documents were filed, and end with the order being appealed. If a pro se party files a paper copy of the appendix with the appellate court, the appendix must be on standard 8½" x 11" paper. If any documents are on larger pieces of paper, the party compiling that appendix should reduce the documents to standard, 8½" x 11" size paper when copying them.

As in final appeals, the parties may only include in the appendix copies of documents that were filed in and considered by the lower tribunal before the order being appealed was entered. When possible, the parties should use copies of documents that include the filing date or clerk's stamp in their appendix. When including a copy of a lower tribunal order, especially the order on review, the party should obtain a signed or "conformed" copy of the order from the lower tribunal. The clerks of the circuit courts are increasingly posting filed documents on their websites, making it relatively easy for litigants to save and print out filed versions of their pleadings and court orders.

2. The Record in Final Appeals

Generally in most final appeals, and in some postconviction appeals, the appeals division of the lower tribunal clerk's office assembles the record on appeal the same way: by copying the parts of the lower tribunal's file that go into the record on appeal, numbering those pages, and placing those pages into an electronic PDF document. The clerk's office then prepares an electronic index to the record on appeal, which includes the title of each record document and the record page number on which it can be found. With the amendments to rule 9.200 that took effect

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on January 5, 2016, the lower tribunal clerk is now required to paginate the record on appeal so that the PDF pages match the record page numbers, make the PDF record text searchable, and bookmark the record. Fla. R. App. P. 9.200(d). The clerk will attach the trial transcripts in a PDF file separate from the main record but matching the pagination of the index. Fla. R. App. P. 9.200(d)(2). These new requirements help make the electronic record easier for the parties and the appellate court to navigate.

The lower tribunal clerk's office provides a copy of the record on appeal to each of the parties in most criminal cases and in nonsummary postconviction appeals. Fla. R. App. P. 9.140(f)(4) and 9.141(b)(3)(B). In civil cases, the clerk's office initially sends each party a copy of only the record index. Fla. R. App. P. 9.110(e). It is then generally up to the parties to either compile their own copy of the record using the record index, or obtain an electronic copy of the record from the clerk. When a motion for postconviction relief is granted or denied *without* a hearing, the lower tribunal clerk sends copies of the index and record to the parties. Fla. R. App. P. 9.141(b)(2)(B). When a motion for postconviction relief is granted or denied *after* a hearing on one or more claims, the lower tribunal clerk sends copies of the record to indigent defendants and their appointed attorneys. In these cases, the clerk only sends copies of the index to non-indigent defendants. Fla. R. App. P. 9.141(b)(3)(B). After preparing the record and index, the lower tribunal clerk's office will electronically transmit both to the appellate court.

When an appellant files a notice of appeal without specific directions to the clerk, the lower tribunal clerk will automatically include only the documents required by rule in the appellate record when it transmits the record to the appellate court. Fla. R. App. P. 9.200(a)(2). This is what happens in most appeals.

C. Assembling the Record on Appeal Generally

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1. Filing Directions to the Trial Court Clerk

To designate particular items from the lower tribunal file for the clerk to include in or exclude from the record on appeal, the appellant will need to file a document called "directions to clerk." Fla. R. App. P. 9.900(g). The directions should be filed in the court that heard the case within 10 days of the date that the notice of appeal was filed. Fla. R. App. P. 9.200(a)(2). In the directions, the appellant should clearly identify which items the appellant wants to include and which items the appellant wants to exclude, if any, from the record. Rule 9.900(g) contains a sample form to use when filing directions with the lower tribunal clerk. If the appellant files directions with the clerk, the appellee, the other party to the appeal, has 20 days from the notice of appeal to file a similar document directing the clerk to include other documents and exhibits that the appellee wants in the record. Fla. R. App. P. 9.200(a)(2).

If the appellant chooses to direct the clerk to exclude items from the record or to include only particular documents instead of sending the whole record to the appellate court, the appellant will also need to file a "statement of judicial acts" in the lower tribunal at the same time as the directions to the clerk. Fla. R. App. P. 9.200(a)(2). 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 statement of judicial acts also allows the appellee to decide whether to add additional portions of the record.

2. Transcripts and Designations to the Court Reporter

When there has been a trial, evidentiary hearing, deposition, or other proceeding in the lower tribunal that is relevant to the order being appealed, the record should include a transcript. A transcript is a written record of a spoken court proceeding. It often contains the most important

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information for an appeal. Transcripts are prepared by an official court reporter or court transcriptionist, who either attended the proceeding or transcribed the proceeding from a recording.

Most criminal proceedings have a court reporter present or are audio recorded for later transcription. However, in civil cases the parties must arrange for a court reporter to be present or for a recording of the proceedings to be made. If they do not, there will not be any transcript available to include in the record on appeal. Once a court proceeding has been transcribed, either party may file it in the court file for inclusion in the record on appeal. In civil cases, the presence of a court reporter or electronic recording device at the court proceeding is not enough. The parties must request that a court reporter create an official transcript of the proceeding and then ensure that it is filed with the lower tribunal clerk before the transcript can be included in the record on appeal.

Within 10 days of filing the notice of appeal, the appellant must file a designation with the court reporter or transcriptionist present at or responsible for transcribing the recording of the proceeding clearly identifying which court proceedings need to be transcribed and filed with the lower tribunal clerk. Fla. R. App. P. 9.200(b)(1). The appellee has 20 days from the date the notice of appeal was filed to designate any additional proceedings that need to be transcribed and included in the record. Fla. R. App. P. 9.200(b)(1). The designation should list the dates of all of the days of trial and any hearings that need to be transcribed. In civil cases the designation should also include the names and addresses of the other parties that should be served with a copy of the transcript. If the party filing the designation does not direct the court reporter or transcriptionist to serve a copy of the transcript on all of the parties to the appeal, that party must serve a copy of the transcripts on the other parties within 10 days of receiving the transcripts. Fla. R. App. P. 9.200(b)(3). For a sample form for serving designations on the court reporter or transcriptionist,

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refer to rule 9.900(h). In criminal cases, service of the transcripts on the parties is a little different. See Fla. R. App. P. 9.140(f)(2). Consult section (E) of this chapter for more information.

The court reporter has 30 days from the date of the designation to prepare the transcript. Fla R. App. P. 9.200(b)(3). After receiving the designation, the court reporter will fill out the "court reporter's acknowledgement" section with the date the designation was received and the estimated date of completion of the listed transcript. Fla. R. App. P. 9.200(b)(2). Within 5 days of receiving the designation, the court reporter will send the completed acknowledgement to the clerk of the appellate court and the parties. If the court reporter cannot prepare the requested transcript within 30 days, the court reporter may ask the appellate court, by way of a motion, for extra time. If the court reporter will need more than 30 days, another option is for the appellant to file a motion for an extension on behalf of the court reporter; such a motion should be filed well before the 30 days is over and should ask the appellate court to extend the time for the court reporter to prepare the transcript and to also "toll" or extend all other deadlines accordingly (that helps avoid a situation where the briefs are due before the record is even complete). If the court reporter and/or appellant asks for that extra time, the appellate court will then either grant or deny the court reporter's request for extra time and issue an order telling the court reporter and the parties when the transcript is due. See Fla. R. App. P. 9.200(b)(2), (e).

Parties should remember that when they want to include transcripts of depositions or other proceedings that did not include the lower tribunal judge as a participant, the transcripts must have been before the lower tribunal, either introduced into evidence or attached to a motion, pleading, or other filing. As with other record documents, the appellate court may only consider transcripts that were considered by the lower tribunal in coming to its decision. See, e.g., Parker v. Parker,

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109 So. 2d 893, 894 (Fla. 2d DCA 1959) ("A deposition is not a part of evidence before the court unless made so pursuant to the rules of evidence and the rules of court.").

3. Record Stipulations and Reconstruction

Rarely, instead of preparing a record on appeal, both sides work together to prepare what is called a "stipulated statement" for the appellate court. Fla. R. App. P. 9.200(a)(3). This may save costs when the appellant must pay for the appellate record and is a separate and distinct procedure than reconstructing the transcripts of a hearing when there was no court reporter or electronic recording available at the court proceeding. A stipulated statement must be approved by both parties. It shows how the case proceeded in the lower tribunal, what the lower tribunal decided, includes copies of record documents as is necessary to review the decision on appeal, and must be filed with the lower tribunal clerk for transmission to the appellate court. If the parties intend to rely on a stipulated statement, they should advise the lower tribunal clerk as soon as possible. Fla. R. App. P. 9.200(a)(3).

If there was no court reporter present at the court proceeding or a transcript is otherwise unavailable, the parties may agree on a prepared statement of the evidence or the proceedings. The party seeking to recreate the record of the proceeding should prepare the statement from the "best available means," which includes the memories of the parties. They should then serve the statement on the opposing party, who has 15 days from the date of service to object or propose amendments to the statement. 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. The court-approved statement can then become part of the appellate record. Fla. R. App. P. 9.200(b)(5).

4. Cross-Appeal

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Sometimes in an appeal, the appellee also files a cross-appeal, which is explained in more detail in Chapters 8 and 9. 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 20 days from the date the notice of appeal was filed to file a designation directing the clerk of the lower tribunal to add documents, exhibits, or transcripts to the record on appeal. 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 cross-appellee then has 15 days after service of the cross-appellant's designation and statement of judicial acts to be reviewed, to designate any other items for inclusion in the record on appeal. When there is a cross-appeal, the total time for the clerk of the lower tribunal to prepare and transmit the record is extended by 10 days. Fla. R. App. 9.200(c).

5. Correction and Supplementation of the Appellate Record

The appellant is responsible for checking the record on appeal to make sure that everything the appellate court needs to make a decision on the issues raised is included. If one of the parties believes that the record contains an error or omission (e.g., a mislabeled document, a mistake in record page numbers, or a document filed with the lower tribunal but missing from the record on appeal), the appellant or appellee may correct it: (1) by agreeing with opposing counsel to stipulate to the correction, (2) by filing a motion to correct the mistake with the lower tribunal clerk before the clerk sends the record to the appellate court, or (3) if the lower tribunal clerk's office has already sent the record to the appellate court, by filing a motion to supplement or correct the record on appeal in the appellate court asking the appellate court to make or allow the correction or supplementation. Fla. R. App. P. 9.200(f)(1).

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If a party believes that the lower tribunal clerk has left a necessary item out of the record on appeal, the party cannot just file the document with the appellate court clerk or attach it to his or her brief. If the lower tribunal clerk has not yet filed the record in the appellate court, the party may arrange for correction or supplementation of the record with the lower tribunal clerk. This is typically done by filing a designation identifying the documents to be supplemented. However, if the lower tribunal clerk has already transferred the record to the appellate court, the party must instead file a "motion to supplement the record" in the appellate court. This motion should identify the missing filing by date and title and should explain why it needs to be in the record.

In a civil case, if the appellate court believes that the record is incomplete or wants a particular document, transcript, or exhibit that neither party designated with the lower tribunal clerk, the appellate court will generally order the appellant to make arrangements with the lower tribunal clerk to supplement the record. In a criminal case, the appellate court may order the lower tribunal clerk to supplement the particular document, transcript, or exhibit directly. Pursuant to rule 9.200(f)(2), the appellate court will give the parties a chance to supplement the record rather than decide the appeal on an incomplete record.

D. Civil Appeals

1. Timing

In civil cases, the lower tribunal clerk will serve a copy of the index to the record on the parties within 50 days of the date that the notice of appeal is filed. The lower tribunal clerk will electronically transmit copies of the index and the record on appeal to the appellate court within 60 days of the date that the notice of appeal is filed. Fla. R. App. P. 9.110(e). In civil cases, the clerk's office initially sends each party a copy of only the record index. It is then generally up to

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the parties to either compile their own copy of the record using the record index, or obtain an electronic copy of the record from the clerk.

If the clerk needs more time to prepare the record, the clerk may request an extension, or a party may request an extension on behalf of the clerk. See 9.200(b)(3),(e). A motion for extension should be filed well before the time expires, and if a party is filing the motion, it should generally ask the court to extend both the time for the clerk to prepare the record and to "toll" or extend all other deadlines in the appeal accordingly (so that the briefs are not due before the record is due).

2. Costs

Generally, in civil appeals the appellant is responsible for the costs of preparation and transmission of the record on appeal. When 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 be sent to the appellate court and the opposing party. 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 and copies, that party must pay the rest of the transcript costs. Fla. R. App. P. 9.200(b)(1).

A party to a civil appeal who does not have the money necessary to pursue the appeal may file an application for determination of indigent status with the trial court. See Fla. R. App. P. 9.430; §§ 57.081, 57.082, 27.52, Fla. Stat. However, indigency does not automatically mean that the lower tribunal clerk will transmit the record or that the court reporter will prepare the transcripts without cost in an appeal. See, e.g., §§ 27.52, 57.081, 57.082, Fla. Stat.

E. Criminal Appeals

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1. Introduction

This section describes the record on appeal in a direct criminal appeal from the trial court to the appellate court. A "direct appeal" is an appeal from a conviction or sentence in a criminal case. An appeal from an order on a postconviction motion, such as a motion under Florida Rule of Criminal Procedure 3.800, 3.801, 3.850, or 3.853, is a "postconviction appeal." The next section, section (F), will describe preparation of a record in a postconviction appeal. See also Fla. R. App. P. 9.140 (criminal appeals) and 9.141 (postconviction appeals).

2. Timing

In a criminal appeal, the lower tribunal clerk will serve a copy of the record on the parties and electronically file the record in the appellate court within 50 days of the filing of the notice of appeal unless the proceedings designated for transcription by the parties are not timely filed with the lower tribunal clerk. If the designated transcripts are late, the clerk will serve a notice of inability to complete the record on the appellate court, the parties, and the court reporter. The record is then due within 20 days of the date that the court reporter files the transcripts with the lower tribunal clerk.

3. Costs

If a criminal defendant does not have the money for a criminal appeal, the defendant may ask the trial court to declare him indigent. See Fla. R. App. P. 9.430; §§ 57.081, 57.085, Fla. Stat. 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 and a designation to the court reporter. The statement of judicial acts to be reviewed lists all of the issues the appellant intends to bring up on appeal. The appellant's designation to the court reporter should list only the proceedings that relate to the issues that the indigent party is planning to bring up in

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the appeal. Copies of the statement of judicial acts to be reviewed and the designation to the court reporter should be served on the State.

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 or his appointed attorney, a copy of the record on appeal. If the defendant has not been found indigent, the lower tribunal clerk will send him a copy of the index to the record on appeal, as the clerk's office does in a civil appeal.

F. Postconviction Appeals

1. Introduction

In postconviction appeals, the record may be prepared differently depending on whether there was an evidentiary hearing on the postconviction motion. Appeals from orders entered on a postconviction motion after an evidentiary hearing are called "nonsummary postconviction appeals." Fla. R. App. P. 9.141(b)(3). Appeals from orders entered on a postconviction motion without an evidentiary hearing are called "summary postconviction appeals." Fla. R. App. P. 9.141(b)(2).

2. Nonsummary Postconviction Appeals

a) Timing

The lower tribunal clerk will prepare the record on appeal and electronically transmit the record on appeal to the appellate court and serve a copy on the parties within 50 days of the date that the notice of appeal was filed. Fla. R. App. P. 9.141(b)(3)(B)(i).

b) Costs

As in direct criminal appeals, the clerk's office automatically sends a copy of the record on appeal to the State and, if the defendant has been declared indigent, to the defendant. If the defendant has not been declared indigent, the clerk will send only a copy of the index to the record

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on appeal to the defendant. If the appellant has been declared indigent, the state will bear the costs of transcription of the evidentiary hearing. However, if the appellant has not been declared indigent, 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.

c) Directions to the Clerk and Designations to the Court Reporter

If the appellant does not file directions to the lower tribunal clerk identifying the specific filings to be included or excluded from the record on appeal, the lower tribunal clerk's office will automatically include the postconviction motion, the State's response, a reply if one was filed, the order on the motion, attachments to any of these documents, and a 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, any reply, the order on the motion, and attachments to any of these documents. Fla. R. App. P. 9.141(b)(3)(B)(i).

In a nonsummary postconviction appeal, the appellant does not have to file a designation to the court reporter. If the appellant does not file a designation, the lower tribunal clerk's office will tell the court reporter to transcribe the evidentiary hearing. Fla. R. App. P. 9.141(b)(3)(A).

Just as in any appeal, it is the appellant's responsibility to make sure the record on appeal contains everything the appellate court will need to decide the issues on appeal. 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 as described in section (C)(5) of this chapter.

3. Summary Postconviction Appeals

In a summary postconviction appeal, the clerk will include in the record on appeal the postconviction motion, the State's response, a reply if one was filed, the order on the motion, and

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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 attachments to any of these documents. Fla. R. App. P. 9.141(b)(2)(A).

In summary postconviction appeals, the rules require the clerk to put new page numbers on the pages of the appellate record and to prepare an index. Additionally, the clerk's office is required to send a copy of the appellate record and index to the parties. Fla. R. App. P. 9.141(b)(2)(B).

G. Workers' Compensation Appeals

1. Introduction

Workers' compensation claims are brought in the Office of the Judges of Compensation Claims (OJCC), a part of the Department of Administrative Hearings. Consult Chapter 17 of this Handbook for more information on workers' compensation claims. The requirements for preparing and filing the appellate record in workers' compensation cases are found in Florida Rule of Appellate Procedure 9.180(f), (g), and (h)(2). This includes the contents of the record, who is responsible for preparing it, paying for it, and submitting it to the appellate court. The process for preparation of the record in appeals from final orders is started by the filing of the notice of appeal with the Judge of Compensation Claims' (JCC) office that decided the case. As discussed below, in appeals of nonfinal orders allowable under rule 9.180(b)(1), the notice of appeal initiates the time limit for submitting the initial brief and the appendix to that brief which serves as the record in such appeals.

2. Appeals from Final Orders

Rule 9.180(f)(1) requires that the record in workers' compensation appeals of final orders include all petitions for benefits, all notices of denial of the claim filed by the employer or its

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insurance company, as well as any pretrial stipulations, pretrial orders, trial memoranda, depositions, or other exhibits the JCC admitted into evidence, motions for rehearing (and responses to them), the order(s) addressing any motions for rehearing, the transcripts of any hearings held before the JCC, and the order that is being appealed. If there is anything that was filed with the workers' compensation judge that is not on this list and which a party wants to be in the record on appeal, or does not want to be in the appellate record, a party (or all parties) may designate other items for inclusion in or omission from the record in accordance with the process explained in rule 9.200(f), and section (C)(1) of this chapter, by filing a notice of designation with the JCC.

Evidence, such as documents, reports, deposition transcripts, or testimony at trial, that a party asked the JCC to admit into evidence, but which the JCC ruled was not admissible, is generally not included in the record or considered on appeal. However, rule 9.180(f)(2) states that a party may direct that the record include such evidence if the evidence was proffered and the exclusion of the evidence is one of the issues on appeal. In other words, if a party asked the JCC to admit something into evidence, the JCC refused to do so, and the party is appealing that refusal, that party should request the JCC to include it in the record on appeal. See Fla. R. App. P. 9.180(f)(2). But this can be done only if, at the hearing, the party seeking to have the evidence admitted asked the JCC to accept it so that the appellate court can review the evidence and decide if it should have been admitted.

Rule 9.180(f)(4) allows the parties to agree on the contents of the appellate record. In this situation, the parties would file a written stipulation of the record with the clerk for the JCC, and that stipulated record along with the order being appealed would be transferred to the appellate court. Rule 9.180(f)(9) provides that rule 9.200(a)(3) applies in workers' compensation appeals. As explained in section (C)(3) of this chapter, under 9.200(a)(3), the parties may prepare a

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stipulated statement explaining how the issues on appeal arose and were decided by the JCC. The order appealed should be attached to this statement as well as those parts of the record necessary for the court of appeal to decide the issues on appeal. If this process is chosen, the parties are required to inform the clerk of the OJCC and file the stipulated statement with the clerk within 60 days.

Rule 9.180(f)(7) provides that the deputy chief judge of compensation claims shall designate the person to prepare the record on appeal, and that the clerk of the OJCC is to supervise the record's preparation. When the record (including any transcript(s)) is ready, the clerk of the OJCC sends it to the JCC who presided over the case to review it and certify that it was prepared according to the rules and send it to the court of appeal within 60 days after the notice of appeal is filed. The JCC is also required to provide an electronic image copy of the record to the lawyers for represented parties, and to any unrepresented party. Rule 9.180(f)(8) allows the JCC to extend the time for delivery by 30 days, but any further extensions requires permission from the appellate court.

Generally, pro se parties receive a copy of the record on a CD through the mail. However, they may also register for electronic access to the OJCC case by going to the eJCC website, https://www.fljcc.org/eJCC, signing up for an account, and then filling out the "request for eJCC Access to Case" form found at: https://jcc.state.fl.us/JCC/forms/. After completing all of the steps to gain eJCC access to their case, pro se parties may view and download a copy of the appellate record, which is also on their OJCC docket. As with all public records, pro se parties may make a public records request for any missing document they may want.

3. Appeals from Nonfinal Orders

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Rule 9.180(b)(1) allows for appeals from only three types of nonfinal administrative orders: orders on jurisdiction, venue, or compensability. The proper method of submitting the record in an appeal in these cases is to include the relevant materials in an appendix to the appellate brief, as discussed in section (B)(1) of this chapter. Rule 9.180(h)(2) provides that in an appeal from a nonfinal order in a workers' compensation case, the "[a]ppellant's initial brief, accompanied by an appendix as prescribed by rule 9.220, shall be served within 15 days of filing the notice" of appeal. Thus, once an appellant files a notice of appeal of one of the nonfinal orders allowed by rule 9.180(b)(1), that party has just 15 days to file an initial brief and appendix. Therefore, it may be advisable to make sure that all documents and transcripts have been obtained before filing the notice of appeal, but keep in mind that the deadline for filing the notice is 30 days after the JCC sends the nonfinal order to the parties either by mail or email, and if the notice of appeal is late the appeal will be waived. See Fla. R. App. P. 9.180(b)(3).

Rule 9.220(b) provides that the appendix shall contain a coversheet, an index (which is a list of the items included in the appendix and the page number on which they can be found), a certificate of service, a conformed copy of the order being appealed, and all of the documents that concern or support the appellant's argument on appeal. This includes, for example, any petitions for benefits, motions, responses to motions, and any exhibits or records that were admitted into evidence. Also, if there were any hearings on the issue decided in the non-final order, the appendix should include a transcript of the hearing(s). The appellant may already have copies of the papers that were filed in the JCC that are needed to include in the appendix. If so, the appellant can usually prepare the appendix from these copies. Otherwise, the appellant may obtain copies of those documents from the judge of compensation claims or through the eJCC electronic filing system. The copies do not have to be certified, but they must be accurate, and the appellate parties

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cannot change or mark up the copy. If a transcript or other record of a hearing is needed for the appendix, the appellant may need to request a copy of the audio recording from the OJCC and then have the audio recording transcribed for inclusion in the appendix.

Rule 9.220(c) provides that the appendix should be filed in electronic (PDF) format unless a paper copy is allowed. The rule then discusses the formatting requirements for an appendix in paper format. Rule 9.220(d) provides that a paper appendix "shall be separated from the petition, brief, motion, response, or reply that it accompanies," and that the paper size should usually be 8 ½ by 11 inches. Please see Chapter 1 for more information on electronic filing in the appellate courts.

The appellee may decide that the appellant's appendix is incomplete or missing important documents or transcripts that were part of the record below. If so, the appellee can file an appendix with the answer brief, following the same format and procedure discussed above and in section (B)(1) of this chapter, including any additional documents that the appellee thinks are necessary for the appellate court to consider. If the appellant files a reply brief and wants to include additional documents from the lower court's record for the appellate court to review that have not already been included in an appendix, the appellant can file an additional appendix with the reply brief.

4. Costs

The appellant is responsible for paying the cost of preparing the record in a worker's compensation appeal. The cost of preparing the record in a workers' compensation appeal is addressed in rule 9.180(f)(5). For appeals from final orders, subdivision (f)(5)(A) of this rule states that within 5 days after the contents of the record have been determined, the OJCC must serve notice on the appellant of the estimated cost of preparing the record. At this point, the appellant must either (1) pay the estimated costs within 20 days after service of the notice of the estimated

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costs, or (2) file a motion asking to be excused from paying all or some of the costs as provided in rule 9.180(g)(3). If the appellant fails to deposit with the JCC the estimated costs, the OJCC will notify the appellate court, which may dismiss the appeal.

Rule 9.180(g)(3)(c) states that the cost of the record may be waived or excused if the appellant can show that the appellant is "insolvent." According to the law, an appellate party is insolvent or indigent if the party 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. According to rule 9.180(g)(3)(B), 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 20 days after the date the judge sent the notice of estimated costs to that party, stating that the appellate party is insolvent. If the verified petition is filed before receiving the notice of estimated costs or more than 20 days after the judge sent the notice of estimated cost, the petition will be denied as untimely. For purposes of pursuing this petition, the party who filed it is referred to as the petitioner rather than as the appellant.

A sample form titled "Verified Petition: Relief from Paying Cost of Record Preparation" can be found online at https://jcc.state.fl.us/JCC/forms/. Rule 9.180(g)(3)(D) provides that the petition must be sworn, signed by the appellant, and notarized by a notary public. The petitioner must attach to the petition a complete and detailed "Financial Affidavit," which must also be sworn, signed by the petitioner, and notarized by a notary public. The financial affidavit must list all of the party's assets, liabilities, and income, including assets owned with the party's spouse. A form for the financial affidavit is also available at https://jcc.state.fl.us/JCC/forms/. The petitioner must also attach a copy of any directions filed with the judge of compensation claims specifying which filings the party directed be included in the record.

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Rule 9.180(g)(3)(E) states that, when filing the petition for relief, financial affidavit, and a copy of the directions with the judge of compensation claims, the petitioner must also provide copies of the same documents to all other parties to the appeal and to the Division of Workers' Compensation (whose website is https://www.myfloridacfo.com/division/wc/), the office of general counsel of the Department of Financial Services (the department's website is https://www.myfloridacfo.com/Division/generalcounsel/), and the clerk of the appellate court.

Rule 9.180(g)(3)(F) provides that, after the JCC gives 15 days' notice of the petition to the other parties and the Division of Workers' Compensation, the JCC is to promptly set the matter for a hearing. However, if there is no objection to the petition from any of the other parties or the Division within 30 days, then the JCC can enter an order on the petition without a hearing. Rule 9.180(g)(3)(G) provides that, if the JCC denies the petition, or grants it in part, then the petitioner/appellant must deposit the estimated costs with the JCC within 15 days of the order and, if the appellant fails to do so, the OJCC will notify the appellate court, which may dismiss the appeal. If the appellant decides to withdraw the petition to be relieved of paying for the cost of record, the payment should be submitted when the petition is withdrawn.

5. Transcripts

As noted in section (G)(2) of this chapter, the record in appeals from final orders is supposed to include transcripts of all hearings held by the JCC. Just as in civil appeals, if an appellant needs a transcript of a hearing that was held before the judge of compensation claims, the appellant needs to make arrangements 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. Rule 9.180(f)(6)(A) provides that the deputy chief judge of compensation claims is the one who selects the transcriber or reporter to prepare the necessary transcript(s), and requires the deputy chief judge

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to notify the parties of the selection. Subdivision (f)(6)(B) of the rule allows for a party to object to the selection of transcriber, in writing, within 20 days of service of the notice of selection. If there is an objection, the deputy chief judge is to hold a hearing on the matter within 5 days. Subdivision (f)(6)(C) of the rule requires the transcriber selected by the deputy chief judge to certify and deliver an electronic version any transcript(s) to the clerk of the OJCC, and to do so in sufficient time for the OJCC to include the transcript(s) in the appellate record. The transcriber must also notify the parties when the transcript(s) is delivered to the clerk of the OJCC. In an appeal from a nonfinal order, if a transcript or other record of a hearing is needed for the appendix, the appellant may need to request a copy of the audio recording from the OJCC and then have the audio recording transcribed for inclusion in the appendix.

6. Supplementing the Appellate Record

As with an appeal from a final order in a civil case, the parties to a workers' compensation appeal may obtain permission from the appellate court to supplement or correct the record. Rule 9.180(f)(9) explains that the provisions of rule 9.200(f), discussed in section (C)(5) of this chapter, apply to workers' compensation appeals. If there is an error or if something is missing from the record, the parties can stipulate to a correction, the JCC can correct the record before transmitting it, or the appellate court can order the record to be corrected. Any error or omission in the record discovered before the record is transmitted should be brought to the JCC's attention by a motion to supplement or correct the record. If the error or omission is discovered after the record is transmitted to the court of appeal, such motion should be filed with the court of appeal. When it is necessary to supplement or correct the record originally prepared, the procedures concerning the costs of preparing and submitting the record are repeated.

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Likewise, if the appellant determines that the appendix that was filed with the initial brief in the appeal of a nonfinal order, the appellant can file a motion with the appellate court requesting permission to amend the appendix to include missing items.

H. Administrative Appeals

1. Introduction

In certain circumstances, Florida law allows parties to appeal decisions or rules issued by Florida state agencies. Fla. R. App. P. 9.190. As in any appeal, 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 made an error. Therefore, appellant has the same duty to make sure that the appellate court receives all of the necessary documents by direction or supplementation.

The procedures for furnishing the record to the appellate court in an administrative appeal 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. In challenges to an agency's nonfinal orders and appeals from "immediate" final orders pursuant to section 120.569(2)(n), Florida Statutes, the record will not be prepared by the agency clerk, but instead must be an appendix prepared by the parties and attached to their briefs as described in section (B)(1) of this chapter. See Fla. R. App. P. 9.190(c)(2)(F)&(c)(3) and 9.220. Otherwise, as in other types of appeals, when a party files a notice of appeal of a state agency's final decision or rule, a formal record will be prepared by the agency clerk. As in civil appeals, the parties to an administrative appeal will only receive a copy of the record index, not a copy of the entire appellate record. The parties should construct their personal record using the index and their personal copies of record documents.

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If a party to an agency appeal needs to review the appellate record, 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 online 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' online docket is accessible at www.doah.state.fl.us.

2. Directions to the Agency Clerk

The appellant generally has 10 days to send the agency clerk written directions identifying the documents to be included or excluded from the record on appeal. The appellee has an additional 20 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 "directions to clerk" form is included in the appellate rules and may be used as template in preparing directions to the agency clerk. Fla. R. App. P. 9.900(g). 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 their particular agency clerk's address. The agency clerk's name and address can also be obtained by calling the agency's lawyer or searching the agency's website. 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 issues raised on appeal. In this regard, it is very important to review rule 9.190(c) and sections 120.57(1)(f) and (2)(c) and 120.574(2)(d),

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Florida Statutes, which specifically identify the types of documents that must be included in various types of administrative 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. Fla. R. App. P. 9.190(c). Also like other appeals, the record may generally include only documents that were filed with and reviewed by the state agency before it issued the decision or rule being appealed. Fla. R. App. P. 9.190(c)(1). If documents not on file with the agency are included in 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 them in the appellate record.

3. Transcripts of Agency Proceedings

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. However, it can sometimes be difficult to get an accurate transcript from a tape recording. Therefore, if a party is considering appealing the agency's decision in the future, that party should request that the agency's lawyer 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 able to adequately review the issues raised on 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 transcription expenses

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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. See Fla. R. App. P. 9.400.

4. Costs

In administrative appeals, the agency clerk may or may not impose fees for electronically transmitting the record to the appellate court. 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 determine whether they will be a charge and to get an estimate of any anticipated fees for preparing the record.

5. Timing

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. Fla. R. App. P. 9.110(e). Many times, the agency clerk is unable to meet this deadline and needs an extension of time. If so, the appealing party should file a motion asking the appellate court to grant the agency clerk an extension to prepare the record index. The motion should be filed well before the deadline. In addition to asking for an extension on behalf of the agency clerk, it should also ask the appellate court to "toll" or extend all of the other deadlines in the appeal accordingly.

6. Supplementation

When an appellate party receives the record index, the party should carefully review it to make sure that it is complete. If a party believes that a document is missing from the record index or is mislabeled, that party can file a motion to supplement or correct the record with the appellate court explaining the situation and requesting correction of the error or supplementation with the missing document. Motions to correct or supplement the appellate record are discussed in detail in section (C)(5) of this chapter.

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If a party's review of the record index reveals that one or more documents that were never considered by the agency have been included in the record on appeal, the party can file a motion to strike with the appellate court requesting that those documents be "stricken" from the record on appeal. Additional forms for use on appeal can be found in the Florida Rules of Appellate Procedure, which can be obtained at a local court, agency law library, law school library or on the Florida Bar's website at http://www.floridabar.org.

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CHAPTER 4: MOTION PRACTICE IN THE APPELLATE COURTS

Motion practice is different in an appeal than in a proceeding in a trial court or lower tribunal. For one thing, there are far fewer motions filed in an appeal. Most of the motions in an appeal relate to how the appeal moves through the court. Some of the more common types of motions a party may file in an appeal include: motions to dismiss an appeal; motions for extensions of time to file appellate briefs and/or comply with court orders; motions to strike another party's brief for failure to comply with the appellate rules; motions to stay execution of a final judgment, or to stay proceedings in the lower tribunal during an appeal from a non-final order; motions to consolidate appeals in the same or related cases; and motions for rehearing, to name a few.

Rule 9.300 of the Florida Rules of Appellate Procedure contains the requirements for appellate motions. A motion filed in an appeal should:

- explain what the party is asking the appellate court to do (the "relief sought");
- explain why the appellate court should grant the relief sought (the "argument"); and
- include citations to any statutes, rules, or cases that support the party's argument (the "authorities").

If a party believes the appellate court should consider any documents from the case file in the lower tribunal ("the record"), the party should attach a copy of those documents to that party's motion as "exhibits." The party should attach a copy of the documents because the appellate court may not have yet received the record from the lower tribunal.

The party filing the motion in the appellate court is also required to send, or "serve," a copy of the motion on the other parties to the case (along with any attachments/exhibits). The party filing the motion is also required to include a "certificate of service" at the end of the motion, which states (certifies) that: the party served a true and correct copy of the motion on the other

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parties; the date the document was served (sent); and the method of service (such as by U.S. mail, or e-mail if e-service is permitted). The party must sign the motion and the certificate of service.

The other parties to the appeal generally have 15 days to respond to a motion filed in an appeal. (A reply to the response is usually not permitted). Most often, an appellate court will then decide the motion based only on the motion and the response (if any). The court generally will not hold a hearing or oral argument on a motion.

Most motions "toll," or extend, the time for the next steps in the appeal until the court rules on the motion. But some appellate motions do not toll time. Motions that do <u>not</u> toll time include but are not limited to: motions for post-trial release in a criminal case; motions for stay pending appeal; motions relating to oral argument; motions relating to attorney's fees on appeal; motions relating to expediting the appeal. Also note that motions of any type filed in the Florida Supreme Court do <u>not</u> toll time, unless a separate request to toll time is filed with the motion (and granted). If a party has any questions or concerns about the schedule of the appeal or the tolling effect of a motion, a party should call the court clerk's office and/or retain an appellate lawyer.

One of the most common types of motions in an appeal, which <u>does</u> "toll" time until the court rules on it, is a motion for an extension of time to file an appellate brief. A party requesting an extension of time to file a brief generally must do so before the deadline. In addition, a party moving for an extension is usually required to certify in the motion that he or she has contacted the opposing party's attorney, and state whether or not the opposing party objects to the requested extension. If the other party agrees to the motion, the court may rule on it faster than if the court has to wait for the other party to respond. A motion for an extension of time to file a brief may ask for an extension of a certain number of days (typically 30 to 60 days), or it may include the specific date that a party would like to serve and file the brief. But, for example, asking for an

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extension "until February 1, 2016," to serve and file the brief may be less confusing to a pro se litigant than just asking for a 30-day extension of time.

One common type of motion which does not toll time is a motion to "stay," or stop, the lower tribunal's order or decision until the appeal is decided. For instance, a party may want to file a motion to stay (meaning stop) the other party's attempt to collect on a judgment. Rule 9.310 of the Florida Rules of Appellate Procedure contains the rules regarding "stays." A motion for stay is usually filed first in the lower tribunal, not the appellate court. A party to an appeal can then file a motion in the appellate court asking the appellate court to review the lower tribunal's ruling on the stay motion. In an emergency situation, a party could file a motion to stay directly with the appellate court first, but the appellate court may deny the motion or require the party to file a motion with the lower tribunal first. *See* Florida Rule of Appellate Procedure 9.310.

If the judgment being appealed requires only the payment of money, an automatic stay (without filing a motion) may apply if a bond is posted in an amount provided for under Rule 9.310(c) of the Florida Rules of Appellate Procedure. The amount of the bond must generally be equal to the amount of the judgment, plus twice the statutory rate of interest on judgments. (If the interest rate is not stated in the judgment, the clerk's office of the lower tribunal should be able to provide it). In most other situations, a party must both file a motion to stay and get a ruling on it in order to stay the lower tribunal's order or judgment until the appeal is decided. Stays during an appeal are addressed in more detail in Chapter 11 of this Handbook.

Unless electronic filing of documents with the court is permitted, a party must mail or deliver the motion to the appellate court or file it in person at the courthouse. Similarly, unless service by e-mail is available, a party must mail or deliver a copy of the motion to the opposing parties. A party filing an appellate motion by mail or delivery should include plain, unaddressed,

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postage-paid envelopes for all parties in the case, which the court will use to send a copy of its order on the motion to the parties in the case. Postage-paid envelops probably are not needed if the party files and serves the motion electronically and if the other parties in the case have designated an e-mail address for service by e-mail. Currently, service by e-mail is available for pro se parties if certain procedures and requirements are followed. *See* Florida Rules of General Practice and Judicial Administration 2.514 and 2.516(b)(1). In addition, most courts now allow (but do not require) electronic filing by pro se parties. *See* Florida Rule of General Practice and 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 by pro se litigants is allowed, and, if so, the requirements for electronic filing and service by e-mail. *See also* Florida Rules of General Practice and Judicial Administration 2.516 and 2.525(c)-(d). Chapter 22 of this Handbook contains additional contact information the appellate courts in Florida.

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CHAPTER 5: WRITING AN APPELLATE BRIEF

A. Introduction

In most appeals, an initial brief, an answer brief, and a reply brief will be filed, in that order. The appellant, who filed the notice of appeal, will file the initial brief first. Then the other party, the appellee, will respond with an answer brief. Finally, the appellant can respond to the answer brief by filing a reply brief. In the case of extraordinary writs, a petition is filed as the brief. Extraordinary writ petitions are discussed in Chapter 10 of this Handbook.

Before writing an appellate brief, a party should review the appellate record to understand the history and facts of the case, research the law, and decide what arguments to make and issues to raise. The appellant will want to argue why the lower tribunal's decision or judgment should be reversed (why the lower court "erred"). And the appellee will want to argue why the decision was correct and should be upheld, or "affirmed."

Again, the initial brief is filed first by the appellant. The appellee does not file an answer brief until after the initial brief, because the answer brief will respond to the arguments in the initial brief. The reply brief is then filed by the appellant after, and in response to, the answer brief. Both the initial brief and the answer brief will contain a section called the statement of the case and facts. In this section, the briefs discuss the history and facts of the case. There must be no argument in the facts section. The initial and answer briefs will also contain argument sections. There will be a summary of the argument section, which is a short preview of the argument, and also a separate and longer argument section where the party will fully discuss all points on appeal. Initial and answer briefs should also state the standard of review. The reply brief will only need an argument section, since it just responds to the answer brief (and cannot add any new arguments). All appellate briefs should contain citations to the appellate record for any facts discussed, whether

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in the facts section or the argument. All briefs should also contain citations to legal authority (statutes and case law) in the argument section.

As mentioned above, before a party writes an appellate brief, he or she should consider and study several things. For example, the party writing the appellate brief reads the record on appeal prepared by the clerk of the lower tribunal that entered the order or judgment appealed. This record will include the important pleadings filed in the case and should also include 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 appeal. 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 or her argument. Then the party writing the appellate brief gathers together any statutes and case law that support the argument he or 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, or "cite," to those cases or statutes in the appellate brief to support his or her argument. Citations to legal authorities in the brief should follow the format for citations found in Florida Rule of Appellate Procedure 9.800.

B. Formatting for All Briefs

Florida Rule of Appellate Procedure 9.210 requires that all briefs have a specific format. Briefs must generally be printed or typed on opaque, white, unglossed paper. The paper size should be 8.5 by 11 inches. The paper should have margins of at least one inch on all sides. The lettering should be black. If the brief is typed, it must be typed in either Arial 14-point font or Bookman Old Style 14-point font, and must include a certificate at the end of the brief saying the

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brief is typed in one of those fonts. See Florida Rule of Appellate Procedure 9.045. Any headings or footnotes must be the same font and size as the rest of the brief. Although typed briefs must be double spaced, headings, indented quotations, and footnotes can be single spaced.

The brief should 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 name or "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.

Briefs filed in paper format should **<u>not</u>** be stapled or bound (except by paper clip or rubber band). This is a recent requirement that assists the clerks of court, who now have to scan paper briefs into the computer.

C. Contents of the Initial Brief and Answer Brief.

The initial brief is the first brief. It is filed by the appellant who filed the appeal. The appellant's initial brief is due within 70 days after filing the notice of appeal. An appellant who needs extra time to file the initial brief should file a motion for an extension of time in the appellate court before the deadline for the brief. Motion practice is discussed in Chapter 4 of this Handbook. The initial brief should set out the facts and history of the case in the statement of case and facts section. It should also present legal arguments explaining each reason the appellant believes the decision of the lower tribunal was wrong (i.e., erroneous) and why it should be reversed. The initial brief cannot be longer than 13,000 words or 50 pages, not counting the Table of Contents, Table of Citations, Certificate of Service, Certificate of Font Compliance and the signature block for the brief's author. A party can ask the court for permission to file a longer brief, but such motions are rarely granted. And briefs are usually much shorter, often 20 to 30 pages or less.

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The answer brief is the next brief. It is filed by the appellee within 30 days after the initial brief, again unless a motion for an extension of time is filed before the deadline. The answer brief responds to the arguments in the initial brief. It will argue why the lower tribunal's decision was correct and should be affirmed. Like the initial brief, the answer brief generally cannot be longer than 13,000 words or 50 pages. Unlike the initial brief, the answer brief is not required to have a statement of the case and facts section, but it usually should have one to explain the case from the appellee's perspective. Although the appellee will argue in the answer brief that the appellant's arguments in the initial brief are incorrect, both sides must argue their positions respectfully and <u>without</u> name-calling or insults.

The initial brief and the answer brief will each have the following sections:

1. Table of Contents
2. Table of Authorities
3. Statement of the Case and Facts
4. Summary of the Argument
5. Standard of Review
6. Argument
7. Conclusion
8. Certificate of Service
9. Certificate of Font Compliance

1. Table of Contents

The table of contents lists the sections and issue headings in the brief, with the corresponding page numbers of where in the brief those sections and headings are. For example,

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a table of contents for an initial brief might look something like this in an appeal of a final judgment entered after a jury trial:

Table of Contents

Table of Authorities		1
Statement of the Case and Facts		2
Summary of the Argument		10
Standard of Review		11
Argument		12
Issue I:	Whether a new trial is required based on the trial court's decision to strike defendant's only witness.	12
Issue II:	Whether a new trial is required based on plaintiff's improper closing arguments.	18
Conclusion		24
Certificate of Service		25
Certificate of Font Compliance		25

2. Table of Authorities

The table of authorities (also called the table of citations) is similar to the table of contents. It is a list of the legal authorities (cases, statutes, and rules) referred to or "cited" in the brief to support the party's arguments, along with all of the page numbers where those authorities were cited in the brief. Cases are listed in alphabetical order. Statutes are listed in numerical order. Legal authorities are cited in the format required by Rule 9.800 of the Florida Rules of Appellate Procedure.

For example, a table of authorities in an appellate brief might look like this:

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Table of Authorities	
Gray v. State, 123 So. 2d 159 (Fla. 3d DCA 2002)	11, 21, 23
Smith v. Smith, 222 So. 2d 222 (Fla. 2d DCA 1999)	12, 15-16
§ 412.30, Fla. Stat. (2015)	11, 13, 18, 22
§ 720.000, Fla. Stat. (2015)	15

3. Statement of the Case and the Facts

Before writing the brief, the party will have reviewed the record on appeal that was prepared by the clerk of the trial court (or other lower tribunal) that entered the order or judgment being appealed. The statement of the case and facts explains to the appellate court, based only on the documents and evidence that are in the record, what the history and facts of the case are, and what occurred in the lower tribunal. This part of the brief is for facts only, **not** argument.

The appellate party may **not** discuss in the brief any fact or circumstance that is not in the appellate record, such as events occurring after the order or opinion on appeal was entered, or documents or evidence he or she did not present to or file in the lower tribunal. In any appellate brief, every sentence containing a fact must be followed by a citation referring to the page number of the record on appeal where that fact can be found or supported. Usually, the appellate party would refer to a page of the record in parentheses or brackets with an "R." followed by the volume and page number. Two common formats for citing the record volume and page numbers are, for example: (R. Vol. 1, pp. 1-8; R. Vol. 4, p.815), or [RI.1-8; RIV.815]. If there is a trial transcript in the record that has separate page numbers, the appellate party may refer to it as "T." followed by the page number. Citations in the statement of case and facts section of a brief might look something like this:

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This case arises from an automobile accident. [RI.12-18]. Plaintiff, Mr. Roberts, filed a lawsuit against Defendant, Ms. Wynn, alleging she was negligent in causing the accident and that he was injured as a result. [RI.12-18]. Defendant denied she was negligent or that the accident caused Plaintiff's alleged injuries. [RI.34-36; RII.205].

At trial, Plaintiff's treating physician, Dr. John, testified Plaintiff was injured as a result of the accident. [T.235-40, 315-19]. Defendant's expert, Dr. Smith, testified that Plaintiff was not injured. [T.441-44, 448-52].

In the statement of the case and the facts section of an appellate brief, the party writing the brief will discuss:

(a) the type of case (civil, criminal, etc.), and nature of the appeal (such as an appeal from a final judgment or non-final order, etc.);

(b) the procedural history of the case in the lower tribunal, such as what documents, pleadings, or motions were filed and when; what arguments and positions the parties raised the lower tribunal; and what happened in the pre-trial and trial proceedings;

(c) the evidence that was presented to the lower tribunal at the trial or hearing, such as written documents and/or the testimony of witnesses; and

(d) the outcome of the trial, hearing, or other proceeding.

The appellate party drafting the brief includes in this section those facts that specifically relate to the issue he or she is arguing. For example, an appellant who is only arguing that the trial court erred in excluding certain evidence at trial probably would not need to discuss facts regarding jury selection in the brief. The statement of the case and the facts is usually presented in chronological order to make it easier for the appellate court to follow and understand.

4. Summary of the Argument

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This section provides an overview of the arguments made in the appellate brief. It is much like a "road map" that previews the arguments. The summary of the argument is seldom longer than two pages, and is never longer than five pages. Since the summary of the argument is just a short preview of the arguments, it generally does not need to have citations to the appellate record or legal authorities.

5. Standard of Review

While the standard of review does not have to be in a separate section, it must be included in the brief. If it is not in a separate section, it should be included in the argument section, at the beginning of each issue. Whether it is in a separate section or in the argument, the standard of review should be stated for each point on appeal. The standard of review is very short, usually just a sentence or two and often no longer than a paragraph. It tells the appellate court whether the issue raised on appeal is a question of fact, law, or both. This is important because the standard of review determines how much weight or "deference" the appellate court will give to, or how strictly it will question, the lower tribunal's rulings and decision.

Appellate courts give the greatest deference to a lower tribunal's findings of fact and discretionary decisions. Findings of fact are generally reviewed for "competent substantial evidence," meaning they will usually be upheld if supported by any competent evidence in the record. Discretionary decisions, such as rulings on evidence, are reviewed for an "abuse of discretion," meaning they will usually be upheld unless the decision was extremely unreasonable.

Appellate courts review pure legal issues, such as the interpretation of a statute, with the least amount of deference. This is called the "de novo" standard of review. Under this

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standard, appellate courts decide for themselves what the law says and what the decision of law should be, without deferring to the trial court's decision.

6. Argument

The argument section explains the party's legal arguments in the appeal and why the decision of the lower tribunal should either be affirmed or reversed. It discusses the relevant statutes and case law, how the law applies to the facts in the case, and the party's arguments based on the law as applied to the facts. It explains the legal reasons why the order or judgment of the lower tribunal was either correct or incorrect, and what specific result, or "relief," the party wants in the appeal (i.e., what the party wants the appellate court to do). For example, an appellant may ask the appellate court to reverse the final judgment and return, or "remand," the case to the lower tribunal for a new trial, whereas an appellee may ask the appellate court in the answer brief to affirm the final judgment. The argument should be supported by references to legal cases, statutes, and rules that support that appellate party's argument that the lower tribunal decision was either correct or incorrect.

The argument is divided into specific legal issues. The argument section in the brief starts with an issue heading for each argument or point on appeal. In many cases, an appellant might only raise one or two specific issues. In other cases, the appellant might argue more than one or two issues, if he or she believes the lower tribunal made more errors. Each issue the appellant raises should have a reasonable basis in the facts and in the law. The appellant's issue or issues should be clearly and concisely stated. If the appellant is arguing more than one issue, the appellant usually starts with the strongest point first. Under each issue heading, the appellant discusses the case law, statutes, and rules that deal with the issue for that section.

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The appellee's answer brief arguments respond to the argument issues raised in the initial brief. It often has the same or similar issue headings as the initial brief, to help the appellate court know which of appellant's initial brief arguments the appellee's answer brief is responding to. Like the initial brief, the appellee's answer brief should explain how the law applies to the facts and present his or her arguments in support of the outcome he or she wants in the appeal (usually affirmance). The answer brief arguments should also include citations to the legal authorities, cases, and statutes the appellee believes supports his or her position and arguments in the appeal.

7. Conclusion

In the conclusion, the party tells the court what result or relief he or she wants in the appeal (i.e., what the party is asking the appellate court to do in the case). It is usually only a sentence or two in length, and should not be longer than one page. For example, the conclusion in appellate brief in an appeal from a judgment entered after a trial might look like this:

Conclusion

The appellant requests this Court to reverse the final judgment entered below with instructions to hold a new trial.

8. Certificate of Service

The brief should contain a certificate of service, in which the party filing the brief with the court affirms that he or she has sent, or "served," a copy of the brief to the opposing party (or their attorney if they have one) on a specific date and states the method of service, such as by mail, delivery, or service by e-mail (if the procedures for e-service are followed). The certificate of service must be signed by the appellate party and should include a signature block containing the

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appellate party's name, address and telephone number. For example, a certificate of service might look like this:

> I hereby certify that a true and correct copy of the foregoing document was furnished to _____________ (name of opposing party), at (address, city, state, zip, and/or e-mail address), by (e-mail) (delivery) (mail) on ___________ (date).
>
> JOHN DOE
> 222 N.W. 2nd Street
> City, State 11111
> Telephone: (234) 567-8901
>
> By: ___________________
> JOHN DOE

It is important for pro se litigants to remember that, generally, a party has to both file the brief with the court, and serve a copy on the opposing party. Pro se parties are generally permitted to serve documents by e-mail if they comply with certain requirements, which are set forth in detail in Florida Rule of General Practice and Judicial Administration 2.516(b)(1). In addition, most courts now allow (but do not require) electronic filing by pro se parties. *See* Florida Rule of General Practice and 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 General Practice and Judicial Administration 2.516 and 2.525(c)-(d). Unless electronic filing and service by e-mail is available, a brief must generally be filed by mail or delivery to the court and served by mail or delivery to the opposing party.

9. Certificate of Font Compliance

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According to Florida Rule of Appellate Procedure 9.045, the font of the letters in the brief must be either Arial 14-point font or Bookman Old Style 14-point font, and must include a certificate at the end of the brief saying the brief is typed in one of those fonts. In the certificate of compliance, the appellate party states that the font and type size used in the brief complies with this Rule and signs below the statement. A certificate of compliance might look like this:

> Certificate of Compliance
>
> I certify that the size and style of type used in this brief is (Arial 14-point font or Bookman Old Style 14-point font) and complies with the font requirements of Florida Rule of Appellate Procedure 9.045.
>
> By: ______________________
> JOHN DOE

D. The Reply Brief

The Florida Rules of Appellate Procedure do not require that the appellant file a reply brief, but an appellant often should file a reply brief to respond to the arguments in the answer brief. The appellant's reply brief, if any, is due 30 days after the answer brief and responds to the answer brief arguments. The reply brief can be no more than 4,000 words or 15 pages long, not counting the Table of Contents, Table of Citations, Certificate of Service, Certificate of Font Compliance, and the signature block for the brief's author.

The reply brief typically includes the following sections:

1. Table of Contents
2. Table of Authorities
3. Reply Argument
4. Conclusion
5. Certificate of Service

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6. Certificate of Font Compliance

The reply brief does not raise new arguments. Issues that were not raised first in the initial brief are generally waived. But, if new or different arguments are raised in the answer brief, the reply brief can respond to those argument. The key is that the reply brief responds to the answer brief arguments. It does not just repeat the initial brief, nor does it raise new arguments that were not in either the initial or answer brief. Although the appellant argues in the reply brief that the appellee's answer brief arguments are incorrect, the appellant, like the appellee, must do so respectfully and <u>without</u> name calling or insults.

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CHAPTER 6: CHECKLIST FOR APPELLATE BRIEFS AND GENERALLY PETITIONS IN THE DISTRICT COURTS OF APPEAL

As with the rest of this Handbook, this 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.

Review the Florida Rules of Appellate Procedure and Applicable Florida Law.

_____ An appellate party reviews the Florida Rules of Appellate Procedure ("FRAP"), which can be obtained from a public library, law library, or on The Florida Bar's website at http://www.floridabar.org/tfb/TFBLegalRes.nsf/. An appellate party needs Adobe Acrobat on their computer to view the Rules.

_____ An appellate party also reviews any other rules, statutes, or case law that may apply in the case.

_____ An Appellate party also reviews the specific procedures and requirements of the particular court where the appeal is filed (available on the court's website and/or from the court's clerk's office).

Page Limits for All Briefs (FRAP 9.210(a)(5)(B))

_____ 1. Appellant's initial brief can be no more than 13,000 words or 50-pages long

_____ 2. Appellee's answer brief can be no more than 13,000 words or 50-pages long

_____ 3. Appellant's reply brief can be no more than 4,000 words or 15 pages long

Paper Size and Binding for All Briefs (FRAP 9.045, 9.210(a)(1) and (a)(3))

_____ 1. Standard size 8 1/2" x 11" paper, that is white, opaque, and unglossed

_____ 2. Paper briefs are **not** stapled or bound (except by paperclip or rubber band)

Formatting for All Briefs (FRAP 9.045 and 9.210(a)(2))

_____ 1. One-inch margin on all sides (courts may measure the margins)

_____ 2. Typed briefs must be double-spaced

_____ 3. Print on only one side of paper

_____ 4. Font must be either Arial 14-point or Bookman Old Style 14-point

_____ 5. If the brief is typed on a computer, it must certify that it meets the font

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requirements. The font certification goes after the certificate of service.

Cover Page for All Briefs (FRAP 9.210(a)(4))

Includes the following, in this 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 court or tribunal which entered the order appealed (e.g., "Appeal from the 13th Judicial Circuit, Hillsborough County")

______ 6. Name, address and e-mail of the pro se party filing the brief

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

_____ 1. Cover Page – sets forth the information discussed above

_____ 2. Table of Contents – lists the sections of the brief, including headings and subheadings identifying the issues raised in the appeal, with the page number where the argument on each issue begins

_____ 3. Table of Authorities – lists the legal authorities cited in the brief with all pages on which each is cited, in this order: (a) cases are listed alphabetically with citations; (b) statutes; (c) other authorities, including rules of procedure

_____ 4. Statement of the Case and Facts – discusses the facts and procedural history of the case, contains citations to the page in the appellate record where each fact discussed can be found or supported, and includes discussion of: (a) the type of case; (b) history of the case in the lower tribunal before the appeal; (c) the outcome in the lower tribunal, and (d) the facts relevant to the issues on appeal

_____ 5. Summary of the Argument – previews the argument in 2 to 5 pages or less

_____ 6. Standard of Review – briefly states the standard of review for each issue on appeal (this can be a separate section, or it can just stated at the beginning of each argument issue, but must be included in the brief)

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_____ 7. Argument – explains the appellant's legal arguments for each issue heading listed in the table of contents, with citations to legal authorities supporting the arguments (unless the brief has a separate standard of review section, the standard of review for each issue should be stated at the beginning of each argument issue)

_____ 8. Conclusion – tells the appellate court what remedy is sought on appeal (e.g. reverse, reverse and remand for a new trial, etc.)

_____ 9. Certificate of Service – certifies a copy of the brief was served (sent) to the opposing party (see below)

_____ 10. Certificate of Font and Word-Count Compliance – certifies the brief complies with the word-count and font style and size requirements

_____ 11. Signature block – the brief must be signed by the party submitting the brief

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

_____ 1. Cover Page – as set forth above

_____ 2. Table of Contents – lists 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 – lists the legal authorities cited 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 – can be omitted if appellee agrees with appellant's statement, but is usually included to state the facts from appellee's perspective; it discusses the facts and procedural history, and has citations to the page in the appellate record where each fact can be found or supported

_____ 5. Summary of the Argument – previews the argument in 2 to 5 pages or less

_____ 6. Standard of Review – briefly states the standard of review for each issue on appeal (this can be a separate section, or it can just stated at the beginning of each argument issue, but must be included in the brief)

_____ 7. Argument – responds to the initial brief and explains the appellee's legal arguments for each issue, with citations to legal authorities supporting the arguments (unless the brief has a separate standard of review section, the standard of review for each issue should be stated at the beginning of each argument issue)

_____ 8. Conclusion – tells the appellate court what the appellee wants the court to do

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with the appeal (e.g. affirm the lower tribunal's decision).

_____ 9. Certificate of Service – certifies a copy of the brief was served (sent) to the opposing party (see below)

_____ 10. Certificate of Font and Word-Count Compliance – certifies the brief complies with the font style and size requirements

_____ 11. Signature block – the brief must be signed by the party submitting the brief

What the Reply Brief Should Contain (FRAP 9.210(d))

A reply brief is not required, but one should usually be filed to respond to the answer brief. A reply brief should not raise new arguments nor merely repeat the arguments in the initial brief. Rather, its purpose is to respond to the arguments made in the answer brief.

_____ 1. Cover Page – as set forth above

_____ 2. Table of Contents – lists 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 – lists the legal authorities cited, with page references to: (a) cases listed alphabetically with citations; (b) statutes; (c) other authorities, including rules of procedure

_____ 4. Reply Argument – responds to the answer brief arguments

_____ 5. Conclusion – tells the appellate court what result the appellant wants

_____ 6. Certificate of Service – certifies a copy of the brief was served (sent) to the opposing party (see below)

_____ 7. Certificate of Font and Word-Count Compliance – certifies the brief complies with the word-count and font style and size requirements

_____ 8. Original brief must be signed by the party submitting the brief

Timely Filing and Service for All Briefs (FRAP 9.110(f) and 9.210(f))

_____ The appellate party must serve the brief (send it by mail, hand delivery, or e-mail if e-service is available) to the other party and file it with the court within the times required by the Rules. The court may reject the brief if it is not timely (see FRAP 9.410(a)). If an appellate party needs more time to write the brief, he or she must file a motion for extension of time under FRAP 9.300(a)—at least a few business days before the brief is due—asking the court for additional time.

_____ 1. Appellant's initial brief: 70 days from filing notice of appeal (unless the court grants a motion for extension of time filed by the appellant)

_____ 2. Appellee's answer brief: 30 days after service of appellant's initial brief (unless

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the court grants a motion for extension of time filed by the appellee)

_____ 3. Appellant's reply brief: 30 days after service of appellee's answer brief (unless the court grants a motion for extension of time filed by the appellant)

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

_____ File the brief with Appellate Court the same day as service (by mail, delivery, or electronic filing if e-filing is available)

It should be sufficient to file one original paper copy of the brief with the appellate court. But a party should contact the clerk's office for the specific court (and/or visit their website) to find out if multiple paper copies are still required and/or if there may be additional requirements in that court for filing a brief.

Pro se parties are generally permitted to serve documents by e-mail if they comply with certain requirements, which are detailed in Florida Rule of General Practice and Judicial Administration 2.516(e). In addition, most courts now allow (but do not require) electronic filing by pro se parties. *See* Florida Rule of General Practice and 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 General Practice and Judicial Administration 2.516(e) and 2.525(c)-(d). Unless electronic filing and service by e-mail is available, a brief must generally be filed by mail or delivery to the court and served by mail or delivery to the opposing party.

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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, the circuit courts, and agencies. For purposes of this timeline, and throughout this Handbook, the timeline for filing an appeal is measured from the rendition of an order, which occurs when all three of the following events have been done: (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 order is filed with the clerk of the lower tribunal that issued the order. *See* Florida Rule of Appellate Procedure 9.020(i).

With some exceptions, in most cases it is the date of rendition of an order, and not the date it was served or mailed to the parties, that 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, counting begins on the first day following the event that is not a Saturday, Sunday, or legal holiday. *See* Florida Rule of Appellate Procedure 9.420(e) (adopting Florida Rule of General Practice and Judicial Administration 2.514 for computing time). The period of time includes the last day of that time-frame, unless the last day falls on a Saturday, Sunday, or legal holiday. Holidays are only those legal holidays listed in the Rule. If the last day falls on a Saturday, Sunday, or legal holiday, the final day to file or act is the next day that is not a Saturday, Sunday, or legal holiday. If the time to act is less than seven days, then Saturdays, Sundays, and legal holidays are not counted in the calculation. Thus, if the court or other lower tribunal renders an order on January 1st, the notice of appeal is generally due no later than January 31st. If January 31st is a Sunday, the notice is generally due no later than Monday, February 1st. This timeline is based on the 2023 version of the Florida Rules of Appellate Procedure. The Florida Rules of Appellate Procedure are amended from time to time. So, it is

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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 any deadline to reduce the chance of missing that deadline. If a notice of appeal is filed late, the appellate court likely will not have jurisdiction to consider it, and the appeal may be dismissed.

The Florida Rules of Appellate Procedure should be consulted 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.

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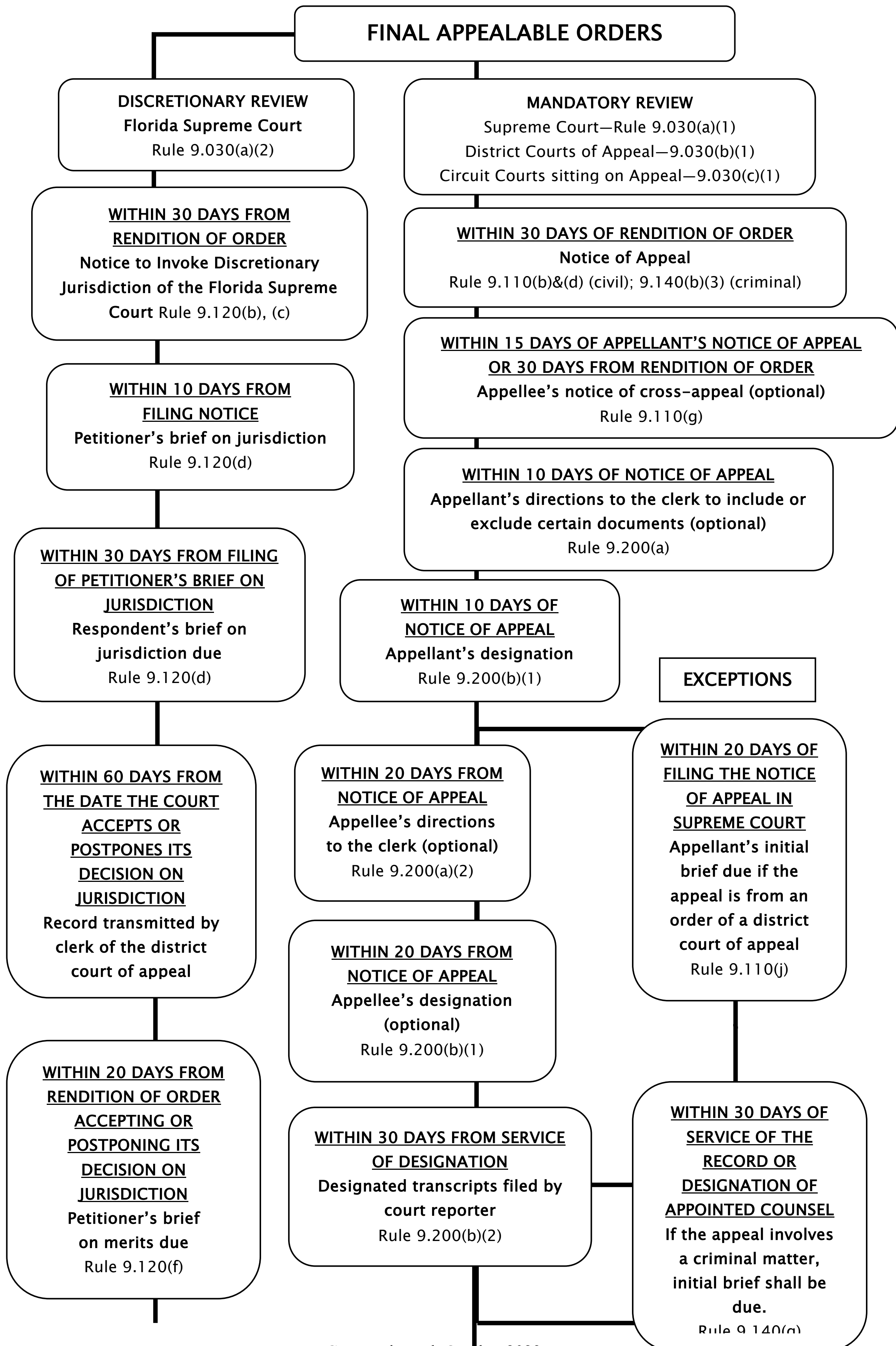

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CONTINUED

WITHIN 50 DAYS FROM NOTICE OF APPEAL
Record prepared by clerk of court and index served on parties—Rule 9.110(e); 9.140(f); 9.200(d);
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 the court—Rule 9.110(j)

WITHIN 60 DAYS FROM NOTICE OF APPEAL
Record transmitted by the clerk of courts
Rule 9.110(e); 9.200(d)

WITHIN 70 DAYS FROM FILING NOTICE OF APPEAL
Appellant's initial 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 30 DAYS FROM SERVICE OF APPELLANT'S INITIAL BRIEF
Appellee's answer brief due
Rule 9.210(f)

WITHIN 30 DAYS FROM SERVICE OF APPELLEE'S ANSWER BRIEF
Appellant's reply brief due
Rule 9.210(f)

OTHER IMPORTANT DEADLINES

Motion for attorney's fees: by deadline for rely brief (Rule 9.400(b))
Request for oral argument: within 15 days after reply brief (Rule 9.320(a))
Motion for rehearing: within 15 days of order/decision (Rule 9.330(a)(1))

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CHAPTER 8: THE APPELLATE PROCESS CONCERNING FINAL APPEALS

A. Introduction.

The party who loses in the trial court or lower tribunal usually has the right to appeal to a higher court. On appeal, the higher court, called the appellate court, reviews the decision of the lower tribunal, and will generally either uphold or overturn it (affirm or reverse). That process of review is known as the appeal or appellate process. This Chapter describes when and how an appeal from a final judgment or order is begun.

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. Appeals provide checks on the trial process and help to guide judges on the law in future cases. Lower tribunal judges understand this.

To appeal from an order or judgment of a lower tribunal, the party must have lost, or at least been negatively affected by the order or judgment (this can include not receiving all of the relief requested in the trial court). The appealing party is called the appellant. To prevail in an appeal, the appellant has to show the appellate court that errors occurred in the lower tribunal proceedings, and that such errors were bad enough to reverse the final judgment or order entered in the case. Thus, it is the appellant's responsibility to (1) identify the problem or error, (2) persuade the appellate court that there is, in fact, error in the final order, judgment, or verdict appealed, and (3) show that the error is so serious that it needs to be sent back to the lower tribunal and corrected, or "reversed and remanded."

The party opposing the appeal, called the appellee, is the party that agrees with the outcome of the order or trial and will argue during the appeal that the judge's or the jury's decision should

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be left alone, or "affirmed." In some cases, the appellee may also disagree with a part of the final order, judgment, or verdict and may file what is called a "cross-appeal."

The highest appellate court in Florida is the Florida Supreme Court. The next highest appellate courts in Florida are called "District Courts of Appeal." There are six district courts of appeal, covering specific adjoining counties: the First District Court of Appeal, headquartered in Tallahassee; the Second District Court of Appeal, headquartered in Tampa (and eventually St. Petersburg); the Third District Court of Appeal, headquartered in Miami; the Fourth District Court of Appeal, headquartered in West Palm Beach; the Fifth District Court of Appeal, headquartered in Daytona Beach; and the Sixth District Court of Appeal, headquartered in Lakeland. Circuit Courts may also act as appellate courts in certain types of cases; for example, in an appeal from a county court decision, or when reviewing the actions of a county government agency.

The appellate court generally reviews the actions of the lower tribunal, not the actions of the parties. The appellate court focuses on whether the lower tribunal made the right decision. There are a variety of possible outcomes to an appeal. In deciding an appeal, the appellate court may, for example:

- Find no error and "affirm" the lower tribunal's decision, judgment, or order, thereby declaring the decision was correct and will stand as is.
- Find error, but hold it was "harmless," meaning the error did not affect the outcome of the case, and so the lower tribunal's decision is affirmed just as if there was no error.
- Find error and "reverse" the lower tribunal's decision, which often (but not always) also results in "remanding," or sending the case back, to the lower tribunal with instructions regarding further proceedings, such as a new trial or hearing.

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- Find error and "modify" the lower tribunal's decision, which also often (but not always) results in "remanding," or sending the case back, to the lower tribunal with instructions regarding further proceedings.
- Affirm in part and reverse in part the lower tribunal's decision, and remand with directions for further proceedings in the lower tribunal.

If the appellate court is reversing and/or remanding the case, it will often explain its decision and the outcome in the case with a written decision, or "opinion." The appellate court may also explain its decision in a written opinion if it affirms, but it does not have to. If the appellate court is affirming, it can simply issue a short order stating that the lower tribunal's decision or judgment is "affirmed" (this is typically known as a "per curiam" affirmance).

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. A self-represented, "pro se," party who wants to file an appeal should seriously consider retaining an appellate attorney if at all possible. A party served with a notice that the opposing party is appealing the decision should also retain an appellate attorney when at all possible.

Just like appellate judges who work exclusively on making appellate decisions, there are appellate lawyers who only (or mainly) 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, a self-represented "pro se" appellant or appellee will have to do deep research of the appellate and trial procedures and Florida law.

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A pro se party who cannot retain an appellate attorney (or any attorney) is still responsible to follow the rules of appellate procedure and Florida law. Thus, while this Handbook can serve as a beginning point for a pro se litigant, a pro se party should not only read this Handbook from cover to cover, but also review the Florida Rules of Appellate Procedure, Florida Statutes, and Florida case law that may apply to his or her case.

C. The Final Judgment Rule

A "final" judgment or order is a written order entered by a trial court (or "lower tribunal") which ends the case and leaves nothing left to be done except to follow what the final judgment or order requires the parties to do. In contrast, a "non-final" order does not end the case and usually cannot be appealed right away. For example, if the trial court rules against a party on an issue or motion before trial or at trial, the party normally has to wait, and often cannot appeal, 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 the final judgment, and, in the appeal from the final judgment, the party usually can also challenge any ruling or non-final order entered before the final judgment. So, with some exceptions, appeals generally can only be brought from a final judgment. This is called the "final judgment rule." Some of the exceptions to the final judgment rule are covered in other Chapters of this Handbook, such as Chapter 9 on Appeals from Non-Final Orders, and Chapter 10, Extraordinary Writs.

The final judgment rule is very important because an appeal has deadlines and time limits that must be followed. For example, there is a time limit for filing an appeal, and a party who fails to file an appeal within that time limit may lose or "waive" the right to appeal. Thus, one of the important reasons to consult or retain an appellate attorney, if one is available, is to find out whether a specific order can be appealed, and, if so, whether the appeal has to be filed right away.

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D. Tips for Determining Finality.

Not every decision by a judge is final. Usually, only final judgments, or orders which end the case once and for all, are appealable. If the decision or order does not end the case, it probably is not a final order or judgment. 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 that are not "final." For example, if a party does not like a pre-trial ruling, such as on a discovery issue, the party must normally wait until the trial or the case is over and a final judgment is "rendered," before bringing an appeal to challenge the ruling. As another example, when a judge denies a motion to dismiss or for summary judgment, the case continues to move along in the lower tribunal. That is why orders denying such motions are usually considered non-final orders. Orders granting such motions may or may not be final——it depends on if the order just grants the motion, or if it also orders a final judgment (of dismissal or summary judgment) in favor of one of the parties.

Whether an order is "final" for purposes of an appeal is a confusing area of appellate law, especially in civil cases. What is final is not always clear. If there is any doubt about whether the order is final, a party should usually make sure to appeal from it within 30 days, to reduce the risk of waiving an appeal if it turns out the order was final (meaning it had to be appealed within 30 days, if ever). The following questions may help a party determine if the order 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," the order is likely final. The below chart gives a few examples of some orders that are usually final and some that are usually non-final:

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Examples of Usually Final Orders:	Examples of Usually Non-Final Orders:
• Order dismissing the case with prejudice • Summary final judgment which enters judgment in favor of a party • Final judgment entered on a jury's verdict after a trial • An order both awarding a party entitlement to attorney's fees and determining the amount (or an order later setting the amount after entitlement was decided) • An order denying a motion for attorney's fees after the final judgment • A final judgment awarding court costs and setting the amount	• Order granting a motion to dismiss which does not actually dismiss the case • Order granting a motion to dismiss without prejudice to amend the complaint • Order granting a motion for summary judgment which does not actually enter judgment for one party or the other, or which does not end the case • Orders denying motions to dismiss or for summary judgment • Orders ruling on discovery matters and other pre-trial orders • Orders awarding entitlement to attorney's fees but with amount to be decided later

These are just a few examples of the kinds of decisions appellate courts generally consider final, and those usually considered non-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 whether that type of order is considered final and appealable or non-final and not appealable.

In sum, a final decision, also called a final judgment or final order, ends the case in the lower tribunal, usually by entering a judgment in favor of one party and against another. When in doubt, parties should retain an appellate attorney promptly after receiving the order to see whether 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.

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E. How, When, and Where to File an Appeal from a Final Order or Judgment.

The right to appeal a final 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. In Florida courts, a lower tribunal's final decision generally must be appealed within 30 days, or the right to appeal is forever lost. *See* Florida Rules of Appellate Procedure 9.110(b)&(d) (civil cases), 9.140(b)(3) (criminal cases), and 9.900(a)-(f) (format).

An appeal is generally started by filing a document called the "notice of appeal" in the lower tribunal (not the appellate court), with a copy of the order being appealed attached, within 30 days of when the order or judgment being appealed was entered. The party appealing, the appellant, must also pay the filing fee. The clerk's office of the lower tribunal should have a list of how much the filing fees are for an appeal. The notice of appeal must generally be filed personally at the lower tribunal's clerk's office, unless electronic filing is permitted. A notice of appeal generally has to be received and recorded by the lower tribunal's clerk before the 30-day deadline for the appeal (not just put in the mail). A party can usually bring a second copy of the notice of appeal and ask the deputy clerk in the clerk's office to stamp a date on it for the party's own records.

The 30-day time limit for filing a notice of appeal is a "jurisdictional" deadline. This means that if the notice of appeal is not filed within the time limit, the appellate court usually will not have the power, or "jurisdiction," to hear the appeal, and the appeal will be dismissed. The rest of the deadlines, such as the time limits for paying the filing fee, or for filing the appellate briefs, are also important and should be followed, but many are not "jurisdictional." This means the appellate court still has the power to hear the appeal, but it may decide to dismiss for a party's failure to follow the rules and procedures for the appeal.

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An example of the general format for a notice of appeal is contained in Florida Rule of Appellate Procedure 9.900 (forms). A notice of appeal in a civil case might look like this:

IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

Case No.____________

Mr. Smith, Defendant/Appellant
v.
Ms. Jones, Plaintiff/Appellee

NOTICE OF APPEAL

Notice is hereby given that Defendant/Appellant, Mr. Smith, appeals to the Second District Court of Appeal the order of this court rendered on November 2, 2015. The nature of the order is a final judgment which is reviewable as a final order under Florida Rule of Appellate Procedure 9.110. [Attach a copy of the order appealed, per Rule 9.110(d)].

____
Mr. John Smith
[address, e-mail address, & phone number]

Once the notice of appeal is filed with the clerk of the lower tribunal, the lower tribunal will transfer the case to the appellate court for the appeal. After the case is transferred to the appellate court, the rest of the proceedings for the appeal take place in the appellate court.

F. After Filing the Notice of Appeal, What Happens Next?

After filing a notice of appeal, 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)-(b). 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 Chapter 3 of this Handbook.

The party opposing the appeal, the "appellee," generally has 15 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

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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 9.140(b)(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 only filed in cases where the appellee believes the lower tribunal made a mistake in not granting all of the relief the appellee wanted in the specific 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 did not grant all of the desired relief, then the appellee must file his or her own notice of appeal from that order, not a notice of cross-appeal. And, again, any 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 Chapter 3, is made up of the documents—such as the pleadings, pre-trial motions, orders, discovery, and evidence ("exhibits")—that were filed and made part of the "record" in the lower tribunal. It usually also has transcripts of the hearings that the lower tribunal judge held and transcripts of any trial, if the hearing or trial was "transcribed" (typed-out by a court reporter), and if one of the parties filed those transcripts with the lower tribunal. *See* Florida Rule of Appellate Procedure 9.200.

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There are also time limits for filing appellate briefs. Appellate briefs are the written arguments of the appellant and the appellee that are presented to the appellate court. The arguments in an appellate brief must be limited to the matters contained in the appellate record. The appellant's initial brief is generally due 70 days after filing the notice of appeal. *See* Florida Rule of Appellate Procedure 9.110(f). The appellee's answer brief is then due 30 days after the initial brief, and the appellant's reply brief is due 30 days after the answer brief. *See* Florida Rule of Appellate Procedure 9.210(f). If the appellant needs more time to file a brief, the appellant usually may file a motion for an extension of time with the appellate court (usually for 30 or 60 days), so long as the motion for extension is filed before the deadline for the brief. Before filing a motion for an extension, the appellant is generally required to contact the opposing party to ask if the opposing party will agree or object to the motion for an extension. The motion for extension should, in addition to requesting the extension, also state whether the opposing party objects or agrees to the extension. The same general procedure for seeking extensions would also apply to the answer brief and the reply brief.

The appellate briefs are filed with the appellate court before oral argument. Oral argument is like a formal hearing before a trial judge. The main differences are that appellate oral arguments are usually heard by a "panel" of three judges and arguments are limited to those contained in the appellate briefs and supported by the appellate record—no new evidence or arguments can be made. The party seeking to present oral argument must file a "request for oral argument" in a separate document, generally not later than 15 days after the reply brief is due. *See* Florida Rule of Appellate Procedure 9.320. After the parties have filed their briefs, and if a request for oral argument was made, the appellate court will decide whether to grant oral argument. Appellate courts do not always grant a request for oral argument. If oral argument is not granted, the case

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will be decided based on the arguments in the appellate briefs, without holding an 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 state the date and time of the oral argument and how many minutes each side will have to argue their case.

G. What Does the Appellate Court Review?

Appellate courts are limited in what they can review and decide. The appellant must outline the specific question or issue 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, in an appeal, 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. An appeal is not a second trial. The trial level is the only opportunity 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 argued 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 or 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. *See* Florida Rule of Appellate Procedure 9.200. Only the evidence, argument, testimony, and objections considered

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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 or trial court based on a new document that the trial judge never got to see. The trial was the only opportunity to present that document. So, for example, a party can argue on appeal that the trial court should have allowed a certain document into evidence at trial, but only if the party presented the document to the trial court and objected when the trial court refused to consider it or allow it into evidence, and, after the objection was overruled also made sure the document was still filed in the court file and included in the record on appeal.

In sum, appellate courts do not take new evidence. Appellate courts decide whether the trial judge made errors based on what happened in the lower tribunal. Appellate courts also generally do not consider new arguments. If an argument or objection was not made to the lower tribunal, the appellate court usually will not consider it for the first time on appeal, unless the error was "fundamental," meaning it destroyed the fairness of the case.

H. A Few More Important Points About Preserving Arguments for an Appeal.

As discussed above, an appellate court generally does not consider new arguments or objections for the first time on appeal, except for fundamental errors. To preserve an issue, a party usually has to object when the issue first comes up, to give the lower tribunal a chance to

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fix the problem. Often, to be preserved, the same argument or objection also has to be raised again after the trial or decision in the lower tribunal, such as in a motion for new trial or rehearing. Thus, to be preserved, an argument or objection often has to be raised both when the issue first comes up (usually at a hearing or trial) and again after the trial or decision.

In a civil case where a jury trial is held, a motion for a new trial has to be filed within 15 days after the jury's verdict (not the judgment, which is entered later). *See* Florida Rule of Civil Procedure 1.530(b). In a jury case, most types of objections have to be raised again in a timely motion for new trial to preserve them for appeal (this is in addition to objecting at trial or whenever the issue first came up). Examples include objections to allowing or disallowing specific evidence at trial, giving or withholding requested jury instructions, and improper closing arguments, to name just a few.

In a civil case decided by the judge (without a jury trial), a motion for rehearing has to be filed within 15 days after the final order or judgment. *See* Florida Rule of Civil Procedure 1.530(b). Objections to the judge's failure to consider certain evidence or failure to state enough findings of fact in the final order are examples of the types of objections that should usually be raised again in a motion for rehearing from a final order or judgment.

Filing a motion for new trial, a motion for rehearing, and a few other types of post-trial motions, may extend the time for filing the appeal—but **only** if the motion was both timely filed and specifically allowed by the rules of procedure. *See* Florida Rule of Appellate Procedure 9.020(i). Technically, such a motion does not really extend the time for taking the appeal; rather, the 30-day deadline for filing the notice of appeal just does not start until the lower tribunal enters an order ruling on the motion. However, if the motion for new trial, motion for rehearing, or other post-trial motion was either untimely or not specifically allowed by the rules of procedure, the 30-

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day deadline to file an appeal will not be extended in any way, and will instead run from the date of the final order or judgment as usual (and not from an order ruling on the untimely, unauthorized motion). One way to reduce the risk of either failing to preserve an issue or failing to timely file the appeal may be to: (1) file a motion for new trial, rehearing, or other post-trial motion, and then (2) after filing the motion go ahead and also file the notice of appeal. *See* Florida Rule of Appellate Procedure 9.020(i).

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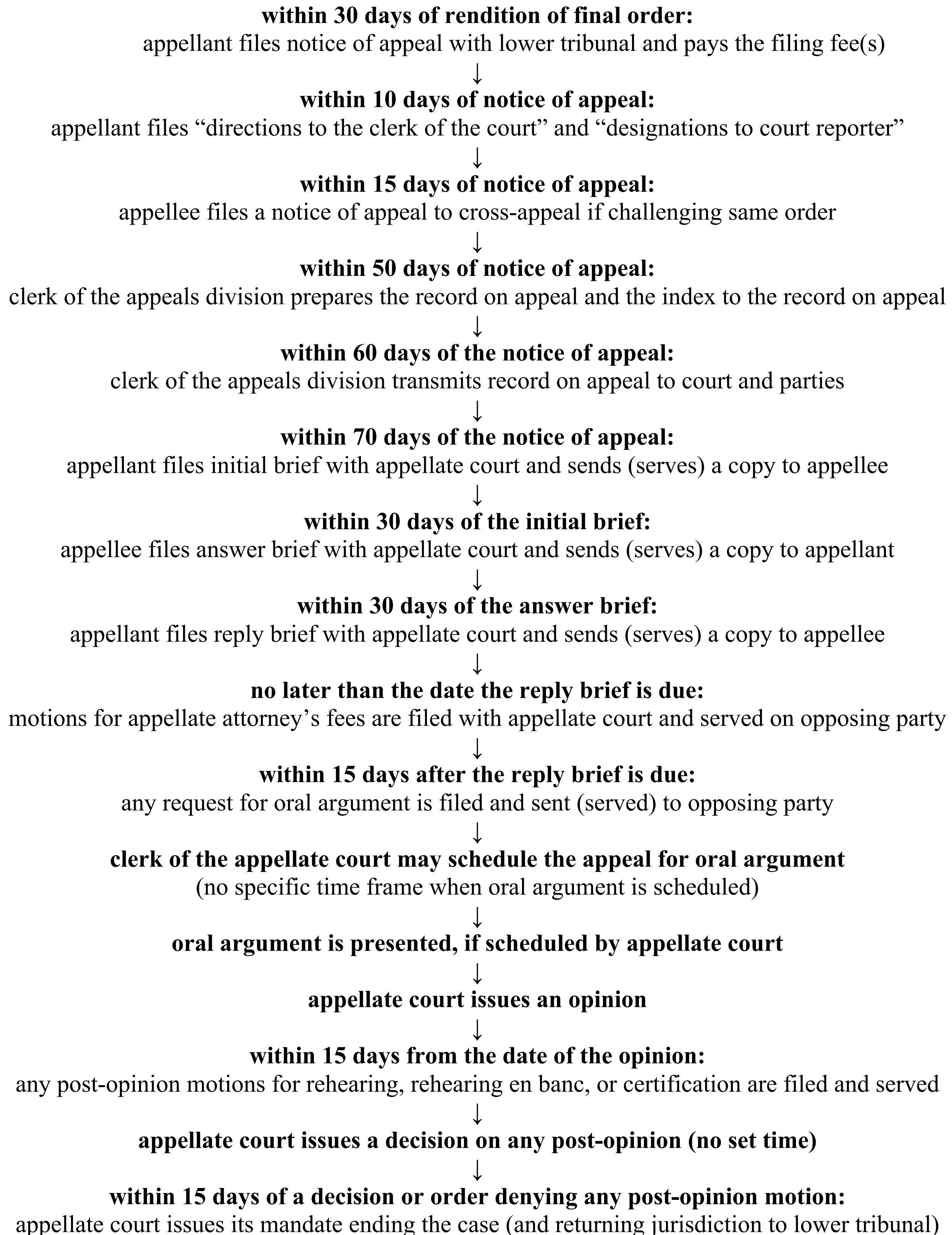
Flowchart for Final Appeals Following Rendition of Final Appealable Order



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CHAPTER 9: APPEALS FROM NON-FINAL ORDERS: WHAT CAN BE APPEALED, WHEN AND HOW

A. Introduction.

Some orders can be appealed before final judgment, and a person does not always have to wait for a final order or for the case to be over to appeal. That is, in certain situations, appeals of "non-final" orders may be allowed. The kinds of non-final orders that can be appealed immediately depend on the type of case and the type of order. The non-final orders that can be appealed are limited to those listed and described in Florida Rule of Appellate Procedure 9.130. They include orders that:

1. concern venue (i.e., the county or location of the lawsuit);

2. grant, continue, modify, deny, or dissolve injunctions, or refuse to modify or dissolve injunctions;

3. determine the jurisdiction of the person (i.e., whether the court has authority over the parties);

4. determine the right to <u>immediate</u> possession of property;

5. determine, in family law matters:

    a) the right to <u>immediate</u> monetary relief,

    b) rights or duties regarding child custody or time-sharing in a parenting plan, or

    c) that a marital agreement in invalid in its entirety;

6. determine whether a party is entitled to arbitration, or to an appraisal under an insurance policy;

7. determine that, as a matter of law, a party is not entitled to workers' compensation immunity from the lawsuit;

8. determine whether or not to certify a class (i.e., as in a class action lawsuit);

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9. determine that a governmental entity has taken action that has inordinately burdened real property under the Bert Harris Property Rights Protection Act, found in section 70.001(6)(a), Florida Statutes;

10. determine the issue of forum non conveniens (inconvenient forum or location for the lawsuit);

11. determine that, as a matter of law, a settlement agreement is unenforceable, is set aside, or never existed;

12. determine that a permanent guardianship shall be established for a dependent child pursuant to section 39.6221, Florida Statutes;

13. grant or deny the appointment of a receiver, and terminate or refuse to terminate a receivership;

14. grant or deny a motion to disqualify counsel;

15. deny a motion that asserts entitlement to absolute or qualified immunity in a civil rights claim arising under federal law;

16. deny a motion that asserts entitlement to immunity under section 769.28(9), Florida Statutes;

17. deny a motion that asserts entitlement to sovereign immunity;

18. grant or deny a motion for leave to amend to assert a claim for punitive damages;

19. deny a motion to dismiss on the basis of the qualifications of a corroborating expert witness under subsections 766.102(5)-(9), Florida Statutes; or

20. are entered on an authorized and timely motion for relief from judgment.

Generally, a district court of appeal does not have jurisdiction over, and cannot review, any non-final orders that are not listed in Rule 9.130. It should be noted that orders disposing of

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motions that suspend rendition of a final order are not reviewable separately from a review of the final order, provided that orders granting motions for new trial in jury and non-jury cases are reviewable by the same method as for a final appeal.

B. Time for Appealing a Non-Final Order.

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's clerk's office. Unlike a motion for rehearing of a final order, a motion for rehearing of a non-final order will not stop, or "toll," the 30-days-to-appeal clock. Thus, 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 only reviewable or appealable if they fit within one of the categories set out in Florida Rule of Appellate Procedure 9.130, discussed above. If an order does not fit into one of those categories, a party usually must wait for a later final order ending the case or proceeding in order to appeal. Even if a party cannot appeal a non-final order right away, the party can still ask the appellate court to review any non-final order in an appeal from the later final order or judgment.

In addition, if a party cannot take an immediate appeal from a non-final order, there may be 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* Chapter 10, Extraordinary Writs.

In some cases, an order may make 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 <u>some</u> of the parties, but the case is still continuing as to <u>other</u> parties, a party may appeal that order. One example is an order

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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 order or judgments, not appeals of non-final orders. Appeals from final orders are discussed in Chapter 8, the Appellate Process Concerning Final Appeals.

Again, 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. In other words, if it's a non-final order, it can be challenged in an appeal from the final judgment. But if it's a final order, it must be appealed within 30 days.

A party can appeal more than one non-final order in a single appeal <u>if</u> all the orders being appealed were timely filed within 30 days of that date on which each order was entered. In other words, multiple non-final orders may be reviewed by a single notice of appeal if the notice is timely filed as to each of those non-final orders.

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

The notice of appeal of a non-final order is filed the same way as in final appeals. *See* Chapter 8, the Appellate Process and Final Appeals; Chapter 3, Pulling Together the Record on Appeal. In most cases, a party must file the notice of appeal, together with the filing fees, with the

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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.

An example of the general format for a notice of appeal is contained in Florida Rule of Appellate Procedure 9.900 (forms). A notice of appeal in a civil case might look like this:

IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

Case No.____________

Mr. Smith, Defendant/Appellant
v.
Ms. Jones, Plaintiff/Appellee

NOTICE OF APPEAL

Notice is hereby given that Defendant/Appellant, Mr. Smith, appeals to the Second District Court of Appeal the order of this court rendered on November 2, 2015. The nature of the order is a non-final order which is reviewable under Florida Rule of Appellate Procedure 9.130 (specify subsection). [Attach a copy of the order appealed, per Rule 9.130(c)].

____
Mr. John Smith
[address, e-mail address, & phone number]

The notice of appeal should also include a certificate of service, which might look like this:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was furnished to _____________ (name of opposing party), at (address, city, state, zip, and/or e-mail address), by (e-mail) (delivery) (mail) on ___________ (date).

Mr. John Smith
222 N.W. 2nd Street
City, State 11111
Telephone: (234) 567-8901

By: ___________________
Mr. John Smith

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Note that if it is the defendant who is appealing, the defendant's name is listed first in the case name, or "caption," of the notice of appeal (instead of the plaintiff's name). A conformed copy of the order(s) identified in the notice of appeal should be enclosed with the notice.

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

While the non-final appeal is pending, the lower tribunal proceeding will keep going. This means that unless a stay order is entered, the lower tribunal may continue moving forward with and deciding all matters, including trial or final hearing. The only thing the lower tribunal cannot do while the appeal is pending is enter a final order disposing of the case. If the appeal is about questions of jurisdiction or venue, the lower tribunal will usually grant a motion for a stay, but motions seeking a stay should be filed promptly. *See* Chapter 11, Stays Pending Review.

There are two other main ways that an appeal from a non-final order in a civil case differs from an appeal after final judgment. First, the appellant's initial brief is due served within 15 days of filing the notice of appeal, rather than 70 days. (But the time for the appellee's answer brief and the appellant's reply brief remains the same as in a final appeal). Secondly, in a non-final appeal, unlike appeals from final orders or 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 an "appendix" containing the important documents that the appellate court needs to have to decide the non-final appeal. The appendix is filed with the court and a copy served on the other parties at the same time as the initial brief. *See* 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 relevant pleadings, motions, transcripts and other documents on record that the appellant needs to understand the case and decide the issues on appeal. It must also

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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. The appendix is separate from the brief and has its own cover page and 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.

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

In criminal cases, a defendant may generally 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 postconviction proceedings under Florida Rules of Criminal Procedure 3.800(a), 3.801, 3.850, 3.851, or 3.853. *See also* Chapter 13, Appeals of Motions for Postconviction Relief.

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 intellectually disabled under Florida Rule of Civil Procedure 3.203; (10) orders granting relief under Florida Rule of Criminal Procedure 3.801, 3.850, 3.851, or 3.853; (11) orders ruling on a

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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* Florida Rule of Appellate Procedure 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 or designation of appointed counsel, whichever is later. All further briefs (the answer and reply briefs) follow the same time-frame as for civil appeals. *See* Florida Rule of Appellate Procedure 9.140(b)(3), (f)(1), & (g)(1).

In cases of summary denial (without a hearing) of petitions for post-conviction relief under Florida Rule of Criminal Procedure~~s~~ 3.800(a), 3.801, 3.850, or 3.853, 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 30 days of filing the notice of appeal. *See* Florida Rule of Appellate Procedure 9.141(b).

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

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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 other final order as prescribed by law. *See* Florida Rule of Appellate Procedure 9.145(c).

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 subject to bail if the child were charged as an adult; otherwise, the lower tribunal has discretion to release the child. All references to the child in all court documents 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

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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 also 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* Sections 39.510 and 39.815, Florida Statutes, and Florida Rule of Appellate Procedure 9.146. 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 also* Chapter 14, 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 court's 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. *See* Florida Rule of Appellate Procedure 9.180(b)(1).

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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 the initial brief with the court and serve a copy on each of the other parties. The brief must be accompanied by an appendix that contains the order to be reviewed, along with 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. *See also* Chapter 17, Workers' Compensation Appeals; Chapter 3, Pulling Together the Record on Appeal.

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

In many situations, the Administrative Procedure Act, Chapter 120, Florida Statutes, determines whether a non-final administrative agency action or order may be immediately appealed. Section 120.68(1)(b), 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 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

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cases, an appellant generally files a petition for review of non-final agency action under the Administrative Procedure Act, together with Florida Rules of Appellate Procedure 9.100(b) and (c). *See* Florida Rule of Appellate Procedure 9.190(b)(2)&(c)(3). Instead of filing a notice of appeal, an appellant must file a petition for review (which is similar to an initial brief), 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.

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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* Chapter 15, Administrative Appeals; Chapter 3, Pulling Together the Record on Appeal.

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CHAPTER 10: EXTRAORDINARY WRITS—CIVIL

A. Introduction.

An extraordinary writ petition is a different way to ask an appellate court to review the actions or inactions of a lower tribunal. Writ petitions can only be used in very rare, or "extraordinary," circumstances, where there is no other adequate remedy or ability to appeal. *See* Florida Rule of Appellate Procedure 9.100. In civil cases, writs are most commonly used to: compel a judge or other official to perform a ministerial act he or she refuses, but is required, to do (writs of mandamus); prevent a lower tribunal from performing an act it has no jurisdiction to do (writs of prohibition); or challenge non-final orders that cannot otherwise be immediately appealed (writs of certiorari). An extraordinary writ petition can be filed, provided certain criteria are satisfied, with the appellate court while the case is still going on in the lower tribunal.

Filing a writ petition usually does not stay (stop) the proceedings in the lower tribunal. Rather, to stay the lower tribunal proceedings during the writ proceeding, a party would normally have to also move for and be granted a stay. Stay motions are discussed in Chapter 11 of this Handbook. *See also* Florida Rule of Appellate Procedure 9.310.

An extraordinary writ petition is not the same as an appeal. First, the parties to a petition have different titles than in an appeal. In an appeal, the appealing party is the "appellant," and the opposing party is the "appellee." In contrast, in a writ proceeding, the party petitioning the appellate court is called the "petitioner," and the opposing party is called the "respondent." A writ proceeding is begun by filing the petition, which is like the initial brief, directly with the appellate court (unlike an appeal, which begins by filing a notice of appeal in the lower tribunal). The writ petition is filed in the appellate court and served on the opposing parties. Depending on the type

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of writ, the deadline is usually 30 days from the date the challenged order was entered or action performed.

In addition, in some types of writ proceedings, such as when a party files a petition for writ of mandamus or prohibition, the judge in the lower tribunal must also be (a) named as a respondent in the body of the petition, but **not** in the case name (caption), and (b) served with a copy of the petition for writ mandamus or prohibition. In the case of a petition for writ of certiorari, the lower tribunal judge is not named as a party at all, but is served with a copy of the petition. In contrast, in a regular appeal, the lower tribunal judge is not named as a party nor served with the documents filed in the appeal.

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. Types of Extraordinary Writs in Civil Cases.

There are many different kinds of extraordinary writs. Each one serves a different purpose, and each is proper only in specific circumstances.

1. Writ of Mandamus.

If a lower tribunal judge or other 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:

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(1) The petitioner must have a clear legal right to have the trial judge or other officer perform a specific act or duty;

(2) The lower tribunal judge or other government officer must have a clear legal, ministerial duty to perform the action; and

(3) The petitioner must have no other adequate legal remedy.

The appellate court can only issue a writ of mandamus when the duty to be performed is a ministerial act. An act is ministerial when the lower tribunal or office has no discretion. Discretion is the freedom to choose to do or not do something. So, an act is ministerial when the law requires it to be done, without any choice by the official. Sometimes an act might be part ministerial and part discretionary. In such cases, mandamus could be used to make an official do an act or make a decision (if it is a required ministerial act), but not how to do the act nor what decision to make (which is usually for the official to decide, i.e., discretionary).

For example, an appellate court 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 issue a writ of mandamus to require a city to produce for inspection and copying public records which the petitioner has requested and the city has refused to produce. An appellate court may also issue a writ of mandamus to require a lower tribunal to hold a hearing within a certain amount of time. But 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. District courts of appeal can issue writs of prohibition to lower courts or

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

The petition for writ of prohibition must be filed before the lower tribunal takes the action that the petitioner wants to prevent. An appellate court cannot grant prohibition to undo something that already has been done. It can only grant prohibition to prevent something that has not been done yet. In addition, the petitioner must show (1) there are no disputed facts and (2) the lower tribunal has no jurisdiction to do the thing the petitioner is trying to prevent.

If the appellate court issues an order to show cause why relief should not be granted in a prohibition proceeding, it stays the proceedings below. However, an order merely directing the respondent to file a response to the petition in a prohibition proceeding generally does not stay the lower tribunal proceedings. A stay puts all of the lower tribunal proceedings on hold until the appellate court makes a decision. *See* Chapter 11 of this Handbook (stays).

3. Writ of Certiorari.

Certiorari, also called "cert," lets an appellate court review a non-final 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. Unlike the district courts of appeal, the Florida Supreme Court does not have jurisdiction to grant writs of common law certiorari. To get a writ of certiorari, a petitioner must show:

(1) The action of the lower tribunal is a material 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

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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) The error will cause the petitioner irreparable harm throughout the remainder of the proceedings. The irreparable harm must be more than the time and expense of an unnecessary trial. An example of irreparable harm 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) There is no adequate remedy by appeal from a final judgment. This is another aspect of 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

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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.

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

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. On a final note, a party who plans to file a certiorari petition with the appellate court will often also file an emergency motion to stay in the lower tribunal, asking it to stop or "stay" the challenged order during the certiorari proceeding. As discussed in Chapter 11 of this Handbook on stays, if the trial court denies the motion, the party can then ask the appellate court to issue the stay. See Florida Rule of Appellate Procedure 9.310(a)&(f).

4. Writ of Quo Warranto

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

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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 have tried to use all writs jurisdiction to get the Florida Supreme Court to review a district court of appeal's decision, such as a "per curiam" affirmance without a written opinion. But 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

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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.

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(g) states what a petition must include:

(a). <u>The basis for invoking the jurisdiction of the court</u>. 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.

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(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, or overturn an order of the lower tribunal.

(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.

(e). 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

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opposing party is likely to cite. To do so may expose that party to a sanction or penalty from the appellate court.

3. Page Length and Filing.

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 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 further action unless the appellate court either says it can or decides the case.

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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 the petitioner wants to stop.

There is a 30-day time limit for filing a petition for writ of certiorari. The time runs from the date the lower tribunal's order was rendered. 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 in the lower tribunal does not extend, or "toll," 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 still runs from the date of the original order. It does not run from the date of rehearing. The 30-day time limit for a petition for writ of certiorari cannot be extended.

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.

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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 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 during the appeal. The appellant is not required to seek a stay, but a stay can help protect the appellant from collections and other enforcement proceedings until the appellate court decides the appeal. It is important to remember that filing a motion for a stay generally will not stay the case unless or until the court rules on and grants the stay motion. In a mortgage foreclosure action, for example, even if an appeal has been filed, the lower court can still sell the property at a foreclosure sale unless the appellant obtains a stay of the proceedings. In some types of cases, the stay may be automatic if certain requirements and procedures are followed.

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 court or administrative agency (lower tribunal) that entered the order or judgment that the party is appealing. Under Florida Rule of Appellate Procedure 9.310 and Section 45.045, Florida Statutes, the lower tribunal has the power to grant, deny, or modify the terms of a stay, even after a notice of appeal has been filed. Sometimes, the appellate court may consider a stay request first, but the party who wants to stay the order or judgment that is being appealed is usually required to first file a motion requesting a stay in the lower tribunal that decided the case. After the lower tribunal has

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ruled on a motion for a stay, that decision can be reviewed by the appellate court. *See* Florida Rule of Appellate Procedure 9.310(a)&(f).

C. Factors for Imposing a "Stay" Pending Review, Generally

A lower tribunal must try to protect the party who won. If the order appealed is for something other than 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. *See* Florida Rule of Appellate Procedure 9.310(a). A bond is either cash money deposited in the court registry, or a formal 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 where the case is pending can provide the names of Florida approved surety companies, which have their own requirements for obtaining a bond.

D. Money Judgments

Florida Rule of Appellate Procedure 9.310(b)(1) generally provides that if the order being appealed is solely for the payment of money, a party can obtain an automatic stay pending appeal "by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest." *See* Florida Rule of Appellate Procedure 9.310(b)(1).

Some Florida courts have ruled that the only way to stay execution (the enforcement of a money judgment) is by posting cash or a surety bond in the amount required by Rule 9.310, and this may remain a subject of disagreement in certain courts. But Section 45.045(2), Florida Statutes, seems to give the lower tribunal the power to reduce the amount of a bond required to stay a money judgment, and/or to set other conditions for the stay with or without requiring a bond. In addition, Section 45.045(1), Florida Statutes, generally states that, except in certified class

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actions, the amount of a bond needed to obtain a stay pending appeal may not be more than $50 million for each appellant, regardless of the amount of the judgment being appealed (although this number may change in the future). If you are asking a court to apply Section 45.045, Florida Statutes, doing additional research will help you determine what your local courts have decided.

According to Section 45.045, Florida Statutes, if the lower tribunal reduces the bond amount or allows a stay on other conditions without requiring a bond, the party who won in the lower tribunal (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 may then, upon request from the appellee, change the amount of the bond or require the appellant to post a full bond in the amount required by Florida Rule of Appellate Procedure 9.310.

Unless the lower tribunal allows a bond in a reduced amount or orders a stay on other conditions without requiring a bond under Section 45.045, Florida Statutes, the bond amount required is the total amount stated by the judgment, plus two years of interest at the statutory interest rate. *See* Florida Rule of Appellate Procedure 9.310. The current interest rate can be obtained from the local court clerk, the Florida Department of Financial Services' website, or an authorized surety company. Posting a bond for the correct amount should automatically stay 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. In a mortgage foreclosure case, it is especially important for a party who plans to appeal to move for a stay order in the lower court as soon as possible and prior to the judicial foreclosure sale scheduled in the final foreclosure judgment.

E. Public Entities and Officers

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In a civil case, if the judgment is against the state, a public officer in an official capacity, a board, commission, or other public entity, and that public entity files a timely appeal, the public entity will get an automatic stay and does not have to post a bond. The lower tribunal does have the authority, however, to remove or modify this automatic stay, and that decision can be reviewed by the appellate court. If the order being appealed relates to a public records or public 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. *See* Florida Rule of Appellate Procedure 9.310(b)(2)&(f).

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 wrong ("abused its discretion") when it denied or granted the stay motion. *See* Florida Rule of Appellate Procedure 9.310(f).

G. Administrative Cases

Generally, filing a notice of appeal of an administrative agency's action or final order does not automatically stay the order or judgment being appealed. In any such administrative case governed by Chapter 120, Florida Statutes (the "Administrative Procedure Act"), a stay pending appeal can usually be granted either by the administrative agency or the appellate court. With certain exceptions, a stay should usually be sought by first filing a motion for a stay in the

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administrative agency. Either party can file a motion asking the appellate court to review the agency's ruling on a motion for a stay. *See* Florida Rules of Appellate Procedure 9.190 and 9.310.

A party seeking to stay an agency order suspending or revoking a license (other than a driver's license) must file the motion for stay directly 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. *See* Florida Rules of Appellate Procedure 9.190(e)(2) and 9.310.

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 generally cannot be stayed during an appeal of the suspension/revocation order. *See* Florida Rule of Appellate Procedure 9.190.

H. Length of the Stay

A stay lasts until an appellate court issues its mandate after its decision in the case is final. The stay ends when the appellate court issues its mandate, even if one of the parties asks the Florida Supreme Court to review the appellate court's 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 usually just send the mandate to the parties and to the lower tribunal 15 days after an opinion is final (which will either be 15 days after the opinion if no post-decision motions are filed,

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or 15 days after the appellate court decides a timely-filed motion for rehearing, certification, or clarification).

I. Mortgage Foreclosure Stays

A mortgage foreclosure judgment generally is not viewed as an order solely for the payment of money because it is secured by the mortgage on the real property. Accordingly, an appellant cannot rely on the automatic stay provisions for money judgments in Florida Rule of Appellate Procedure 9.310(b)(1). To obtain a stay pending appeal in a mortgage foreclosure case, the appellant should file a motion to stay the foreclosure judgment and sale in the lower court as soon as possible and prior to the judicial foreclosure sale scheduled in the final foreclosure judgment. The trial court has broad discretion to decide whether to grant a motion to stay a foreclosure case pending appeal, and will consider, among other factors, the present fair market value of the property, any other liens on the property, and any waste or other damages that could be caused by delaying the foreclosure sale for the appeal. Although a mortgage foreclosure judgment does not fit neatly within the formula for money judgments in Florida Rule of Appellate Procedure 9.310(b)(1), the trial court may use that bond formula as a yardstick for determining the amount of a bond. If the order on appeal is affirmed or appellate review dismissed, the plaintiff generally may also collect any interest that accumulated on the bond during the appeal as damages for the delay in the case.

J. Conclusion

Because filing an appeal usually does not automatically stay execution or enforcement of most orders and judgments, filing a motion 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

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appellant seeking a stay should also review Florida Rules of Appellate Procedure 9.310 and 9.190, Section 45.045, Florida Statutes, and recent cases that discuss those rules and the statute.

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CHAPTER 12: PRO SE *ANDERS* BRIEFS: WHAT A CRIMINAL DEFENDANT SHOULD DO WHEN HIS OR HER ATTORNEY FILES AN *ANDERS* BRIEF.

A. Introduction.

This chapter is intended to aid a defendant whose appellate attorney has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), on appeal from a criminal conviction and sentence or postconviction motion. This chapter describes how to write a pro se or "self-represented" brief after the appellate court permits the appellate attorney to withdraw or allows the defendant an opportunity to raise issues in a pro se brief.

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

The defendant is not entitled to a perfect appeal; however an appellate attorney has a duty to support her client's appeal to the best of her ability. Under the Rules Regulating the Florida Bar (the code of ethics that regulates all attorneys who practice in Florida), an appellate attorney must study the trial court record to determine which, if any, issues have merit and should be appealed. Attorneys are forbidden by the code of ethics from filing "frivolous" documents in court. Frivolous means that the documents have no serious purpose, meaning, or merit. Sometimes, the appellate attorney representing a defendant finds that the case does not have any nonfrivolous issues to raise on appeal (i.e., all of the issues that the attorney might raise on appeal have no serious purpose, meaning, or merit). In those circumstances, the appellate attorney may file an *Anders* brief. In the *Anders* brief, the attorney explains to the court that he or she believes the appeal presents no issues that can be argued in good faith as grounds to reverse the judgment, sentence, or order being appealed. Nevertheless, the attorney must also identify facts in the record that, despite not rising to the level of grounds for reversal, the appellate attorney believes could arguably support the appeal. In so doing, the appellate attorney balances his or her ethical responsibility to the courts not to raise frivolous issues on appeal with his or her ethical responsibility to protect the

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defendant's constitutional rights. If the attorney files an *Anders* brief, he or she may also file a motion to withdraw from representing the defendant. Whether the motion to withdraw is required varies in different appellate courts.

In the *Anders* brief, the attorney identifies any facts in the record or law that might arguably support the appeal. When the attorney files an *Anders* brief, he or she must send a copy of the *Anders* brief and his or her motion to withdraw, if she files one, to the defendant. In either the motion to withdraw or the brief, the attorney will request that the court allow the defendant to file his or her own brief. Once the appellate attorney files an *Anders* brief, the appellate court will give the appellant an opportunity to file a brief on his or her own behalf. This brief filed by the defendant is commonly referred to as a "pro se brief." The defendant may raise any issues he or she wants the appellate court to consider in the pro se brief.

When an *Anders* brief is filed, the appellate court performs a full review of the record to discover if any debatable issues exist. In some appellate courts, the appellate court, after conducting its own review, may order the appellate attorney to file a supplemental brief on the merits. This does not mean that the appellate court will grant relief on an issue, only that the facts warrant more briefing on appeal. Even if it does not order supplemental briefing, the appellate court will consider the *Anders* brief and, if one is filed, the pro se brief. The appellate court will also 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 the appellate attorney files an *Anders* brief, he or she must send a copy of that brief to his or her client. Most are sent with proof of delivery to ensure that the defendant promptly receives the *Anders* brief. The appellate court will then issue an order granting the defendant a

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specific number of days, usually 30, to file a 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 that appointed the appellate attorney has a policy that requires the record be returned directly to that office, then the appellate attorney will return the record to the assigning office which will, in turn, send the record directly to the defendant.

D. Compliance with Florida Rule of Appellate Procedure 9.210.

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 includes (Chapter 5).

E. Prison Law Libraries & Inmate Law Clerks.

Florida prisons are generally required to provide law libraries to ensure that inmates have adequate legal materials to prepare court documents. The prison will also usually assign inmate law clerks who have completed a training class to assist inmates in doing legal research and preparing court documents. The Florida Supreme Court and the Rules Regulating The Florida Bar forbid the "unlicensed practice of law." That means a nonlawyer (including an inmate law clerk, a lawyer from another state, or a law student) cannot give legal advice or represent anyone in court proceedings unless they have a license to practice law in Florida. In other words, a nonlawyer without a Florida license to practice law <u>cannot</u> 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 that may differ between particular prisons. Because writing a pro se brief requires some legal research, 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.

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The appellant's goal in writing a pro se brief is to show that reversible error occurred during the trial court proceeding. In order to obtain relief on appeal, the appellant must show that the trial court made a legal error. To warrant reversal on appeal, for almost every error, the appellant must also demonstrate that it affected the outcome of the case – that is, that the error was not "harmless."

G. Ineffective Assistance of Counsel.

A pro se brief in an *Anders* case is typically not the place to raise claims that the trial attorney did not provide effective assistance during the trial court proceedings. As a general rule, claims for ineffective assistance of counsel cannot be considered on direct appeal from the final judgment and sentence. See Corzo v. State, 806 So. 2d 642, 645 (Fla. 2d DCA 2002). Therefore, in most cases, the pro se brief should not include claims or arguments that the trial attorney did something wrong or did not do something to aid the case.

Ineffective assistance of trial counsel claims should be raised after the direct appeal in a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. The trial court cannot rule on a rule 3.850 motion while the case is pending in the appellate court on direct appeal. A defendant generally has two years from the date the appellate court decision becomes final to file a rule 3.850 motion. However, if the defendant wants to preserve the right to file postconviction claims in federal court pursuant to a 28 U.S.C. § 2254 habeas petition, the rule 3.850 motion must generally be filed within one year from the date of the appellate court decision in order to "toll" (pause or delay) the one-year federal limitations period. Please review the chapter on postconviction motions for more information (Chapter 13).

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 Writing an Appellate Brief

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chapter in this handbook (Chapter 5). The following is a summary of key points for writing a pro se appellate brief when an *Anders* brief has been filed.

First, the record on appeal from the trial 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, an appellant should not rely on mere memory of what happened in the trial court. The appellate court will only consider the documents, facts and evidence in the record on appeal. Notes taken while reading the record will assist in later citing the correct page numbers 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. An appellant may only raise issues that were properly preserved for appellate review by being first raised in the trial court. If trial counsel did not bring the issue up before the trial court, it can only be reviewed on appeal if it is a fundamental error. A fundamental error is an error which reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error. Because fundamental error is relatively rare, an appellant should consider issues raised by the trial attorney in a motion or an objection and which the trial court ruled against. For sentencing errors, Florida Rule of Appellate Procedure 9.140(e) requires that errors be raised in the trial court first, either by objection at sentencing or through a Florida Rule of Criminal Procedure 3.800(b) motion (which can be filed before or during the direct appeal, if necessary). Please refer to this handbook's chapter on postconviction motions (Chapter 13) for a more thorough discussion of how to raise a sentencing error in a Rule 3.800(b) motion.

Third, the appellant should consider whether the record contains all of the documents from the court file and transcripts needed to present the issues to be raised on appeal. Sometimes a

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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 (Chapter 3). The motion briefly explains what court file 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 supplement the documents, but may allow more or less time if needed. The appellate court will send a copy of its order to the trial court clerk, who supplements the missing court documents. However, it remains the appellant's responsibility to be sure the missing documents are supplemented within the allowed time. If the missing documents are not supplemented, that party must ask for an extension of time in the appellate court and contact the trial court clerk. If the missing document is a hearing transcript, the party must file a motion to transcribe in the trial court so that an order can be entered that directs the court reporter to transcribe the hearing.

Fourth, the appellant must do legal research to find case law and statutes that support his or her argument. The inmate law clerk can assist in doing the research in the law library, but cannot legally tell the appellant what he or she should argue on appeal. Sometimes the legal research will show that an issue that seemed unfair is not a strong one to raise. On the other hand, the legal research might show that there is an issue to raise that the appellant had not yet thought of. Research of the law is very important to any appellate brief.

Fifth, the appellant must determine the standard of review for each issue being raised on appeal. The cases will often explain which standard of review will apply to the type of error being alleged. There are many different standards of review. For example, if the trial court applied the

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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 trial court ruled and it considers the issue anew. In other instances, the trial court has discretion to make a ruling. The decisions to admit or exclude evidence are discretionary rulings. These issues will be reviewed under the "abuse of discretion" standard. To prove that the trial court abused its discretion, it must be shown that the ruling was arbitrary and that no reasonable judge would have made the same ruling.

Sixth, the appellant should make an outline of the argument section of his brief. That outline should list the issues the appellant intends to raise and the standards of review for each of those issues. The appellant should make notes about the facts that support the issues he or she plans to include in the brief. The appellant should make similar notes about the case law and statutes that support his or her argument. This outline will help organize the arguments and present it to the appellate court in a clear and concise manner when writing the brief.

2. Writing the Pro Se Brief

Statement of the Case and Facts: In filing an *Anders* brief, the appellate lawyer was first required to review the trial court 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 usually does not need to restate the same facts. Instead, the appellant should 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 appellant believes the trial court incorrectly denied a motion to suppress evidence, the pro se brief should include facts about the motion to suppress, the hearing on the motion, and the court's ruling.

Summary of the Argument: The summary of the argument is located before the argument

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in the pro se brief. But it is often written last. It summarizes the argument and does not exceed five pages, although it is usually much shorter. *See* Fla. R. App. P. 9.210(b)(4). Once the argument is written, the pro se party should pick out the key ideas from the argument and use those key points as the summary of argument. (Or, if the summary of the argument is written first, it can be used as an outline for writing the issues in the argument section).

Argument: The pro se party should use the outline he made to organize the argument into sections for each issue. First, the pro se party should state the issue. The pro se party should then give the standard of review for that issue. Next, he or she should explain the general law that applies to that issue, citing cases and statutes that support the argument. It is not generally necessary to cite to a large number of cases that basically say the same thing, but the cases and statutes that most closely relate to the issues being raised in the specific appeal should be cited to communicate the legal basis of the appellant's claim.

After explaining what law governs the court's decision, the pro se appellant should identify the facts that show that a reversible error occurred. He or she should cite to the volume and page number in the record to direct the appellate court to the facts that support his case. Cases with facts similar to those involved in his appeal should be cited, to show how courts have applied the general law that the pro se appellant identified in the first part of the argument. 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 grant. For example, some mistakes require reversal and remand for a new trial, and others require reversal and dismissal or resentencing.

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

Conclusion: At the end of the brief, the appellant should include one paragraph that tells the appellate court what relief or outcome the pro se appellant is asking for in the case. The relief

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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. Litigants often also request "whatever other relief the Court finds appropriate" or a similar broad request for relief.

<u>Table of Contents:</u> After the pro se party has finished writing his or 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 should also be listed with its beginning page number.

<u>Table of Citations:</u> All the cases cited in the brief are listed in alphabetical order. Then, all statutes cited in the brief are listed in numerical order. If other authority is cited, such as books or articles, they are also listed. The page numbers where each authority is cited should be included next to each listing.

<u>Certificate of Service and Certificate of Typeface Compliance:</u> A certificate of service at the end of the pro se brief is included to show that a copy of the brief was mailed to the opposing attorney in the case. Examples of a certificate of service for pro se appellants are included in Florida Rule of Appellate Procedure 9.420(d). If the pro se brief is typed, it is typed in either Arial 14-point font or Bookman Old Style 14-point font and must include a certificate saying the brief is typed in one of those fonts at the end of the brief. The fonts and other requirements for typed briefs are listed in Florida Rule of Appellate Procedure 9.045. If the brief is handwritten, it is not necessary to include a certificate of typeface compliance.

<u>Page Limit:</u> The pro se brief cannot exceed 13,000 words or fifty pages without permission from the appellate court, which is rarely granted. Fla. R. App. P. 9.210(a)(5).

I. Motions for Extension of Time in an *Anders* Appeal.

The appellate court informs the pro se party of how many days the pro se party has to file and serve his pro se brief. Most appellate courts generally allow 30 days. The pro se party must

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complete the brief and mail it to the court and the opposing attorney within that time limit. If it will take longer to obtain and read the record, do the legal research, and write the brief than the time that the appellate court allows in the order, the pro se party should file a motion for extension of time to serve the pro se brief. The motion for extension of time must be served before the brief is due and it should ask for a specific amount of additional time or number of days needed to finished, serve and file the brief.

J. Filing and Serving the Pro Se Brief.

After the pro se party has finished writing the brief, he or she must file the original signed brief with the appellate court and must also serve a copy of the brief to the opposing attorney (usually by mail or delivery). For serving a copy, the Florida Attorney General's Office represents the State in criminal appeals, and an Assistant Attorney General will be the opposing attorney in criminal cases. The pro se appellant must complete the certificate of service at the end of the brief and indicate the day that the pro se party gave the brief to the prison authorities for mailing. For filing with the appellate court, most courts used to require pro se appellants to deliver the original and three copies of the brief to the appellate court. But now most appellate courts only require the original signed copy of the brief to be filed. This does not change the requirement that the pro se appellant still must also serve a copy of the brief to the opposing attorney.

K. Answer Briefs.

The State may file an answer brief to respond to the arguments raised in the pro se brief. However, generally the State will not file an answer brief unless ordered by the court. If the State is ordered or chooses to file an answer brief, the attorney 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 attorney. Answer briefs are addressed in more detail in the chapter on Writing an

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Appellate Brief (Chapter 5).

L. Reply Brief.

If the State files an answer brief, the pro se party should 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, should determine if he needs to respond to any of the State's arguments. If the pro se party decides to respond, then the pro se party does so by filing a reply brief. The reply brief is due 30 days after the answer brief is served. If the answer brief was sent by mail or e-mail, then five more days are added to the due date of the reply brief. Like the initial brief, it also contains 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 refute facts stated in the answer brief. The reply brief is limited to 4,000 words or 15 pages, not including the table of contents, the table of authorities and the certificate of service. The reply brief is supposed to respond to the State's answer brief arguments. It is not supposed to merely restate the argument from the initial brief, and it cannot raise new arguments that were not raised in the initial brief. Reply briefs are addressed in more detail in Chapter 5 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 to review the appeal. The exact procedures for handling *Anders* appeals vary from court to court; however, generally a law clerk or staff attorney will first review the record on appeal and the briefs and prepare a memorandum for the judges to review. Each judge will review the memorandum, briefs, record on appeal, and appeal case file. If the panel of judges

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determines that a potentially meritorious issue has been raised in the case, the court will generally order the court-appointed attorney to file a brief, in addition to the already-filed *Anders* brief, addressing the potential merit of the issue. The State of Florida will then be given an opportunity to respond. The appellate court will consider the supplemental briefs and decide how to rule on the case. A written decision, or opinion, indicating the appellate court's ruling will then be sent to the appellant and all the attorneys.

N. Motions for Rehearing, Clarification, Certification, and Rehearing En Banc.

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 within 15 days. These motions are unusual in that they are only filed if a legitimate argument for relief can be made. They are rarely granted. Florida Rule of Appellate Procedure 9.330(a)(2)(A) 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." The motion should not be used to raise issues that were not previously argued 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. Often, the appellate court will issue a decision without opinion, which is commonly called a "per curiam affirmance" 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.

A motion for rehearing en banc requests review of the decision by all of the active judges on the appellate court. A pro se appellant should only file a motion for rehearing en banc when there are grounds that the case is of exceptional importance or that such consideration is necessary to maintain uniformity in the court's decisions. A motion based on any other ground will be

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stricken. Fla. R. App. P. 9.331(d)(1). Post-decision motions are addressed in more detail in Chapter 19 on Post-Decision Motions.

O. Mandate.

The appellate court will usually issue 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. A mandate may be recalled at the discretion of the appellate court, but not more than 120 days after it issues (this is very rare).

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CHAPTER 13: APPEALS OF MOTIONS FOR POSTCONVICTION RELIEF

A. Introduction.

Generally, there are two different types of postconviction relief motions: (1) a motion to correct, reduce, or modify a sentence pursuant to Florida Rule of Criminal Procedure 3.800 and (2) a motion to vacate, set aside, or correct a sentence pursuant to Florida Rule of Criminal Procedure 3.850 or 3.851 (for death penalty cases). Although the rules for postconviction motions under rules 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. In 2013, the Florida Supreme Court adopted rule 3.801, which governs motions seeking jail credit. The new rule only applies to motions seeking in-state jail credit; motions seeking out of state jail credit should still be filed in a rule 3.850 motion. *See Gisi v. State*, 135 So. 3d 493, 495 (Fla. 2d DCA 2014). The Florida Supreme Court created a model form for postconviction relief motions filed pursuant to rule 3.850, but there is no model form for rule 3.800 or 3.801 motions. The model form for a motion for postconviction relief under rule 3.850 is found at rule 3.987, Florida Rules of Criminal Procedure.

B. Florida Rule of Criminal Procedure 3.800.

1. Rule 3.800(a).

Generally, a court may at any time correct (1) an illegal sentence (a sentence that is longer than that allowed by law), or (2) a sentencing scoresheet error. To succeed on a rule 3.800(a) motion, however, a defendant <u>must</u> be able to show that the court records demonstrate on their face that the defendant is entitled to relief. A rule 3.800(a) motion should be initiated by filing a motion in the court that issued the judgment and sentence from which the defendant seeks relief. It is important to remember that a defendant cannot seek relief under rule 3.800(a) while his/her direct appeal is pending.

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A defendant may file a motion for rehearing in the postconviction court within 15 days of the date of the service of the order disposing of the rule 3.800(a) motion. An order denying a rule 3.800(a) motion may be appealed within 30 days of rendition of the final order or the order denying a timely motion for rehearing.

2. Rule 3.800(b).

A defendant may file a rule 3.800(b) motion to ask the sentencing court to correct any sentencing error, including an illegal sentence, during the time allowed for the filing of a notice of appeal of the sentence, or after filing a notice of appeal but before the defendant's first brief is served. 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 provide 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 defendant may file a motion for rehearing of the denial of a rule 3.800(b) motion within 15 days of the order disposing of the motion or within 15 days of the expiration of the 60-day time period for filing an order if no order disposing of the motion is filed.

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

A defendant may file a motion to correct, reduce, or modify his/her sentence during the time allowed for the filing of a notice of appeal. This means that the motion is filed within 30 days of rendition of the judgment and sentence. *See* Fla. R. Crim. P. 3.800(b)(1). If the defendant files

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the rule 3.800(b) motion before the time to file a notice of appeal expires, the filing of the rule 3.800(b) motion will stop (or toll) the running of the clock on the appeal deadline, and the defendant will not have to file a notice of appeal until after the sentencing court rules on the motion to correct, reduce, or modify a sentence. *See* Fla. R. Crim. P. 3.800(b)(1)(A).

Unless the sentencing court decides that the motion can be decided as a matter of law without a hearing, it must hold a calendar call no later than 20 days from the filing of the motion, with notice to all parties. The purpose of the calendar call is for the sentencing court to either rule on the motion or determine whether it needs to hold an evidentiary hearing. *See* Fla. R. Crim. P. 3.800(b)(1)(B). If the sentencing court decides that it needs to hold an evidentiary hearing to determine whether the defendant's sentence should be corrected, reduced, or modified, it must hold that hearing no more than 20 days after the calendar call. *See* Fla. R. Crim. P. 3.800(b)(1)(B). The sentencing court must file an order ruling on the motion within 60 days after it was filed. *See* Fla. R. Crim. P. 3.800(b)(1)(B).

b. Filing a 3.800(b) Motion <u>During</u> Direct Appeal.

A defendant may also file a motion to correct, modify, or reduce his/her sentence under rule 3.800(b) in the sentencing court while the direct appeal is pending. *See* Fla. R. Crim. P. 3.800(b)(2). A defendant wanting to file a motion under rule 3.800(b)(2) <u>must serve the motion before the first brief is served</u>. In this situation, a defendant must also file a notice of pending motion to correct sentencing error in the appellate court. *See* Fla. R. Crim. P. 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 sentencing court clerk transmits the supplemental record described in Florida Rule of Appellate Procedure 9.140(f)(6). *See* Fla. R. Crim. P. 3.800(b)(2).

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The motion must be served on the sentencing court and on all trial and appellate counsel of record. Unless the motion expressly states that trial counsel will not represent the defendant in the sentencing court, trial counsel is supposed to represent a defendant on the motion under Florida Rule of Appellate Procedure 9.140(d). *See* Fla. R. Crim. P. 3.800(b)(2)(A).

The same procedures regarding the calendar call, hearing, and ruling on a rule 3.800(b)(1) motion filed before a direct appeal apply to the consideration of a rule 3.800(b)(2) motion filed during a direct appeal, except that if the trial court does not rule on the motion within 60 days, the motion shall be deemed denied. *See* Fla. R. Crim. P. 3.800(b)(2)(B).

Under rule 9.140(f)(6), the clerk of the lower tribunal must supplement the appellate record related to the direct appeal with the 3.800(b) motion, the order granting or denying it, any amended sentence, and, if requested, a transcript of the hearing on the 3.800(b) motion. *See* Fla. R. Crim. P. 3.800(b)(2)(C).

C. Florida Rule of Criminal Procedure 3.801.

A defendant seeking jail credit for time spent in a Florida jail must file a motion under rule 3.801. This rule was adopted by the Florida Supreme Court and became effective on July 1, 2013. Importantly, defendants have only 1 year from the date that their judgment and sentence become final to file a motion seeking Florida jail credit. Defendants whose sentences became final prior to July 1, 2013, had to file their motions on or before July 1, 2014. Fla. R. Crim. P. 3.801(b).

Rule 3.801 motions seeking jail credit must be made under oath. This means that defendants must sign the motion and swear that its contents are true. In addition to an oath, the motion should contain: (1) a brief statement of the facts that support the defendant's claim for jail credit; (2) the dates, location of incarceration, and total amount of time already awarded by the sentencing court for jail credit; (3) the date, location of incarceration, and total amount of time that

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the defendant claims was not awarded; (4) the location, case number, and resolution of any charges that were pending during the defendant's incarceration for which he/she now seeks credit; and (5) whether the defendant waived any county jail credit at the time he/she was sentenced and if so, the number of days waived. It is very important to include all claims for Florida jail credit in the first motion under this rule because the postconviction court will not consider any successive motions. Fla. R. Crim. P. 3.801(d).

Under rule 3.801, the defendant may file an amended motion, receive an evidentiary hearing (unless it is clear from the record and the motion that the defendant is not entitled to the jail credit), file a motion for rehearing, and seek an appeal from the denial of the motion according to the same procedures outlined in rule 3.850, which are discussed in detail below. Most importantly, defendants should remember that a notice of appeal must be filed within 30 days of the date that the order denying the motion is rendered.

D. Florida Rule of Criminal Procedure 3.850.

A defendant who has not been sentenced to death may file a motion to vacate, set aside, or correct a sentence under rule 3.850 if the defendant has been convicted of a crime following a trial or plea of guilty or nolo contendere. The grounds for relief under rule 3.850 include: (1) the judgment or the sentence was imposed 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, or (6) the judgment or sentence is otherwise subject to collateral attack. *See* Fla. R. Crim. P. 3.850(a)(1)-(6).

One of the most commonly raised grounds in a motion for postconviction relief under rule 3.850 is that a defendant received ineffective assistance of counsel at trial. In order to sufficiently

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plead a claim of ineffective assistance of counsel, a defendant must allege both: (1) that counsel's performance was deficient and (2) that the deficient performance prejudiced the defense. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). To show that a defendant suffered prejudice 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 counsel's deficient performance. If the defendant entered a guilty plea, he/she must allege that but for the errors of counsel, they would not have pleaded, but would have instead proceeded to trial. *See Grosvenor v. State*, 874 So. 2d 1176, 1179 (Fla. 2004).

Like rule 3.801 motions, every rule 3.850 motion must include an oath. This means that a defendant must swear that the facts stated in that motion are true and correct and sign the motion before filing it in the postconviction court. Another person may not sign the oath on behalf of the defendant unless the defendant is physically unable to sign. *See Piper v. State*, 21 So. 3d 902, 903-04 n.1 (Fla. 2d DCA 2009). A defendant does not, however, have to attach any affidavits or sworn testimony to his/her motion. If the defendant fails to include the oath in the motion, it will be dismissed as facially insufficient. *See Almodovar v. State*, 74 So. 3d 1140, 1140 (Fla. 2d DCA 2011).

A defendant is not necessarily entitled to a free copy of his/her trial transcript for the purposes of preparing his/her motion. Nor is a defendant entitled to court-appointed counsel for the filing of a rule 3.850 motion for postconviction relief. The defendant may file a motion in the postconviction court seeking the appointment of counsel. A motion to appoint counsel in the postconviction court and on appeal from the order denying postconviction relief should address the adversary nature of the case, its complexity, the need for an evidentiary hearing, or the need for substantial legal research. *See* Fla. R. Crim. P. 3.850(f)(7). If the court orders an evidentiary

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hearing on the defendant's motion, the defendant may request court-appointed counsel if the issues are complicated or may require expert testimony and should state 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 absolutely entitled to appointment of postconviction counsel for a death penalty case. *See* Fla. R. Crim. P. 3.851(b).

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 postconviction relief under rule 3.850 at any time. *See* Fla. R. Crim. P. 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 case in which a defendant has received a death sentence, the defendant must file his/her motion under rule 3.851 within 1 year of when the judgment and sentence became final. *See* Fla. R. Crim. P. 3.850(b) and 3.851(d)(1). A sentence becomes final thirty days after rendition in the postconviction court, or, when an appeal is taken, on the date that the appellate court issues its mandate.

The only exceptions to the 1- or 2-year deadlines for filing a motion for postconviction relief (that is not based on 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 filing window for the motion and the right has been held to apply retroactively; or (3) the defendant hired an attorney to file a rule 3.850 motion for him/her, but the attorney did not file the motion on time. *See* Fla. R. Crim. P. 3.850(b)(1)-(3), and 3.851(d)(2)(A)-

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(C). A "fundamental constitutional right" is one that is given to a defendant under the United States or Florida constitutions.

Like a rule 3.800(a) motion, a defendant may not file a rule 3.850 or 3.851 motion for postconviction relief 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 filing a postconviction motion. The 1- or 2-year deadline for filing a motion does not begin to run until the judgment and sentence become final, which occurs after the direct appeal has been concluded. If a direct appeal was not filed, the judgment and sentence become final 30 days after the filing of the judgment and sentence in the postconviction court clerk's office.

Once a defendant files a motion for postconviction relief under rule 3.850 the postconviction court clerk must send the defendant's motion and file to the postconviction court. *See* Fla. R. Crim. P. 3.850(f). If the motion, the files, and the records in the case show without doubt that the defendant is not entitled to relief, the postconviction court may deny the motion without a hearing. *See* Fla. R. Crim. P. 3.850(f)(5).

If the postconviction court's decision that the defendant is not entitled to relief is based on the contents of the record, and not the legal sufficiency of the motion, the postconviction court must attach to its order denying the motion those portions of the record that show that the defendant is not entitled to relief. *See* Fla. R. Crim. P. 3.850(f)(5). If the motion, files, and record do not conclusively show that the defendant is not entitled to relief, the postconviction court is required to order the state attorney to respond to the motion. *See* Fla. R. Crim. P. 3.850(f)(6).

If the postconviction court has not otherwise denied the defendant's motion, after the state attorney files its response, the postconviction court must determine whether the defendant is

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entitled to an evidentiary hearing on his/her motion. If it determines that an evidentiary hearing is not required, the postconviction court must rule on the defendant's motion. If it determines that an evidentiary hearing is required, the postconviction court 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* Fla. R. Crim. P. 3.850(f)(8)(A).

A defendant is not necessarily entitled to be present at the hearing on his/her motion. *See* Fla. R. Crim. P. 3.850(g). The postconviction court has the authority and power to resolve his/her motion at a hearing without the defendant being at that hearing. *See* Fla. R. Crim. P. 3.850(g).

A defendant may be permitted to file a second or multiple motions for postconviction relief under rules 3.850 and 3.851. But that is true only if each and every motion after the first is timely and raises new grounds for relief not previously asserted and decided on the merits in any prior motion under rules 3.850 or 3.851. *See* Fla. R. Crim. P. 3.850(h). Because there is a strong preference to resolve all postconviction claims in one motion, any motion filed after the disposition of the first motion should explain why the defendant failed to assert the new grounds for relief in the first motion. If a defendant files a second motion for postconviction relief that states a ground that the defendant raised in his/her first motion for postconviction relief, the second motion will be dismissed as successive. *See* Fla. R. Crim. P. 3.850(h). The postconviction court 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 postconviction 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 postconviction procedures. *See* Fla. R. Crim. P. 3.850(h)(2).

If the postconviction court denies the defendant's rule 3.850 motion, the defendant may appeal that denial within 30 days of the date the order is filed in the postconviction court clerk's

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office. *See* Fla. R. Crim. P. 3.850(k). 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 a belated 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* Fla. R. Crim. P. 3.850(*l*) and Fla. R. App. P. 9.141(c).

A defendant may also file a motion for rehearing of any order denying the motion for postconviction relief under rule 3.850. *See* Fla. R. Crim. P. 3.850(j). The motion for rehearing must be filed within 15 days of the date of the service of the order denying the defendant's motion. *See* Fla. R. Crim. P. 3.850(j). The postconviction court must rule on the motion for rehearing within 15 days of the State's response, if there is one, but not less than 40 days from the date of the order disposing of the postconviction motion. Fla. R. Crim. P. 3.850(j). The defendant has 30 days from the date the order on a timely motion for rehearing is rendered to file an appeal. Fla. R. App. P. 9.020(i). The postconviction court clerk must promptly serve the defendant with a copy of any order denying his/her motion for postconviction relief or denying his/her motion for rehearing. *See* Fla. R. Crim. P. 3.850(i). The clerk must also note on the order the date that the clerk served the defendant with that order. *See* Fla. R. Crim. P. 3.850(i).

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Chapter 14: Appeals of Orders from Dependency and Termination of Parental Rights Cases

A. Introduction.

This Chapter is intended to aid pro se parents involved in dependency and termination of parental rights proceedings, which are governed by Chapter 39, Florida Statutes. Pro se means that the parent does not have an attorney and has to represent himself or herself. If the trial court has already found that a parent is indigent in the trial-level proceedings (i.e., that the parent does not possess the financial means to afford an attorney), then an attorney will often also be appointed to represent the parent in the appeal. If the court-appointed attorney for the appeal does not find anything of merit to argue after a thorough review of the appellate record, the attorney will withdraw from the appeal without filing an initial brief on behalf of the parent. Under those circumstances, the parent will usually be allowed a short period of time to file his or her own pro se initial brief. This Chapter provides guidance to the parents who file their own briefs in the appellate courts in Chapter 39 cases.

B. Parties to a Chapter 39 Proceeding.

Although the Department of Children and Families is involved in the majority of proceedings involving children under Chapter 39, there are cases where private petitions are filed and the Department is not involved. Thus, the Department is not always party. Section 39.01(58), Florida Statutes, defines the parties as the petitioner, the parents of the child, the child, the Department if involved, the Guardian ad Litem or a representative of the Guardian ad Litem program, if appointed.

C. The Right to Counsel in Chapter 39 Proceedings.

At the trial level, Florida Rules of Juvenile Procedure 8.320 and 8.515 generally provide that:

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1) At each stage of the proceedings, the court will advise the parent of the right to have counsel present.
2) The court will appoint counsel to indigent parents or others who are so entitled as provided by law, unless appointment of counsel is waived by that person.
3) The court will ascertain whether the right to counsel is understood.

Chapter 39 proceedings are handled in circuit (trial) courts without a jury, and they typically involve three different phases:

i) Shelter Hearing – where the petitioner seeks to have the child removed from the parent's custody and placed outside the home. Section 39.402(5)(b)2., Florida Statutes, provides that a parent has the right to have an attorney at the shelter hearing, and to have an attorney appointed if found indigent.
ii) Dependency Case – The petitioner seeks to have the child adjudicated dependent based on allegations of abuse, abandonment, or neglect, or a substantial risk of such harm, against the parent or legal custodian. Section 39.505, Florida Statutes, provides that the court should inform the parent that he or she has the right to have an attorney present or appointed before the adjudicatory hearing. An adjudicatory hearing is another name for a trial.
iii) Termination of Parental Rights Case – The petitioner seeks to have the parent's rights to the child terminated. Termination permanently severs the parent's legal rights to the child. Section 39.807(1)(a), Florida Statutes, provides that the court should advise the parent that he or she has the right to have an attorney present, and to have an attorney appointed if found indigent.

To be declared indigent in the trial court, the parent must appear before the court and complete a financial affidavit detailing all assets and debts. If, after reviewing the financial affidavit, the trial court finds the parent to be indigent, it will appoint an attorney to represent the

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parent. If the case goes from the dependency phase to a termination of parental rights proceeding, the court may appoint the same lawyer who represented the indigent parent in the dependency proceeding or a different lawyer. The lawyer who represents the indigent parent in the termination proceeding stays on the case until a final judgment is entered. The same or different attorney may be appointed for the appeal.

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

If the trial court enters an order adjudicating a child dependent or a final judgment terminating parental rights, and the parent wants to appeal that order or final judgment, the parent should tell the court-appointed attorney that he or she wants to appeal. Then, the attorney is required to file a notice of appeal no later than 30 calendar days after the order being appealed is rendered. The date that an order or final judgment is rendered is the date when the order or final judgment is filed in the clerk's office of the circuit court where the trial was held. The attorney will often also file directions to the clerk to order the record and designation to court reporter to order any hearing transcripts required for the record. If the parent was not found indigent and wants to represent himself or herself on appeal, the parent is responsible for timely filing the notice of appeal, directions to the clerk and designation to the court reporter. (See Chapter 3: Pulling Together the Record on Appeal.) After the notice of appeal is filed in the trial court, the trial court clerk will send it to the district court of appeal that handles the appeals for that circuit court. Rule 9.146(g) provides the timeframes for the court reporter to complete and file the transcript(s) with the clerk who is responsible for electronic transmission of the record to the appellate court.

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. Florida Rule of Appellate Procedure 9.146 is specifically related to Chapter 39 appeals. If the appellate

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rules concerning civil cases are different from Rule 9.146, then Rule 9.146 controls. An important difference for appeals in Chapter 39 cases is that the law requires appeals involving 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 may be decided in as little as six months.

E. Representation During the Appeal.

Once the record is prepared, the attorney representing the parent will review the record. In many cases, the attorney will find valid issues to raise on appeal. Also, in many cases, the same attorney will 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 will keep the parent informed of the progress of the appeal.

F. What Happens When the Attorney Withdraws from Representation?

Sometimes court-appointed attorneys cannot find any valid issues to appeal based on their professional judgment. If that happens, the 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 or 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 the 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.

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When the court-appointed attorney finds no valid issues, the attorney will file a motion to withdraw from representing the parent in the appeal. The motion to withdraw will be served on the parent and all the opposing attorneys. The attorney will certify in the motion that he or 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, then the attorney will provide the parent with the record and all the court documents; this is so that the parent can begin his or her self-representation. In granting the motion to withdraw, the appellate court will generally give the parent 20 days from the date of the order, to file his or her pro se brief. However, each district court handles the exact procedure differently. For example, the First District Court of Appeal usually requires the parent to file a notice of intent to file a brief, and then grants the parent 20 days to file the brief. In the order granting withdrawal, 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 or she can obtain the funds, seek to retain a new attorney to represent the parent in the appeal after the court-appointed attorney withdraws; however, the indigent parent must be aware that a trial court cannot appoint another appellate attorney after the first appellate attorney has withdrawn on the basis of finding nothing of merit to argue. If the parent wants to hire a new attorney, the new attorney must be hired before the 20-day period for filing the initial brief ends, and the new attorney must inform the appellate court of the representation.

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 the Florida Rules of Appellate Procedure, especially

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Rules 9.146 and 9.210. The pro se brief must also be served on all other parties. If the other parties are represented by attorneys, the parent must serve those attorneys.

G. Appealing Orders in Dependency Proceedings.

In dependency proceedings, a parent can generally file a notice of appeal from orders of adjudication of dependency or orders of disposition of dependency. The order of adjudication is entered after an evidentiary hearing at which the petitioner (Department of Children and Families, or other petitioner) has the burden to prove the child is "dependent." For a trial court to adjudicate a child dependent, the petitioner 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." An order of disposition is entered after a child has been adjudicated dependent. The order of adjudication of dependency and the order of disposition are considered "final orders" for appeal purposes. Another common order appealed is an order that places the child outside the custody of the parent, and terminates the Department's protective supervision in the case.

Appeals from final dependency orders must be filed in accordance with the Florida Rules of Appellate Procedure, especially Rule 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 the 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 clerk's office of the trial court within 30 days of rendition of the dependency order and not to wait for the disposition order.

H. Appeals from Orders Terminating Parental Rights.

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A parent may appeal from the final judgment terminating his or her parental rights or, if there is a separate order of disposition, the parent may also appeal from that order. The order terminating parental rights permanently severs the legal bond between the parent and child. For a trial court to terminate parental rights, it must find that grounds exist for termination. The petitioner (Department of Children and Families or other petitioner) generally must prove one or more of the following grounds by clear and convincing evidence: (1) the parent abandoned or voluntarily surrendered 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 significant 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 or another child to aggravated child abuse, sexual battery, sexual abuse, or chronic abuse; (7) the parent committed murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or 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 or her blood, urine, or meconium, and the biological mother

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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; (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; (12) the court determines that the child was conceived as a result of sexual battery made unlawful under Florida law or similar law of another state, territory possession, or Native American tribe where the offense occurred; or (13) the parent is convicted of an offense which requires the parent to register as a sexual predator under section 775.21, Florida Statutes. *See* Section 39.806, Florida Statutes.

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 parent's ability to care for the child's safety, well-being, and to not endanger the child's physical, mental, or emotional health; (4) the child's present and future mental and physical health needs; (5) 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; (6) the likelihood the child, especially if older, will remain in long-term foster care if parental rights are terminated; (7) 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; (8) the length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; (9) the depth of the relationship existing between the child and the present custodian; (10) the reasonable wishes of the child; and (11) the

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recommendations for the child provided by the guardian ad litem. *See* Section 39.810, Florida Statutes.

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).

I. Non-Final Orders.

A parent may also appeal from the lower court's denial of a motion for relief from judgment under Florida Rule of Juvenile Procedure 8.270, which is a non-final order listed in Florida Rule of Appellate Procedure 9.130(a)(5). Appeals from non-final orders must also be filed within 30 days of the order being appealed. Also consult Chapter 9 of this Handbook on Appeals from Non-Final Orders.

If a non-final order does not fall within the types described in Rule 9.130, it is not appealable. However, the non-final order may be reviewed by a petition for writ of certiorari, if certain requirements are met. 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 extraordinary writs, such as writ of certiorari – the9etitionn must be filed within 30 days after rendition of the order being appealed.

J. Getting Started in Writing the Pro Se Brief.

Florida Rule of Appellate Procedure 9.146I requires that in briefs and other papers filed, the parents and children who are parties can only be referred to by initials, not by name. The

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parent's job in writing the pro se brief is to show that reversible error occurred during the trial court proceeding. The pro se brief must comply with the Florida Rules of Appellate Procedure, including 9.210. Please also refer to Chapters 5 and 6 of this Handbook about how to write the pro se brief.

To write the pro se brief, a parent should first read the entire record on appeal from the trial 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, a parent should not rely just on his or her memory of what happened in the trial court. The appellate court will only consider the facts that appear in the record on appeal, which will contain the documents, pleadings, motions, hearing/trial transcripts, and like documents, from the proceedings in the trial court. Notes taken while reading the record may assist a parent in later citing the correct page number for the document and testimony when referring to the record in the brief.

Second, a parent should 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 that the trial court ruled against? Did the trial attorney state that something would happen and it did not? What arguments were made by the attorneys for the Department and/or Guardian ad Litem? Did the trial judge fail to allow or exclude certain evidence, and/or fail to make findings to support its decision?

Third, a parent should consider whether the record is missing any documents or transcripts needed to present the issues to be raised on appeal. Sometimes a hearing transcript, a motion, or some other document which was filed in the trial court and is needed for the appeal may get left out of the appellate record. If that happens, then the 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).

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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 indicate the time 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 appealing party's responsibility to be sure the missing documents are filed within the allowed time. If the missing documents are not filed, then that party should ask for an extension of time in the appellate court and contact the lower tribunal court clerk. If the missing document is a hearing or trial transcript, the party will file a motion to transcribe in the trial court so that an order can be entered directing the court reporter to transcribe the hearing or trial.

Fourth, the parent does legal research to find case law and statutes that support his or 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 or herself. Most law schools and courts have law libraries where any parent can do legal research. Public libraries also often have computers with internet access, where a parent could conduct legal research on the internet.

Fifth, the party appealing determines the standard of review for each issue being raised on appeal. The relevant case law will often explain what standard of review should be applied for the type of error being discussed. There are several different standards of review. For example, if the trial 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 trial court has discretion to

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make a ruling. Its decisions to admit evidence or continue a case are discretionary rulings. These discretionary rulings will be reviewed under the "abuse of discretion" standard. To prove that the trial 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. It requires that there be some evidence in the record to support the court's findings. The fact that a parent believes the evidence he or she presented is more believable than the evidence that the petitioner (Department or other) presented is not a basis for reversing the order.

Next, the parent drafting the brief should make an outline of the argument sections of his or her brief. That outline lists the issues the pro se parent intends to raise and the standards of review for each of those issues. The parent makes notes about the facts that support these arguments that will be included in the brief. The parent 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 when writing the brief.

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

K. 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 brief. For example, if the parent

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believes in a dependency proceeding that the record did not reflect that he or she abandoned, abused, or neglected the child, then the 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 the argument is located before the argument in the pro se brief. But it is often written last. It summarizes the argument and does not exceed five pages, although it is usually much shorter. *See* Fla. R. App. P. 9.210(b)(4). Once the argument is written, the pro se party should pick out the key ideas from the argument and use those key points as the summary of argument. (Or, if the summary of the argument is written first, it can be used as an outline for writing the issues in the argument section).

Argument: A parent can use the outline he or she made to organize the argument into sections for each issue. First, the parent should state the issue. The parent should then give the standard of review for that issue. Next, he or she should explain the general law that applies to that issue, and cite a few cases and statutes that support the argument. The parent should also explain how the facts in the case show that an error was made. Case law and statutes that most closely relate to the issues being raised in the specific appeal should be cited to support the arguments (although it is not generally necessary to cite a large number of cases that say much the same thing, the most relevant cases should be cited). A parent should also be sure to cite to the volume and page number in the appellate record to direct the appellate court to the facts that support his or her case. Finally, the parent should explain what relief or outcome he or she is

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asking for in the appeal, which is usually for the dependency or termination order to be reversed, and/or for a new trial or hearing.

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 or outcome the pro se parent is asking for. For instance, the parent will usually ask the appellate court to reverse the dependency order or termination order, and/or will request a new trial or hearing.

Table of Contents: After the parent has finished writing his or 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 should also be listed with its beginning page number.

Table of Citations: All cases and legal authorities cited in the brief should be listed in alphabetical order, along with the page numbers of the brief where each is cited. Any statutes cited in the brief should be listed in numerical order. If other authorities cited, such as law books or articles, those should be included in the table of citations as well, along with the page numbers where each authority is cited.

Certificate of Service and Certificate of Typeface Compliance: A certificate of service must be included at the end of the pro se brief to show the parent has mailed a copy of the brief to all parties to the proceedings, with the exception of the child unless the child was represented by an Attorney ad Litem. An example of a certificate of service for a pro se litigant is included in Florida Rule of Appellate Procedure 9.420(d)(2). If the pro se parent is an inmate, he or she should review the example of certificate of service in Rule 9.420(d)(1). If the pro se brief is typed, it must be typed in either Arial 14-point font or Bookman Old Style 14-point font, and must include a certificate at the end of the brief saying the brief is typed in one of those fonts. *See* Florida Rule

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of Appellate Procedure 9.045. If the brief is handwritten, it must be printed (not in script), but it is not necessary to include a certificate of typeface compliance.

Page Limit: The brief generally cannot exceed 13,000 words or 50 pages.

L. Motions for Extension of Time.

Florida Rule of Appellate Procedure 9.146(g)(3)(B) requires the initial brief to be served within 30 days of service of the record on appeal or the index to the record on appeal. However, some district courts have shortened the time-frame even more, so the parent should check the notice issued at the beginning of the case or call the appellate court clerk to check. 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 as a serious illness or hospitalization, prevents the pro se parent from completing the brief in the time allowed, the 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.

M. Filing and Serving the Pro Se Brief.

After the pro se parent has finished writing the brief, he or she must file the original signed brief with the appellate court and must also serve a copy of the brief to the opposing attorneys (usually by mail or delivery). For service, the parent can obtain the names and addresses of the attorneys and any other party by either reviewing the certificate of service in the parent's former

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attorney's motion to withdraw or by asking the appellate court clerk's office. The parent must complete the certificate of service at the end of the brief stating the date the parent served (mailed) the brief to the opposing attorney or attorneys.

For filing with the appellate court, most courts used to require pro se appellants to deliver the original and three copies of the brief to the appellate court. But now most appellate courts only require that the original signed copy of the brief be filed. This does not change the requirement that the pro se appellant still must also serve a copy of the brief to the opposing attorney or attorneys.

Most courts now permit pro se parties to serve (send) documents to other parties by e-mail, and to file documents electronically with the court, if certain requirements are met. The pro se parent should examine Florida Rule of Appellate Procedure 9.420 and Florida Rule of Judicial Administration 2.516, as well as the specific procedures for the appellate court where the appeal is pending (often found on the court's website or by calling the clerk of court's office), to determine whether he or she may be permitted to file and/or serve the brief electronically.

N. Answer Briefs.

If the Department of Children and Families and the Guardian ad Litem are parties, they 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 Chapter 5 on Writing an Appellate Brief.

O. Reply Brief.

Upon receipt of the answer brief(s), the pro se parent should carefully read the brief(s) and take notes to outline the arguments that are made in the answer brief. The pro se parent is not

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required to file a reply brief but should file one if he or she wants to respond to any of the arguments made in the answer brief(s). 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 in both answer briefs. Florida Rule of Appellate Procedure 9.146(g)(3)(B) requires the reply brief to be served within 15 days of the service of the answer brief.

Like the initial brief, the reply brief 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, but the reply brief may do so if it is necessary to refute facts stated in the answer brief. The reply brief is limited to 4,000 words or 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 responds to the arguments in the answer briefs. It is not supposed to merely restate arguments from the initial brief, and it cannot raise new arguments that were not raised in the initial brief. Reply briefs are addressed in more detail in Chapter 5 on Writing an Appellate Brief.

P. 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 three appellate judges for review. Often, a law clerk or staff attorney will review the record on appeal first and the briefs and prepare a memorandum for the judges to review. Each judge will review the memorandum, briefs, record on appeal and appellate 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.

Q. Motions for Rehearing, Clarification, Certification, and Rehearing En Banc.

After the appellate court issues its decision, a post-decision motion, such as a motion for

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rehearing, clarification, or certification, may be filed with the appellate court within 15 days. These motions are unusual in that they are only filed if a legitimate argument for relief can be made. They are rarely granted. Florida Rule of Appellate Procedure 9.330(a)(2)(A) 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." The motion should not be used to raise issues that were not previously argued 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 appellate court will issue a decision without opinion, which is commonly called a "per curiam affirmance" or "PCA." If that occurs and the pro se party believes "a written opinion would provide a legitimate basis for supreme court review," then that party may file a motion to request that the court issue a written opinion.

A motion for rehearing en banc requests review of the decision by all of the active judges on the appellate court. A pro se appellant should only file a motion for rehearing en banc when there are grounds that the case is of exceptional importance or that such consideration is necessary to maintain uniformity in the court's decisions. A motion based on any other ground will be stricken. Fla. R. App. P. 9.331(d). Post-decision motions are addressed in more detail in Chapter 19 on Post-Decision Motions.

R. Mandate.

The appellate court will usually issue 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, the appellate final judgment, and signals the end of the appeal. A mandate may be recalled at the discretion of the appellate court, but not more than 120 days after it issues (this is very rare).

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S. Belated Appeals: What Happens if 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. Thus, an attorney's mistake in failing to timely file a notice of appeal within 30 days usually will not be held against the parent. Rather, when a parent timely asks the attorney to file an appeal, but the attorney fails to do so, the parent will usually 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 permits the trial court to resolve any factual issues and any defenses to allowing a belated appeal (such as undue delay).

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

In J.B. v. Dep't of Children & Families, 170 So. 3d 780, 785 (Fla. 2015), the Florida Supreme Court held that indigent parents who are represented by a court-appointed attorney have a right to effective assistance of counsel (i.e., competent representation). After the J.B. case was decided, significant amendments were made to the Florida Rules of Juvenile Procedure to create a process for claiming ineffective assistance of counsel in termination of parental rights proceedings. A parent's right to appointed counsel is governed by sections 39.013(9)a. and 27.511, Florida Statutes. A parent who wants to bring a claim of ineffective assistance of counsel should refer to Form 8.9831 in the Florida Rules of Juvenile Procedure for guidance on how to file such a motion.

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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

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[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, unless review of the final agency decision would not provide an adequate remedy. *See* Section 120.68, 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.

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recommended/proposed order may be waived. Exceptions generally must be filed with the clerk 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

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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) and Section 120.68, Florida Statutes. 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.

<u>Final agency orders</u>. 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 filing fee is paid directly to the district court of appeal only, not to the agency. 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. Thus, filing a motion for rehearing generally does not extend the time for seeking appellate review.

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.

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But it is better 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) and file a copy of the notice of appeal with the district court of appeal. 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. As with appealing final orders of agencies, the filing fee is paid directly to the district court of appeal only, and motions for rehearing generally do not extend the time for seeking appellate review.

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)(2), 9.190(c), and Form (g) in Florida Rule of Appellate Procedure 9.900; *see also* Chapter 3 on Pulling Together the Record

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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

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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. Most agency clerks now transmit the record on appeal electronically to the district court of appeal and a copy of the electronic record can be requested. *See* Florida Rule of Appellate Procedure 9.200. 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

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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. *See* Florida Rule of Appellate Procedure 9.190(e) and Section 120.68, Florida Statutes.

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 30 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 30 days of the answer brief. The initial and answer briefs generally cannot be longer than 13,000 words or 50 pages each, and the reply brief cannot be more than 4,000 words or 15 pages. Also, computer-generated briefs must be filed in either Arial 14-point font or Bookman Old Style 14-point font. *See* Florida Rules of Appellate Procedure 9.045, 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

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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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CHAPTER 16: UNEMPLOYMENT COMPENSATION/ REEMPLOYMENT ASSISTANCE APPEALS

A. Introduction.

The State of Florida Department of Economic Opportunity ("DEO") administers the State's Reemployment Assistance Program, which in part involves the payment of compensation to unemployed individuals. DEO makes a "determination" regarding a claim for compensation, and that determination can result in a claimant being denied benefits or in an employer being charged for benefits paid. If an adversely affected party disagrees with DEO's determination, there is a right to appeal. To exercise that right, the party must file an appeal with DEO's Office of Appeals (the "Office"), through which an appeals referee will hold a hearing. An adversely affected party may in turn appeal the appeals referee's decision to the Reemployment Assistance Appeals Commission (the "Commission"). The Commission is the last level of administrative review for reemployment assistance determinations. The Commission is an independent body within DEO and is comprised of three commissioners appointed by the Governor and confirmed by the Florida Senate. The law and rules regarding reemployment assistance claims are in Chapter 443 of the Florida Statutes and Chapters 73B-11, 73B-20, 73B-21, and 73B-22 of the Florida Administrative Code. General information about the Reemployment Assistance Program can be found on DEO's website at www.floridajobs.org. Information about how to appeal a claim determination is available at https://floridajobs.org/Reemployment-Assistance-Service-Center/reemployment-assistance/claimants/file-an-appeal. The Commission's website is available at www.raac.myflorida.com and provides online access to appeal a referee's decision as well as access to important Commission orders, newsletters, and links to relevant statutes and rules.

B. The Initial Claim and Hearing Process.

A worker who loses his or her job can file a claim for reemployment assistance benefits;

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the claim must be filed online at https://www.floridajobs.org/Reemployment-Assistance-Service-Center/reemployment-assistance/claimants/apply-for-benefits. Rule 73B-11.013(2) lists exceptions for those who cannot realistically file an application online. *See* Fla. Admin. Code R. 73B-11.013(2) (a), (b), (c). DEO first determines whether a person has earned enough wages in insured work during the period leading up to the claim's filing date ("base period"). If DEO grants the claim, it sends a notice stating the maximum amount of benefits the claimant can receive. If DEO denies the claim, it must explain why. DEO can deny a claim either because the claimant did not earn sufficient wages during the base period or because the wages that were earned were not for insured work.

Once the claimant has established monetary eligibility for a claim, DEO must determine whether the claimant is disqualified for any reason and whether the claimant meets weekly eligibility criteria. Section 443.101, Florida Statutes, lists reasons for disqualifying a claimant for benefits. The most common reasons for denial are that the claimant quit work for personal reasons and that the claimant was fired for workplace misconduct. Section 443.091, Florida Statutes, lists the weekly eligibility criteria for continuation of benefits; failure to demonstrate adequate efforts to find work is the criterion most commonly left unmet. DEO's determination is final unless the claimant or employer asks the Office for a hearing. The request must be made within 20 days of the date DEO mails its determination. A party may request a hearing online at https://floridajobs.org/Reemployment-Assistance-Service-Center/reemployment-assistance/employers/file-an-appeal. An appeal information booklet and hearing notice will be sent to the parties or will be available on-line when the appeal is filed. Both documents should be read carefully.

An "appeal hearing" is like a trial: The parties present evidence, which may include

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witness testimony, documents, photographs, and recordings (audio or video), and a party may ask questions of the opposing party and of any witnesses. The evidence will either support or rebut the asserted basis for the determination on review (*e.g.*, the claimant would present evidence at an appeal hearing to rebut a determination that he or she did not qualify for benefits because of a voluntary quitting or a termination for workplace misconduct). After the hearing, an "appeals referee" will prepare a written decision and send it to the parties. The written decision is final unless a party seeks review by the Commission within 20 days of the date the decision was mailed. The referee's decision will explain the methods for filing an appeal with the Commission.

When the Commission reviews the appeal referee's decision, it will rely on the evidence presented at the appeal hearing. The Commission generally does not conduct a second hearing. Instead, the Commission reviews the record to determine whether the hearing was fair and procedures were followed, whether there is competent, substantial evidence to support the facts stated by the appeals referee, and whether the referee's legal conclusions are correct. The Commission may send the case back to the appeals referee to take additional evidence. After completing its review, the Commission will issue an order that affirms, modifies, or reverses the appeals referee's decision, or that sends the case back ("remands") with instructions for further review. 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 reemployment assistance cases. In other words, at this point, only a district court of appeal can review the Commission's decision.

C. Review by the District Court of Appeal.

Florida Rule of Appellate Procedure 9.190 governs an appeal from the Commission's order to the district court of appeal, but with some exceptions, the appeal will be handled under the appellate rules that govern civil appeals. An appeal to the district court, generally speaking, will

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not proceed on the internet or by telephone or fax in the same way that reemployment assistance claims and appeal proceedings with the Office and the Commission are handled and processed.

Nevertheless, service of documents 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(b)(1). 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(b)(1) and 2.525(c)-(d).

To appeal the Commission's order, the party seeking review (the "appellant") must file a notice of appeal (rule 9.900(e) prescribes a form) and a conformed copy of the order with the clerks of both the Commission and the appropriate district court of appeal. Section 443.151(4)(e), Florida Statutes, provides that the appeal may be taken to the court for the district in which the claimant resides, the job separation occurred, or the Commission's order was entered. The appellant also must serve the notice and order by email and in paper form on any opposing party.

The notice of appeal must be filed with the Commission's clerk within 30 days of the date the Commission files the order to be reviewed. This time period cannot be extended. The district court of appeal will not be able (that is, it will not have jurisdiction) to hear the appeal if the notice of appeal is not filed on time. The date the notice of appeal is mailed will not matter; the Commission's clerk actually must receive the notice of appeal by the 30th day following the day the Commission's order was filed with its clerk. A claimant that takes an appeal will not need to pay a filing fee, but an employer that appeals must include the $300 filing fee with the notice of

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appeal filed with the district court of appeal's clerk. The "appellees" in the case will be the parties not challenging the Commission's order: the Commission and either the employer or the claimant.

Rule 73B-22.009(1), Florida Administrative Code, identifies what will be included in the record transmitted to the district court for the appeal. Within 10 days of filing the notice of appeal, the appellant may direct the Commission's clerk to exclude from the record any of the documents or exhibits listed in the rule. If the appellant directs the clerk to exclude materials, the appellant must also serve on the appellees a statement of the agency actions to be reviewed. Florida Rule of Appellate Procedure 9.900(g) prescribes a form to use for filing the directions with the Commission's clerk.

For most appeals, the appellant also will want a transcript (a typed, verbatim record of a hearing prepared by a court reporter) of the audio recording from the hearing before the appeals referee. The appellant orders that transcript by filing (also within 10 days of filing the notice of appeal) a "designation" with the Commission's clerk, and the designation should identify the date of the hearing. If the appellant will hire a court reporter to prepare the transcript, the designation should request that a copy of the audio recording of the hearing be provided to that court reporter by the Commission's clerk. In the alternative, the appellant may request that the Commission's clerk make the transcription arrangements. A sample of the designation to reporter appears at Florida Rule of Appellate Procedure 9.900(h). An employer must make financial arrangements in advance for preparation of the transcript. A claimant does not have to pay for the preparation of a transcript; however, a claimant, like any other appellant, is responsible for ensuring the district court of appeal has a complete record on appeal.

The Commission's clerk will prepare the record and send an index of the record to the parties within 50 days after filing the notice of appeal. The Commission's clerk will file the record

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on appeal with the district court clerk within 60 days after filing the notice of appeal. Florida Rule of Appellate Procedure 9.200(f) allows a party to ask the district court of appeal for permission to correct or supplement the record after the record has been transmitted.

The appellant must serve an initial brief on counsel for the appellees within 70 days after filing the notice of appeal, and the brief also must be filed promptly with the district court of appeal. (For guidance on how to prepare this brief, see the chapter in this handbook titled, "Writing an Appellate Brief."). The district court of appeal will review the record to determine whether the facts stated by the appeals referee had competent, substantial evidence (that is, proper evidence) in the record to support those facts. If there is evidence in the record to support those facts, then the referee's findings will stand, even if there also is contradictory evidence in the record. The district court will review conclusions of law under the "clearly erroneous" standard. This means that the district court will determine only whether the correct rules of law were applied; the court will not reverse the Commission's decision simply because the court disagrees with the Commission's ultimate legal conclusion. Thus, the appellant's initial brief should show how the findings of fact do not have support in the record evidence and how the referee or the Commission followed the wrong legal rules. The district court cannot consider new evidence in support of a claim.

If the claimant filed the notice of appeal, then the employer and the Commission will be the appellees; if the employer filed the notice of appeal, then the claimant and the Commission will be the appellees. The Commission almost always submits an answer brief in support of its order. The non-Commission appellee (either the claimant or the employer) should serve an answer brief responding to the arguments made by the appellant. The appellee must serve an answer brief on the appellant and any other appellee within 30 days after service of the initial brief. If the

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appellee received the initial brief by mail, then the appellee may add five days to the 30-day period. The answer brief also must be filed promptly with the district court of appeal. The appellant then may serve a reply brief (which would contain arguments responding to or rebutting those in the answer briefs) within 30 days after service of the answer briefs. If the answer briefs were mailed, five days may be added to that period. The appellant also must promptly file the reply brief with the district court.

Florida Rule of Appellate Procedure 9.420(c) and Florida Rule of Judicial Administration 2.516 govern service of briefs and other documents. A pro se e-filer may use email to serve the opposing parties, provided he or she complies with the formatting and other requirements set out in the rules. Florida Rule of Judicial Administration 2.516(b)(2) lists alternative methods of service by pro se parties who choose not to utilize email. Florida Rules of Appellate Procedure 9.045 and 9.210 set out word/page limits, font type, and font size for briefs. *See* Chapter 5, "Writing an Appellate Brief." Once the briefs have been submitted, the appeal will be assigned to a panel of three appellate judges. Any party may request an "oral argument" before a panel of judges, but the request must be served no later than 15 days after the last brief is due to be served. After considering the briefs and any oral argument, the district court of appeal will issue a written decision, which will either affirm or reverse the Commission's order. A limited number of post-decision motions are allowed. *See* Chapter 19, "Post-Decision Motions—Appellate." The district court of appeal's decision ordinarily is the final step in the appeal process.

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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" orders in workers' compensation cases.

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 Rule 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 or electronically served (e-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" or motion to be relieved of the costs of preparing the record on appeal and a "sworn financial affidavit."

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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 or electronically served (e-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 or e-mailing stated on the order. For example, if the order states that the order was furnished by mail or e-mail on October 3, 2015, to the parties, the notice of appeal must be filed 30 days from October 3, 2015, the date the judge's office stated on the order that it mailed or e-mailed the order to the parties.

To start the appellate process, the notice of appeal must be filed 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)(4). This means that a claimant appealing the trial judge's denial of certain money and

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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)(4).

As an example, a claimant who lost a request for temporary indemnity (money) benefits for the period of January 1, 2015, through May 31, 2015, 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, 2015, through May 31, 2015, 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. The filing of this request delays the time for filing notice of appeal until the judge mails or emails an order granting or denying the request.

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" and financial affidavit 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," and send a copy to the attorney for the opposing party. 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

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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).

E. The Costs of Preparing the Record on Appeal.

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

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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) describe what the appellant needs to include in the initial brief and other general requirements. *See also* Chapter 5 of this Handbook, Writing and Appellate Brief.

After the initial brief is filed, the appellee has 30 days to file an answer brief.

The appellant can then file a "reply brief" within 30 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 within 30 days after service 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.

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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 3, Pulling Together the Record on Appeal.

The appellee's answer brief must be served no later than 30 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 4, Motion Practice in the Appellate Courts; Chapter 6, Checklist for Appellate Briefs and Generally Petitions in the District Courts of Appeal; and Chapter 18, Oral Argument in Florida's Appellate Courts and the Florida Supreme Court.

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CHAPTER 18: ORAL ARGUMENT IN FLORIDA'S APPELLATE COURTS AND FLORIDA'S SUPREME COURT

Oral argument in an appeal is similar to a formal hearing in the lower tribunal. It gives the parties a chance to formally and respectfully talk, in an orderly way, about their appeal or petition with the appellate judges or supreme court justices. Most importantly, oral argument is a chance for the parties to answer questions that the judges and justices may have about the case. Oral argument is based on the arguments presented in the briefs. Parties should not discuss matters not raised in the appellate briefs or matters outside the appellate record.

Oral argument is not granted in every case. The First, Second, Third, Fourth, Fifth, and Sixth District Courts of Appeal often, but not always, grant timely requests for oral argument in cases involving most final orders. In the Florida Supreme Court, oral argument is granted far less often. If oral argument is requested and granted, it is held after all the parties have filed their initial, answer, and reply briefs.

Florida Rule of Appellate Procedure 9.320 governs oral arguments. A party who wants oral argument must ask for it by filing a written or request for oral argument. In appeals, any party's request for oral argument must be served within 15 days after the date that the last brief is due to be served (even if that brief is not actually served). For example, the request ordinarily must be served within 15 days after the reply brief is due, but if there is a cross-appeal, the request will be due within 15 days after the cross-reply (the last brief to be filed in that instance) is due to be served. In proceedings commenced by petition, any party must serve a request for oral argument within 15 days after the reply brief is due.

Thus, oral argument generally cannot be requested in the appellate brief. Again, it must instead be requested in a separate written motion or request. If oral argument is granted, the court will send an order notifying the parties when and where the argument will be held. The Florida

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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 in Tallahassee. Oral arguments in the district courts will take place in the courthouse where that district court of appeal is located. Each side is usually given between 10 and 20 minutes to argue their side, depending on the type of case. The appellant or petitioner goes first. The appellant usually begins by stating, “May it please the court,” and their name. Often, the appellant will then ask the court if he or she can “reserve” a certain number of minutes for rebuttal (usually 3 to 5 minutes). The appellant then presents his or her argument, emphasizing the key points in the appeal and answering any questions the court asks. The appellee’s turn is next, and he or she argues his or her case. After the appellee argues, the appellant usually gets a brief chance to respond if he or she reserved time for rebuttal. (The appellee does not get a rebuttal).

The order scheduling a case for oral argument usually has a list of other cases the court will hear the 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 arrive and check in earlier than the time listed for argument, usually right when the courthouse opens. This is because the court sometimes calls cases in a different order than listed in the schedule.

Before oral argument, it would also be beneficial to watch oral arguments in other cases. Oral arguments at the Florida Supreme Court can be viewed live on the internet (http://wfsu.org/gavel2gavel/live-hd.php), or by watching some local cable TV stations. People can also watch past oral arguments from the court’s archives (http://wfsu.org/gavel2gavel/). 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 held at the district courts of appeal live on the internet and can view past oral arguments from the

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archives of some of those courts. Information on viewing the arguments is contained on those courts' websites: https://1dca.flcourts.gov/, https://2dca.flcourts.gov/, https://3dca.flcourts.gov/, https://4dca.flcourts.gov/, https://5dca.flcourts.gov/, and https://6dca.flcourts.gov/ under "Oral Arguments."

Unlike a lower tribunal, which may make a decision at or right after hearing, the Florida Supreme Court and the district courts of appeal will not decide the case at or right after the oral argument. Rather, the appellate court will send the parties a written decision, an opinion, or another order deciding the appeal, often many months after the argument. The length of time it takes the court to decide the appeal depends on a number of factors, such as the complexity of the case and whether a written opinion explaining the court's reasoning is warranted.

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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" or "decision." 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 affirmance (or "PCA"), or a "per curiam" reversal (or "PCR").

In a civil case, after the appellate court issues its opinion or decision, the losing party may have the right to ask the appellate court for rehearing or clarification of the court's decision. Also, if the decision was "per curiam" without a written opinion, the losing party may, in limited circumstances, be able to ask the court to write an opinion. In some cases, the losing party may also have the right to seek further review of a written opinion by a higher court through a request for "certification." In very rare cases, a party may be able to ask for "rehearing en banc," meaning rehearing by all of the judges on that appellate court, not just the judges that decided the case. Motions for rehearing, clarification, certification, written opinion, and rehearing en banc are the main types of post-decision motions. *See* Florida Rule of Appellate Procedure 9.330 and 9.331(d).

A party who is unhappy with an appellate court's decision or order can usually file a motion for rehearing and/or a motion for clarification, as long as certain requirements are met. However, an order of the Florida Supreme Court that grants or denies discretionary review under Florida Rule of Appellate Procedure 9.120 ordinarily cannot be challenged by a rehearing or other motion.

A party who wants to file a motion for rehearing, clarification, certification, written opinion, or rehearing en banc generally must do so within 15 days of the appellate decision or order. If a party files a post-decision motion, then the other party is generally allowed 15 days to serve a response in which he or she can explain to the appellate court why its decision or opinion should stand and why the other party's post-decision motion should be denied. Ordinarily, no further reply to such a response is permitted by the party that originally filed the post-decision motion, unless the appellate court orders it.

Unless the case is in the Florida Supreme Court, there are generally five post-decision motions that a party may be able to use. These motions are listed in Florida Rules of Appellate Procedure 9.330 and 9.331(d). They are:

- a motion for rehearing;
- a motion for clarification;
- a motion for certification;
- a motion for a written opinion, if there wasn't one and the party believes it would provide a valid basis for review by the Florida Supreme Court; and
- a motion for rehearing en banc.

A party is generally limited to one post-decision motion for rehearing or clarification, and one motion for certification. This means that if a party wants to request both rehearing and clarification, he or she should do so in the same motion. This also means a motion for rehearing and/or clarification should raise and explain all of the reasons the party is asking the court for rehearing and/or clarification. A party is also limited to filing only one motion for certification. Similarly, more than one motion for rehearing en banc is generally not allowed.

There are some exceptions to this rule. For example, if a new opinion, resulting from a

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first rehearing motion, changes the original opinion, then a party may file a second rehearing motion to discuss that change. This Chapter describes the basics of 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 should also consider several important questions, honestly thinking about what the appellate court's answers would be:

- Is the opinion a written opinion as opposed to a per curiam decision?
- 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 or 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)?
- Does the opinion directly conflict with the decisions of another district court?
- Does the opinion pass on a question of great public importance?
- Does the opinion clearly conflict with prior decisions of the same court?

If none of these questions can be answered "yes," then no post-decision motion probably should be filed. But even if the answer to one or more of those questions is "yes," a party still may be better off not filing a post-decision motion. Caution and good judgment should be exercised.

1. Motions for Rehearing, Clarification, Certification, and Request for Written Opinion Under Rule 9.330.

a. Motion for Rehearing.

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The purpose of a motion for rehearing is very limited. Under Florida Rule of Appellate Procedure 9.330(a)(2)(A), a motion for rehearing cannot simply reargue the issues raised in the appellate briefs. 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 or disrespectful 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.

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If certification is sought based on an important question, that question must be an issue which has great importance from the appellate court's outlook, not the party's, and which 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 or a specific group of 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 any person should get a hearing before having his or her property taken away by someone who said he breached a contract may be a question of greater 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 be important to more than just that one person, and, thus, it might also be an issue of great importance to all Florida citizens.

A party may also ask the appellate court to certify that its decision is in "direct conflict" with a decision of another district court of appeal.

A party must follow the same general procedures and standards in preparing a motion for certification as when preparing a motion for rehearing. A party must explain the specific question of great public importance and/or the direct conflict it is asking the district court to certify to the Florida Supreme Court.

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

When the appellate court issues a 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

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that request, the motion must explain why the party believes that a written opinion would provide (i) a basis for seeking Florida Supreme Court review, (ii) an explanation for an apparent deviation from prior precedent, or (iii) guidance to the parties or lower tribunal in certain instances defined in Florida Rule of Appellate Procedure 9.330(a)(2)(D)(iii). A party must follow the same general procedures and standards for this type of motion as when preparing a motion for rehearing.

2. Motions for Rehearing En Banc Under Rule 9.331(d).

The appellate courts of Florida are divided into six districts covering specific counties: the First District Court of Appeal, Second District Court of Appeal, Third District Court of Appeal, Fourth District Court of Appeal, Fifth District Court of Appeal, and Sixth 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 ensure 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(d). It asks the full court (meaning all appellate judges serving on that appellate court, not just the three 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 it is necessary to "maintain uniformity in the court's

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decisions," meaning because the opinion in the case conflicts with other opinions of the same appellate court on the same issue. If a motion for rehearing en banc is not based on one or both of these two grounds, it will be stricken by the court.

A motion for rehearing en banc asks the entire appellate court to take the highly unusual step of reviewing the opinion and comparing it with previous decisions of that same appellate court. 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.

A motion for rehearing en banc must be filed within 15 days of the challenged decision or order. If a party wants to file such a motion, it is often advisable to combine the motion for rehearing en banc with a regular rehearing motion (for example, a "motion for rehearing and/or rehearing en banc"). This is because, as a matter of courtesy and common sense, 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 a problem corrected.

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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

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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.

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(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

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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).

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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 briefs apply to the jurisdictional brief. The brief shall be computer-generated, printed, typewritten, or duplicated on letter-size paper. The brief shall be submitted in either Arial 14-point or Bookman Old Style 14-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 and

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word/page limit requirements. *See* Fla. R. App. P. 9.045. The brief on jurisdiction must not exceed 2,500 words or 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(a)(2)(A), (f). 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 Issues. This shall identify any issues independent of those on which jurisdiction is invoked that petitioner intends to raise if the court grants review.

5. Statement of the Case and the Facts. This shall include information pertaining to the underlying decision sought to be reviewed. This portion must include references to the appropriate pages of the accompanying appendix, which should only include the decision sought to be reviewed.

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.

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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 word or page limit and 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 30 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 also need to include a statement of the issues, which must clearly identify any affirmative issues, independent of those on which jurisdiction is invoked and independent of those raised by petitioner in its statement of the issues, that respondent intends to raise on cross-review if the court grants review. 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,

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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 as a merits brief in a final appeal. *See* Fla. R. App. P. 9.120(g), 9.210. Petitioner's brief on the merits goes first, and is served within 35 days from the date of the supreme court's order. 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 section would include the course of proceedings below and 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 30 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 30 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. Unlike motions filed in the District Courts of Appeal, motions

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filed in the Florida Supreme Court do not toll any deadlines unless accompanied by a separate motion to toll deadlines. 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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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.

These instructions and forms are from the U.S. Supreme Court and are designed to assist petitioners who are proceeding *in forma pauperis* (indigent or unable to pay) 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 by going to the Court's website, http://www.supremecourt.gov/ and by clicking on "filing & rules" on the left-hand side of the page. A petitioner should read the following Rules of the U.S. Supreme Court very carefully:

- Rules 10 to 16 (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); and
- 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

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does not express the Court's view of the merits of the case.

Every petitioner for a writ of certiorari should 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.

A 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. For an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U.S.C. § 1746 setting out the date of deposit and stating that first-class postage has been prepaid. *See* U.S. Supreme Court Rule 29.2.

2. What to File.

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Generally, a petitioner must 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 of that motion. *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 the petitioner is 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 the case. *See* U.S. Supreme Court Rule 12 & 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.

As an exception to the above rules, an inmate confined in an institution and not represented by counsel, only needs to file the following: the original of the motion for leave to proceed *in forma pauperis,* the 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. In other word, inmates do not need to file the extra copies required in the rules. *See* U.S. Supreme Court Rule 12.2.

The forms below provide examples of an original motion, affidavit or declaration, and petition, which would be stapled together in that order. There is also an example of a proof of service, which would be included as a detached sheet.

3. Page Limitation.

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).

4. Method of Filing.

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

C. Additional Information About the Example Forms.

1. Motion for Leave to Proceed *In Forma Pauperis* - Rule 39

a. On the example form provided for the motion for leave to proceed *in forma pauperis,* a petitioner should 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," the petitioner types his or her own name. A pro se petitioner generally cannot file a petition for someone else, because a pro se litigant can only represent himself or herself, not other people. On the line for "respondent," the petitioner should 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 tribunal(s) in the case already granted the petitioner leave to proceed *in forma pauperis,* the petitioner should check the appropriate space and indicate the court or courts that allowed him or her to proceed *in forma pauperis.* If none of the lower tribunals granted leave to proceed *in forma pauperis,* the petitioner should check the block that says that.

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 example form provided, a petitioner should answer fully each of the questions. If

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the answer to a question is "0," "none," or "not applicable (N/A)," the petitioner should enter that response. If a petitioner needs more space to answer a question or to explain your answer, he or she should attach a separate sheet of paper, identified with his or her 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 a petitioner completes the example form for the cover page, he or she should:

a. Leave the case number blank. The number will be assigned by the clerk when the case is docketed.

b. Complete the case caption the same way as 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 the 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 the case is federal, the United States Court of Appeals that decided the case will always be listed here.

d. Enter his or her name, address, and telephone number in the appropriate spaces.

4. Question(s) Presented.

On the example form, the petitioner should give the question or questions that he or she wants 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

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is to assist the Court in selecting cases. The petitioner should state the issue he or she wants the Court to decide clearly and without unnecessary detail.

5. List of Parties.

On the example form, the petitioner should 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, they should be listed there. 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 the petitioner seeks to have the U.S. Supreme Court review is not a party.

6. Table of Contents.

On the example form, the petitioner should list the page numbers on which the required portions of the petition appear. The pages should be numbered consecutively, starting with the "Opinions Below" page as page 1.

7. Index of Appendices.

The petitioner should list the description of each document that is included in the appendix beside the appropriate appendix letter, and mark the bottom of the first page of each appendix with the appropriate designation, e.g., "Appendix A." *See* Rule 14.1 regarding items to be included in the appendix.

a. Federal Courts.

If a petitioner is 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

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timely filed petition for rehearing, a copy of that order should be appended next. If the petitioner is 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 the petitioner was a party, a copy of the state court decision must be included in the appendix.

b. State Courts.

If a petitioner is 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, and then 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.

In the example form, the petitioner should list the cases, statutes, books, and articles that

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are referenced in the petition and the page number in the petition where each authority appears.

9. Opinions Below.

In the example form, the petitioner should indicate whether the opinions of the lower tribunals in his or her 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. So, if the opinion in the petitioner's case appears at page 100 of volume 30 of the Federal Reporter, Third Series, he or she should 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, the petitioner should check the appropriate space. The petitioner should 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 example form sets out the pertinent statutes for federal and state cases. The petitioner only needs to provide 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, the petitioner must provide the requested information pertaining to the extension. If the petitioner seeks to have the Court review a decision of a state court, he or she must provide the date the highest state court decided the case, either by ruling on the merits or denying discretionary review.

11. Constitutional and Statutory Provisions Involved.

A petitioner should set out or quote word-for-word the constitutional provisions, treaties, statutes, ordinances and regulations involved in the case. If the provisions involved are lengthy,

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the petitioner should provide their citation and indicate where in the appendix to the petition the text of the provisions appears.

12. Statement of the Case.

The petitioner should provide a concise statement of the case containing the facts material to the consideration of the question(s) presented; the petitioner should summarize the relevant facts of the case and the proceedings that took place in the lower tribunals. Additional pages can be attached 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 for a petitioner to read U.S. Supreme Court Rule 10 and address what compelling reasons exist for the exercise of the Court's discretionary jurisdiction. A petitioner should 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 also important for a petitioner to show: whether the decision of the court that decided the case is in conflict with the decisions of another appellate court; the importance of the case not only to the petitioner but also to others similarly situated; and the ways the decision of the lower tribunal in the case was erroneous. Again, additional pages can be attached if needed, but the reasons should be as concise as possible, consistent with the purpose of this section of the petition.

14. Conclusion.

The petitioner should enter his or her name and the date that he or she submits the petition.

15. Proof of Service.

A petitioner must serve a copy of the petition on counsel for respondent(s) as required by U.S. Supreme Court Rule 29. If the petitioner serves the petition by first-class mail or by third-

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party commercial carrier, he or she may use the example proof of service form below. If the United States or any department, office, agency, officer, or employee thereof is a party, the petitioner must also serve the Solicitor General of the United States, Room 5616, 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.

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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)

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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.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$_________	$_________	$__________	$_________
Self-employment	$_________	$_________	$__________	$_________
Income from real property (such as rental income)	$_________	$_________	$__________	$_________
Interest and dividends	$_________	$_________	$__________	$_________
Gifts	$_________	$_________	$__________	$_________
Alimony	$_________	$_________	$__________	$_________
Child Support	$_________	$_________	$__________	$_________
Retirement (such as social security, pensions, annuities, insurance)	$_________	$_________	$__________	$_________
Disability (such as social security, insurance payments)	$_________	$_________	$__________	$_________
Unemployment payments	$_________	$_________	$__________	$_________
Public-assistance (such as welfare)	$_________	$_________	$__________	$_________
Other (specify): ____________	$_________	$_________	$_________	$_________
Total monthly income:	$_________	$_________	$__________	$_________

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

Employer	Address	Dates of Employment	Gross monthly pay
________________	________________	________________	$________________
________________	________________	________________	$________________
________________	________________	________________	$________________

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.)

Employer	Address	Dates of Employment	Gross monthly pay
________________	________________	________________	$________________
________________	________________	________________	$________________
________________	________________	________________	$________________

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.

Financial Institution	Type of account	Amount you have	Amount your spouse has
________________	________________	$________________	$________________
________________	________________	$________________	$________________
________________	________________	$________________	$________________

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 ________________

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6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
____________________	$____________________	$____________________
____________________	$____________________	$____________________
____________________	$____________________	$____________________

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
______________________	__________________________	____________________
______________________	__________________________	____________________
______________________	__________________________	____________________

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.

			You	Your spouse
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			$____________	$____________

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	You	Your spouse
Transportation (not including motor vehicle payments)	$___________	$___________
Recreation, entertainment, newspapers, magazines, etc.	$___________	$___________
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$___________	$___________
Life	$___________	$___________
Health	$___________	$___________
Motor Vehicle	$___________	$___________
Other: ______________________	$___________	$___________
Taxes (not deducted from wages or included in mortgage payments)		
(specify): ______________________	$___________	$___________
Installment payments		
Motor Vehicles	$___________	$___________
Credit card(s)	$___________	$___________
Department store(s)	$___________	$___________
Other: ______________________	$___________	$___________
Alimony, maintenance, and support paid to others	$___________	$___________
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$___________	$___________
Other (specify): ______________________	$___________	$___________
Total monthly expenses:	$___________	$___________

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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)

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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)

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QUESTION(S) PRESENTED

[ ]
[ ]
[ ]
[ ]

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[ ] All parties <u>do not</u> 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:

[ ]
[ ]
[ ]
[ ]

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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.

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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).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

[ ]
[ ]
[ ]
[ ]

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STATEMENT OF THE CASE

[ ]
[ ]
[ ]
[ ]

REASONS FOR GRANTING THE PETITION

[ ]
[ ]
[ ]
[ ]

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

____

Date: ____________________________________

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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)

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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
M.C. Blanchard Judicial Building
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
Santa Rosa County Courthouse
6865 Caroline Street
Milton, FL 32570
(850) 981-5676

Walton County
Walton County Courthouse
571 Hwy. 90 East
DeFuniak Springs, FL 32433
(850) 892-8115

Second Judicial Circuit - http://2ndcircuit.leoncountyfl.gov/
(Franklin, Gadsden, Jefferson, Leon, Liberty and Wakulla Counties)

Franklin County

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Franklin County Courthouse
33 Market Street, Ste. 203
Apalachicola, FL 32320
(850) 653-8861

Gadsden County
Gadsden County Courthouse
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
Leon County Courthouse
301 S. Monroe St.
Tallahassee, FL 32301
(850) 606-4000

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
Columbia County Courthouse
173 N.E. Hernando Ave.
Lake City, FL 32055
(386) 758-1342

Dixie County
Dixie County Courthouse

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214 N.E. Highway 351
Cross City, FL 32628
(352) 498-1200

Hamilton County
Hamilton County Courthouse
207 First Street NE
Jasper, FL 32052-6669
(386) 792-1288

Lafayette County
Lafayette County Courthouse
120 West Main Street
Mayo, FL 32066
(386) 294-1600

Madison County
Madison County Courthouse
125 S.W. Range Ave.
Madison, FL 32340
(850) 973-1500

Suwannee County
Suwannee County Courthouse
200 South Ohio Avenue
Live Oak, FL 32064
(386) 362-0500

Taylor County
Taylor County Courthouse
108 N. Jefferson St.
Perry, FL 32348
(850) 838-3506

Fourth Judicial Circuit - http://www.coj.net/departments/fourth-judicial-circuit-court.aspx (Clay, Nassau and Duval Counties)

Duval County
Duval County Courthouse
501 West Adams Street
Jacksonville, FL 32202
(904) 255-2000

Clay County
Clay County Courthouse
825 North Orange Ave.

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Green Cove Springs, FL 32043
(904) 284-6302

Nassau County
76347 Veteran's Way, Ste 456
Yulee, FL 32097
(904) 548-4500

Fifth Judicial Circuit - http://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
Hernando County Courthouse
20 N. Main Street
Brooksville, FL 34601
(352) 754-4402

Lake County
550 W. Main Street
Tavares, FL 32778
(352) 253-1600

Marion County
110 NW First Ave.
Ocala, FL 34475
(352) 401-6700

Sumter County
215 E. McCollum Ave.
Bushnell, FL 33513
(352) 569-6950 Fax: (352) 568-6608

Sixth Judicial Circuit - http://www.jud6.org/
(Pasco and Pinellas Counties)

Pinellas County
Clearwater Courthouse
315 Court Street, Rm. 400
Clearwater, FL 33756
(727) 464-7000

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Pasco County
West Pasco Judicial Center
7530 Little Road, Ste. 220
New Port Richey, FL 34654
(727) 847-8128
and
Robert D. Sumner Judicial Center
38053 Live Oak Ave.
Dade City, FL 33523
(352) 518-4008

Seventh Judicial Circuit - http://www.circuit7.org/
(Flagler, Putnam, St. Johns and Volusia Counties)

Flagler County
Kim C. Hammond Justice Center
1769 E. Moody Blvd.
Bunnell, FL 32110
(386) 313-4400

Putnam County
Putnam County Courthouse
410 St. Johns Ave.
Palatka, FL 32177
(386) 326-7600

St. Johns County
Richard O. Watson Judicial Center
4010 Lewis Speedway
St. Augustine, FL 32084
(904) 819-3600

Volusia County
Volusia County Courthouse
101 N. Alabama Ave.
DeLand, FL 32724
(386) 736-5915

Eighth Judicial Circuit - http://www.circuit8.org/
(Alachua, Baker, Bradford, Gilchrist, Levy and Union Counties)

Alachua County
Alachua County Criminal Justice Center
220 S. Main Street
Gainesville, FL 32601-6538 (criminal matters)

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352-264-7002
Alachua County Family and Civil Justice Center
201 E. University Ave. Room 417
Gainesville, FL 32601-3456 (civil and family matters)
(352) 374-3638

Baker County
Baker County Courthouse
339 E. Macclenny Ave. #113
Macclenny, FL 32063-2294
(904) 259-8113

Bradford County
Bradford County Courthouse
945 N. Temple Ave.
Starke, FL 32091-2110
(904) 966-6280 ext 2201

Gilchrist County
Gilchrist County Courthouse
112 S. Main Street #1004
Trenton, FL 32693-3200
(352) 463-3170

Levy County
Levy County Courthouse
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
Orange County Courthouse
425 N. Orange Ave. #360
Orlando, FL 32801
(407) 836-2399

Osceola County

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Osceola County Courthouse
2 Courthouse Square
Kissimmee, FL 34741
(407) 742-3500

Tenth Judicial Circuit - http://www.jud10.flcourts.org/
(Hardee, Highlands and Polk Counties)

Hardee County
Hardee County Courthouse
417 W. Main Street
Wauchula, FL 33873
(863) 773-4174

Highlands County
Highlands County Courthouse
430 S. Commerce Ave.
Sebring, FL 33870
(863) 402-6565

Polk County
Polk County Courthouse
255 N. Broadway Ave.
Bartow, FL 33830
(863) 534-4000

Eleventh Judicial Circuit - http://www.jud11.flcourts.org/
(Dade County)

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
Sarasota County Justice Center
2071 Ringling Blvd.
Sarasota, FL 34237
(941) 861-7800

Manatee County
Manatee County Judicial Center
1051 Manatee Ave. W.

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Bradenton, FL 34205
(941) 749-3600

DeSoto County
DeSoto County Courthouse
115 E. Oak Street, Room 201
Arcadia, FL 34266
(863) 993-4644

Thirteenth Judicial Circuit - http://fljud13.org/ (contains many useful links) (Hillsborough County)

George Edgecomb Courthouse
800 Twiggs Street
Tampa, FL 33602
(813) 272-5894

Fourteenth Judicial Circuit - http://www.jud14.flcourts.org/ (Bay, Calhoun, Gulf, Holmes, Jackson and Washington Counties)

Bay County
Main Courthouse
300 East 4th Street
Panama City, FL 32401
(850) 763-9061

Calhoun County
Calhoun County Courthouse
20859 E. Central Ave.
Blountstown, FL 32424
(850) 674-4545

Gulf County
Gulf County Courthouse
1000 Cecil G. Costin, Sr. Blvd.
Port St. Joe, FL 32456
(850) 229-6112

Holmes County
Holmes County Courthouse
201 N. Oklahoma Street
Bonifay, FL 32425
(850) 547-1100

Jackson County
Jackson County Courthouse

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4445 Lafayette Street
Marianna, FL 32446
(850) 482-9552

Washington County
Washington County Courthouse
1293 Jackson Ave. # 100,
Chipley, FL 32428
(850) 638-6009

Fifteenth Judicial Circuit - http://15thcircuit.co.palm-beach.fl.us
(Palm Beach County)

Main Judicial Complex
205 N. Dixie Hwy
West Palm Beach, FL 33401
(561) 355-2431

Sixteenth Judicial Circuit - http://www.keyscourts.net/
(Monroe County)

Key West Courthouse
Freeman Justice Center
302 Fleming Street
Key West, FL 33040
(305) 292-3423
Fax: (305) 292-3435

Plantation Key Courthouse
Plantation Key Government Center
88820 Overseas Highway
Tavernier, FL 33070
(305) 852-7145
Fax: (305) 852-7146

Marathon Key Courthouse
3117 Overseas Highway
Marathon, FL 33050
(305) 289-6029
Fax: (305) 289-6089
Clerk's Fax: (305) 289-1745

Seventeenth Judicial Circuit - http://www.17th.flcourts.org/
(Broward County)

Broward County Courthouse

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201 SE 6th Street
Ft. Lauderdale, FL 33301
(954) 831-6565

Eighteenth Judicial Circuit - http://www.flcourts18.org/ (has discussion of pro se litigation) (Brevard and Seminole Counties)

Brevard County
Harry T. and Harriette V. Moore Justice Center
2825 Judge Fran Jamieson Way
Viera, FL 32940-8006
(321) 633-2171

Seminole County
Downtown Civil Courthouse
301 N. Park Ave.
Sanford, FL 32771-1292
(407) 665-4330

Nineteenth Judicial Circuit - http://www.circuit19.org/
(Indian River, Martin, Okeechobee and St. Lucie Counties)

Indian River County
Indian River Courthouse
2000 16th Ave.
Vero Beach, FL 32960
(772) 770-5185

Martin County
Martin County Courthouse
100 SE Ocean Blvd.
Stuart, FL 34994
(772) 288-5576

Okeechobee County
Okeechobee Courthouse
312 NW 3rd Street
Okeechobee, FL 34972
(863) 763-2131

St. Lucie County
St. Lucie County Courthouse
218 S. 2nd Street
Ft. Pierce, FL 34950
(772) 462-6900

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Twentieth Judicial Circuit - http://www.ca.cjis20.org/home/main/homepage.asp (Charlotte, Collier, Glades, Hendry and Lee Counties)

Charlotte County
Charlotte Justice Center
350 E. Marion Ave.
Punta Gorda, FL 33950
(941) 637-2281
Fax: (941) 637-2283

Collier County
Collier Government Complex
3315 Tamiami Trail East
Naples, FL 34112
(239) 252-8800
Fax: (239) 774-9654

Glades County
Glades Courthouse
Route 27, 500 Avenue J
Moore Haven, FL 33471
(863) 946-6031
Fax: (863) 946-2917

Hendry County
Hendry Courthouse
25 E. Hickpochee Ave.
LaBelle, FL 33935
(863) 675-5217
Fax: (863) 675-5248

Lee County
Lee Justice Center
1700 Monroe St.
Ft. Myers, FL 33901
(239) 533-1701 (239) 533-1700
Fax: (239) 458-7083

District Courts of Appeal

First District Court of Appeal - https://1dca.flcourts.gov/
(First, Second, Third, Eighth and Fourteenth Circuits)
2000 Drayton Drive
Tallahassee, FL 32399-0950
(850) 487-1000 (general number)
(850) 488-6151 (Clerk's office)

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Second District Court of Appeal - https://2dca.flcourts.gov/
(Sixth, Twelfth, and Thirteenth Circuits)
1700 North Tampa Street, Suite 300
Tampa, Florida 33602
(727) 610-3740

Third District Court of Appeal - https://3dca.flcourts.gov/
(Eleventh and Sixteenth Circuits)
2001 S.W. 117 Ave.
Miami, FL 33175-1716
(305) 229-3200
Fax: (305) 229-3206

Fourth District Court of Appeal - https://4dca.flcourts.gov/
(Fifteenth, Seventeenth and Nineteenth Circuits)
110 South Tamarind Ave.
West Palm Beach, FL 33401
(561) 242-2000

Fifth District Court of Appeal - https://5dca.flcourts.gov/
(Fourth, Fifth, Seventh, and Eighteenth Circuits)
300 South Beach Street
Daytona Beach, FL 32114
(386) 947-1530
Fax: (386) 947-1562

Sixth District Court of Appeal - https://6dca.flcourts.gov/
(Ninth, Tenth, and Twentieth Circuits)
811 East Main Street
Lakeland, FL 33801
(863) 940-6041

Florida Supreme Court

Florida Supreme Court
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399-1927
(850) 488-0125
e-mail: supremecourt@flcourts.org
https://supremecourt.flcourts.gov/

United States Supreme Court

U.S. Supreme Court Building
1 First St. N.E.

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* Clerk's Office: 202-479-3011
* Public Information Office: 202-479-3211, Reporters press 1
* Visitor Information Line: 202-479-3030
* Opinion Announcements: 202-479-3360
https://www.supremecourt.gov/

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GLOSSARY

When there is more than one definition that may apply, alternative definitions are listed, beginning with the words most commonly used in 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 or completely unreasonable.

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 a 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, Affirmance): 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.

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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 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.

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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 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 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 that the other parties in the action have been served with the document.

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.

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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, such as to make clear something that may be confusing or misunderstood.

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 a car company because he was one of ten thousand others who bought a defective car.

Clerk: The Clerk of Court is the individual who is responsible for accepting and maintaining documents filed with a court. The Clerk's office typically has a number of assistant or deputy clerks to carry out this role.

Collateral: Not directly on point or going to the heart of a subject, but rather supplementary or a side issue. 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 or pleading 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 and starts the case.

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.

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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 criminal law; an unlawful act punishable by a state, usually by a term of probation and/or incarceration.

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.

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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 (Dismissed, Dismissal): To end without further hearing. 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 was dismissal.

Docket: 1. A formal record where a judge or court clerk briefly notes and lists 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.

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Document: 1. A piece of paper with written words. 2. To support with written evidence or legal authorities.

Due Process: In general terms, 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: 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.

Error (Erred): 1. A mistake of law or fact in a court's judgment, opinion or order. 2. To make an error; to be incorrect or mistaken. E.g. The court erred in denying the motion.

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 containing objections 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 or preserve the objections for appeal.

Exhibit: 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 issued by a higher court to grant relief not otherwise available, such as by reviewing an otherwise unappealable order, or 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 (Facts, Factual): 1. The circumstances or facts of the case, as opposed to the law; 2. A piece of information that is presented as being true or actually occurring.

File (Filed, Filing): To deliver a legal document to the court clerk for placement into the official record.

Final: A decision which ends the case.

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Final Judgment Rule: A party generally may appeal only from a lower tribunal's final decision that ends the lawsuit or proceeding. Under this rule a party generally must raise all claims of error in a single appeal. A final order or judgment ends judicial labor in the case, leaving nothing left to be done by the court.

Findings of Fact: A determination by a judge or administrative agency supporting the existence of facts shown by the evidence in the record of a trial or hearing.

Florida Rule of Appellate Procedure (or Florida Rules of Appellate Procedure): The rule or rules which govern the bringing and maintaining of an appeal in the Florida State Courts.

Frivolous: 1. Lacking a legal or factual basis; not serious. 2. Frivolous Appeal: an appeal having no basis in law or fact.

Fundamental: Of basic, critical importance; 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, proceeding, or meeting 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 civil lawsuit or a criminal matter. .

Illegal: In violation of law, usually referring to criminal 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 (Incurred): 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: A person who is too poor to hire a lawyer or to pay for certain court costs, and who a lower tribunal rules is in need of a lawyer and/or a waiver of costs E.g. The court determined that Sue was indigent, so it appointed a lawyer to represent her in the termination of parental rights case.

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Initial Brief: The first brief filed in an appeal, by the person who filed the appeal (the appellant); a 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 (Issues, Issued): 1. In the context of this Handbook, an important question of law or fact that is in dispute and must be settled. 2. The term can also refer to a court giving its decision to the parties in a case. E.g., One of the appellant's issues was whether the trial court erred in granting the motion to dismiss with prejudice; the appellate court agreed and issued an opinion reversing the dismissal.

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 or authority 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 of procedure 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; Liable): 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.

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Magistrate: A judicial officer with strictly limited jurisdiction and authority, often on the local level and often restricted to criminal cases, unless agreed to by parties in a civil case; more common in federal courts.

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 the use 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; to misunderstand.

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 generally cannot be appealed; also referred to by some as "unappealable."

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 (Objection): To assert disagreement.

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Opinion: 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: 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. 3. A decision issued without a written opinion explaining the court's reasoning.

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: 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, or plenary appeal of the whole case after the final judgment.

Post: To file with the court clerk's office. Usually, as in posting (filing) a bond to stay a money judgment pending appeal.

Postconviction: 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.

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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 (Preserve, 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 (Proffered): To offer, present or provider 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: A suggestion, including suggested changes or additions. E.g., proposed statement of evidence or proceedings

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 government authority.

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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 or appellee's previously filed answer brief.

Respondent: The party against whom a petition is filed, similar to an appellee in an appeal.

Restitution: A remedy by which a party is returned to his or her original position.

Retroactive: Application of a tribunal's decision or law to past events.

Reversal (Reverse): An appellate court's decision overturning of a lower tribunal's decision, whether in whole or in part.

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.

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Serve: 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 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: 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, a law or statute. 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): 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.

Subpoena: A document summoning a witness to appear.

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; in contrast, procedural law provides the methods or procedures.

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.

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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, especially a money judgment.

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 or put an end to.

Testimony: Statements made by a person under oath, usually in court or at a deposition.

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 (Tolled): To stop the running of a time period, such as a deadline set by a rule of procedure, or a statute.

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 jury verdict and/or final judgment.

Trial Court: The first court to consider a lawsuit.

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Tribunal: The entity or persons who conduct the official business of a court or state agency. For example, "lower" tribunals include trial courts and administrative agencies. The appellate courts are "higher" tribunals, which review whether the acts of a "lower tribunal" were correct.

Unconstitutional: In violation of the state or federal constitution.

Untimely: Not timely, beyond a required deadline. E.g., The defendant's appeal was untimely because he filed it more than 30 days after the order he was challenging, as required by the rules of procedure.

Unlicensed Practice of Law: The practice of law by a person who is not licensed to practice law by the state, which is prohibited and subject to serious penalties. E.g., a person can proceed "pro se," meaning on their own behalf without a lawyer, but a non-lawyer cannot represent another person (other than himself or herself).

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: 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.

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