



ADMINISTRATIVE OFFICE OF THE COURTS
INTER-OFFICE

MEMO 2015-53

TO: Honorable Carolyn Timmann
Honorable Sharon Robertson
Honorable Joseph E. Smith
Honorable J.R. Smith

FROM: Thomas A. Genung, Trial Court Administrator

A handwritten signature in black ink, appearing to be "TAG", written over a horizontal line.

DATE: December 14, 2015

RE: **Administrative Order 2015-13**
RE: APPELLATE DIVISION OF THE NINETEENTH JUDICIAL
CIRCUIT

Attached please find an original **Administrative Order 2015-13** for filing with the Court.

If you have any questions regarding the above, please do not hesitate to contact me.

TAG/js
Attachment

cc w/attach: All Judges in the Nineteenth Judicial Circuit
All Magistrates and Hearing Officers in the Nineteenth Judicial Circuit
All Staff Attorneys in the Nineteenth Judicial Circuit
Honorable Bruce Colton, State Attorney's Office
Honorable Diamond Litty, Public Defender's Office
All County Attorneys in the Nineteenth Judicial Circuit
All Local Law Libraries
All Local Bar Presidents
IT

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT IN AND FOR
INDIAN RIVER, MARTIN, OKEECHOBEE, AND ST. LUCIE COUNTIES, STATE OF
FLORIDA**

ADMINISTRATIVE ORDER 2015-13

RE: Appellate Division of the Nineteenth Judicial Circuit

WHEREAS the administrative processing of appeals using the services of an Administrative Judge and regularly scheduled appellate panels has been utilized successfully in the Nineteenth Judicial Circuit; and

WHEREAS the efficient operation of the circuit court requires that the appellate division revise its procedures from time to time:

NOW THEREFORE pursuant to the authority conferred by Florida Rule of Judicial Administration 2.215, it is

ORDERED that cases filed with the Clerks of Court pursuant to Florida Rule of Appellate Procedure 9.030(c) shall be administratively processed as follows:

I. CASE ASSIGNMENT

- A. The following shall be assigned to the appellate division:
1. All appeals of final and non-final orders of the county court; and
 2. All appeals of final and non-final orders of code enforcement and local construction licensing boards.
- B. The following shall be assigned to the appellate division and shall be treated as petitions for writ of certiorari:
1. Appeals of local development orders issued pursuant to section 163.3215(4), Florida Statutes;
 2. Appeals of annexation or contraction ordinances;
 3. Appeals of orders transferring local services pursuant to section 190.046(5), Florida Statutes;
 4. Appeals of orders to relocate utility facilities pursuant to section 337.404, Florida Statutes; and

5. Appeals of administrative decisions of the Department of Highway Safety and Motor Vehicles.

C. All petitions for common-law certiorari shall be assigned to the appellate division, unless the petition is combined with a complaint for another form of relief (e.g., injunctive, declaratory, prohibition, mandamus, quo warranto). Petitions that are combined with another form of relief shall be assigned to the civil division. If, at any stage of the case, the assigned judge determines that certiorari is the appropriate remedy, the case shall be transferred by order to the appellate division.

D. Extraordinary Writs

1. All petitions for writs of prohibition, mandamus, quo warranto, and petitions for all writs relief which are within the circuit court's jurisdiction shall be filed in the civil division; and

2. Petitions for Writ of Habeas Corpus

a. All petitions for writ of habeas corpus which are within the circuit court's jurisdiction, other than those which challenge a criminal conviction or sentence, shall be assigned to the civil division.

b. All petitions for writ of habeas corpus which are within the circuit court's jurisdiction and which challenge a criminal conviction or sentence shall be assigned to the criminal division and treated as motions filed pursuant to rules 3.850 or 3.800, Florida Rules of Criminal Procedure.

II. THE ADMINISTRATIVE JUDGE

A. The Chief Judge of the Nineteenth Judicial Circuit shall appoint, on an annual basis, a circuit judge to serve as an Administrative Judge for the appellate division ("Administrative Judge").

B. The Administrative Judge:

1. Shall be responsible for ensuring timely disposition of cases, including compliance with time standards under Florida Rule of Judicial Administration 2.250(a)(4) and compliance with the Florida Rules of Appellate Procedure as they apply to the duties of the clerk, and for ensuring that mandates are timely issued;

2. Shall prepare a schedule of appellate panels every six months;

3. May enter orders on motions concerning matters other than those related to the merits of a case in order to facilitate expeditious handling of appeals; and

4. May issue orders to show cause and enter orders imposing sanctions on parties for violating the Florida Rules of Appellate Procedure pursuant to Fla. R. App. P. 9.410.

III. APPELLATE PANELS

A. The Administrative Judge shall select three circuit court judges or two circuit court judges and one county court judge for each scheduled appellate panel.

B. Each appellate panel shall meet in the county selected by the Administrative Judge to hear oral argument and conference cases.

C. Each appellate panel shall select a presiding judge to preside over oral argument and assign the writing of opinions. If the appellate panel is unable to agree on the presiding judge, the most senior circuit court judge on the appellate panel shall be the presiding judge.

IV. DUTIES OF CLERKS OF COURT

A. Commencement of Cases

1. To commence a case in the appellate division, the appellant or petitioner must file a notice of appeal, or a petition for writ of certiorari, and pay the full amount of the filing fees and costs or file a motion and affidavit requesting indigent status pursuant to rule 9.430, Florida Rules of Appellate Procedure;

2. Upon filing of a notice of appeal or a petition for writ of certiorari, the Appeal Clerk shall send all parties a copy of the NOTICE TO ATTORNEYS & PARTIES attached to this order as Appendix A;

3. The Appeal Clerk shall assign each case filed in the appellate division an appellate case number with an "AP" designation pursuant to the Uniform Case Numbering System; and

4. Once the Appeal Clerk has received the notice of appeal or petition for writ of certiorari, the Appeal Clerk shall promptly forward a copy of the notice or petition to the staff attorney of the appellate division of the Nineteenth Judicial Circuit ("the Staff Attorney") electronically.

B. All documents filed with the Appeal Clerk subsequent to a notice of appeal or petition shall be docketed under the appellate case number. As they are filed with the Appeal Clerk, all briefs, motions, responses, replies, requests for oral argument, and other documents shall be promptly forwarded by the Appeal Clerk to the Staff Attorney electronically.

C. Record on Appeal

1. The Appeal Clerk shall prepare the record on appeal in strict conformity with the requirements and deadlines stated in Florida Rule of Appellate Procedure 9.200, except for appeals from proceedings under rules 3.800, 3.850, or 3.853, Florida Rules of Criminal Procedure. Records for appeals of proceedings under rules 3.800, 3.850, or 3.853 shall be prepared as required by Florida Rule of Appellate Procedure 9.141(b);
2. The Appeal Clerk may require payment of the fee for preparation and transmittal of the record from the appellant prior to transmitting the record to the parties;
3. The record shall be forwarded electronically to the Staff Attorney within 110 days of filing the notice of appeal in civil cases and within 50 days of filing the notice of appeal in criminal cases. The case file shall not be sent to the Staff Attorney except upon request; and
4. If payment for preparation of the record is not timely made, the Appeal Clerk shall send a demand for payment to the appellant directing the appellant to pay the fee within 15 days of the demand. If the appellant fails to pay the fee within 15 days of the demand, the Appeal Clerk shall send the demand for payment to the Staff Attorney electronically.

D. Motions for Rehearing and Mandates

1. When a motion for rehearing or a motion for clarification is filed, the Appeal Clerk shall promptly forward it electronically to the Staff Attorney;
2. If no motion for rehearing or clarification has been filed, the Appeal Clerk shall prepare and file the mandate sixteen days after the opinion is filed;
3. If a motion for rehearing or clarification has been filed, the mandate shall be prepared and filed sixteen days after the opinion on the motion for rehearing or clarification unless an order staying the mandate is received from a higher court; and
4. Upon filing, the Appeal Clerk shall send a copy of the mandate with the opinion(s) attached to each party, the lower court judge or tribunal, and the Staff Attorney electronically or via U.S. mail.

E. The Staff Attorney is authorized to request and receive directly from the Appeal Clerk the case files, copies of files, and documents from cases, including evidence, filed in the appellate division.

V. CLERKS OF ADMINISTRATIVE TRIBUNALS

When a clerk of an administrative tribunal is required to prepare a record on appeal pursuant to Florida Rule of Appellate Procedure 9.110(e), the record shall be prepared in strict conformance with the requirements and deadlines stated in Florida Rule of Appellate Procedure 9.200 and transmitted to the Court by either mailing it via U.S. mail to the Clerk of Court or electronically filing it via the Electronic Portal in the AP case. The Appeal Clerk shall forward the record to the Staff Attorney electronically.


VI. SUPERSEDED ORDERS

This Administrative Order supersedes the following Administrative Orders: Administrative Order 91-2, entered March 25, 1991; Amendment to Administrative Order 91-2, entered August 26, 1991; 2nd Amendment to Administrative Order 91-2, entered November 25, 1992; and Administrative Order 2008-06, entered August 13, 2008.

VII. EFFECTIVE DATE

This Administrative Order shall be effective immediately, but shall not be applicable to cases which have been sent to an appellate panel for review before the effective date of this Order.

DONE and ORDERED in quadruplicate this 8th day of December, 2015 at Stuart in Martin County, Florida.


ELIZABETH A. METZGER
CHIEF JUDGE

NINETEENTH JUDICIAL CIRCUIT COURT – APPELLATE DIVISION

NOTICE TO ATTORNEYS & PARTIES

RE: COUNTY COURT APPEALS, PETITIONS FOR WRIT OF CERTIORARI AND
APPEALS FROM LOCAL ADMINISTRATIVE ACTION

The following rules of the Nineteenth Judicial Circuit Court should be followed by all attorneys and parties filing appeals to the Circuit Court from County Court, both civil and criminal, appeals from local administrative action, and Petitions for Writ of Certiorari.

PLEASE READ THESE RULES TO ENSURE YOUR APPEAL WILL PROCEED IN A TIMELY FASHION AND TO AVOID DISMISSAL OF YOUR APPEAL FOR FAILURE TO FOLLOW THESE RULES.

A. Appeal of County Court Judgments, Code Enforcement Board Orders and Construction Licensing Board Orders

1. A Notice of Appeal shall be filed with payment of the appropriate filing fees. For appeals of local government decisions, the Notice of Appeal must also be filed with the local government's clerk.
2. Persons seeking indigent status must file a signed application for determination of indigent status with the Appeal Clerk.
3. The Notice of Appeal and all other documents must be served on all parties or their attorneys.
4. The full name of the lower court judge who entered the order or judgment being appealed and the date of rendition of the order must be indicated on the Notice of Appeal.
5. The Notice of Appeal shall contain the names of all parties to the appeal and whether it involves a final or non-final order. If the appeal is from a criminal case, state whether the defendant is in custody. If the appeal is from a rule 3.850 or 3.853 motion, state whether an evidentiary hearing was held.
6. For record preparation, please comply with Fla. R. App. P. 9.200 in civil cases or Fla. R. App. P. 9.140 and 9.141 in criminal cases. Please be sure to pay the Appeal Clerk for the cost of any record preparation. Otherwise your record will not be transmitted to the appellate panel, and your appeal may be subject to dismissal. Physical evidence shall not be included in the record on appeal without prior permission of this Court. For appeals of administrative action, it is the Appellant's responsibility to ensure that the local government clerk prepares the record and sends it to the Appeal Clerk.

7. The Appellant must file with the Notice of Appeal a copy of (1) the Final Order/Judgment/or Order of Final Administrative Action being appealed AND (2) any subsequent order on a Motion for Retrial or Rehearing, or in the case of final administrative action, an administrative order reviewing the action being appealed, if applicable.

8. Please advise the Court in writing as soon as possible of any other cases pending before this Court involving related issues of which you have personal knowledge.

B. Petitions for Writ of Certiorari (appeals of non-final orders, zoning and land use appeals, and other quasi-judicial local government action)

1. A petition and appendix shall be filed together with payment of the appropriate filing fee.

2. Persons seeking indigent status must file a signed application for determination of indigent status with the Appeal Clerk.

3. The petition, appendix, and all other filings shall be served on all parties or their attorneys and shall contain a certificate of service.

4. The Petitioner must include in the appendix a copy of (1) the Final Order/Judgment/or Order of Final Administrative Action being appealed AND (2) any subsequent order on a Motion for Retrial or Rehearing, or in the case of final administrative action, an administrative order reviewing the action being appealed, if applicable.

5. Please advise the Court in writing as soon as possible of any other cases pending before this Court involving related issues of which you have personal knowledge.

C. Petitions for Writ of Certiorari Directed to the Department of Highway Safety and Motor Vehicles ("DHSMV")

1. It is the policy of the Nineteenth Judicial Circuit Court to expedite petitions for writ of certiorari to review administrative action by the Department of Highway Safety and Motor Vehicles.

2. Petitioners should follow the requirements set forth above in Section B.

3. The Petitioner must include in the appendix a copy of the transcript of the DHSMV proceeding.

4. If the Administrative Judge determines that the petition complies with the rules of appellate procedure, the Administrative Judge will issue an order to show cause granting the Respondent 30 days in which to file a response to the petition and granting the Petitioner 20 days in which to file a reply to the response. Extensions of time in which to file a response or a reply may be granted only by stipulation of the parties or upon good cause shown.

5. Rulings will typically be issued within 60 days of the deadline for filing a reply.

D. Motions

1. Copies of any record material necessary for resolution of the motion should be attached to the motion as an appendix. See Fla. R. App. P. 9.300(a) for required content of and procedure for motions.

2. Motions shall contain a certificate of service showing service on all parties or their attorneys. Motions must also contain express representations (except on motions where it would be clearly inappropriate) that opposing counsel has been contacted and will or will not stipulate to the relief requested.

3. Responses to motions shall be promptly filed within 10 days of service of the motion. Failure to file a response within ten days will result in the motion being decided without consideration of any response. No reply to the response will be considered unless specifically authorized by this Court.

4. In motions for extensions of time, attorneys and parties must establish a realistic target date for filing of a particular brief (for example, 30 days). A first request for an extension of time to file a brief will ordinarily be given favorable consideration if reasonable and not objected to by the opposing side. Note that this Court interprets Fla. R. App. P. 9.300(b) as including an automatic extension of time for filing a brief when an extension of time is given to a Court Reporter or the Clerk of the Lower Tribunal for preparation and filing of a transcript or record on appeal, as well as in the tolling of time under those motions listed in the rule.

5. Excessive and unnecessary motion practice is discouraged and may result in the imposition of sanctions under Fla. R. App. P. 9.410. See *Dubowitz v. Century Village East, Inc.*, 381 So. 2d 252 (Fla. 4th DCA 1979).

E. Briefs

1. All briefs shall be filed with the Appeal Clerk. See Fla. R. App. P. 9.210 for required contents of and procedure for briefs.

2. An initial brief must be filed within 70 days of filing the Notice of Appeal, except in criminal cases. For criminal cases, the initial brief must be filed within 30 days

of when the Appeal Clerk serves the record. Except for post-conviction appeals, your appeal may be dismissed if you fail to file an initial brief.

3. For post-conviction appeals where no evidentiary hearing was held, the initial brief, if any, must be filed within 15 days of filing the notice of appeal.

4. An answer brief must be served within 20 days of service of the initial brief, and any reply brief must be served within 20 days of the answer brief.

5. All briefs shall include a certificate of service showing service of the brief on the opposing parties or their attorneys.

6. A party's brief should contain all relevant authority published prior to submission of the brief. A Notice of Supplemental Authority should cite only to newly discovered cases (copy of the opinion should be attached to the Notice) with a clear designation of the point on appeal to which the authority is pertinent. Argument is not permitted in the Notice of Supplemental Authority.

F. Oral Argument

1. A request for oral argument must be filed as a separate document. If granted, oral argument will generally be limited to ten minutes per side. If there are multiple parties on a side, then the parties must determine amongst themselves how to split the ten minutes.

2. A notice containing information about where the oral argument will be held will be served two weeks prior to the oral argument date. Oral argument may be held at the Indian River, St. Lucie, or Martin County courthouses. Your oral argument will not necessarily be held in the county where you filed your case.

3. Notices of unavailability are unauthorized and will not be considered. Requests for continuances of oral argument must be based on either a substantial commitment preexisting the receipt of the order granting request for oral argument or an emergency situation.

4. Cases without oral argument are subject to the same review, analysis, and consideration by a three judge panel as cases that are orally argued.

G. Other information

1. Pro se parties are strongly encouraged to file a notice of primary email address with the Appeal Clerk. When possible, the Court will transmit copies of orders and opinions electronically via the E-portal.

2. If you do not have an email address, you must keep your mailing address current with the Appeal Clerk. To ensure you receive copies of all motions, orders, and opinions, you must file a notice of change of address when you move. It is not the Court's responsibility to track down your new address.

3. Requests for the status of the matter pending before the Court should be directed to the Appeal Clerk at the Clerk's Office in the county where your case is pending. Please be advised that the Appeal Clerk can only tell you what has or has not been filed into the appeal case file. Do not ask the Appeal Clerk legal questions, as he/she is not trained or licensed to give legal advice.

Revised December 2015