

ADMINISTRATIVE ORDER
NO. 2015-10-03

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE AND OSCEOLA
COUNTIES, FLORIDA

AMENDED ORDER GOVERNING APPELLATE PROCESS,
NINTH JUDICIAL CIRCUIT

WHEREAS, pursuant to Article V, section 2(d) of the Florida Constitution and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice; and

WHEREAS, pursuant to the chief judge's constitutional and statutory responsibility for administrative supervision of the courts within the circuit and to create and maintain an organization capable of effecting the efficient, prompt, and proper administration of justice for the citizens of this State, the chief judge is required to exercise direction, *see* Fla. R. Jud. Admin. 2.215(b)(2), (b)(3); and

WHEREAS, pursuant to section 26.012(1), Florida Statutes, the Circuit Court shall have jurisdiction of appeals from final administrative orders of local government code enforcement boards and of reviews and appeals as otherwise expressly provided by law;

NOW, THEREFORE, I, Donald A. Myers, Jr., in an effort to promote uniformity of appellate decisions and to avoid intra-Circuit conflict if possible, and in order to enhance judicial efficiency involving appeals to the Circuit Court, as well as in order to facilitate the efficient operation of the administration of justice, and pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, hereby order that, **effective immediately**, unless otherwise provided herein, to continue until further order, and superseding any provisions in prior Administrative Orders which may be inconsistent, that the following procedures are established concerning appeals from final administrative orders of local government code enforcement boards and of reviews and appeals as otherwise expressly provided by law:

I. THE APPELLATE COURT

A. PANELS

1. All petitions for writ of certiorari which seek review of a quasi-judicial decision of any public body, city or county commission or council, administrative board or agency, all writs of prohibition and mandamus directed to any public body or agency in exercise of its quasi-judicial function, and appeals as otherwise expressly provided by law shall be resolved by an appellate panel consisting of three Circuit Judges. In specific detail:

- a. All petitions for extraordinary writs which are filed pursuant to Florida Rule of Appellate Procedure 9.030(c) and which seek review of a lower tribunal ruling, except those qualifying Writs of Habeas Corpus and other Emergency Writs that are ruled upon by the Presiding Judge.
- b. Actions filed pursuant to Florida Rule of Civil Procedure 1.630 **shall not** be heard by an appellate panel consisting of three Circuit Judges.

2. Every Circuit Judge, except as determined by the Chief Judge, shall be assigned to a panel by the Chief Judge and will remain on the panel for one calendar year. Prior to January of each year, the Chief Judge or the Chief Judge's designee will reassign each Judge to a new panel. The Chief Judge shall also ensure that the panels comply with the time guidelines contained herein. The Circuit Appellate Court Clerks shall randomly assign cases to the appellate panels on a rotating basis. Cases assigned to the panel will remain with that particular panel until the case is concluded, even if resolution occurs after the Judges are assigned to new panels. Cases may be reassigned on an as needed basis by the Administrative Judge of the Appellate Division.

3. Each year, the Chief Judge will determine the number of appellate panels and will assign the Judges to a panel. This determination will be made with every effort to assign all Judges to an appellate panel. The Chief Judge will not be assigned to a panel but shall remain available for substitute service on an as needed basis.

4. Every panel shall have a Presiding Judge. Each individual panel member will sit in turn as the Presiding Judge. Once the assignments are made, the first Judge listed for each panel shall be the Presiding Judge for the period of January through April. The second Judge listed shall be the Presiding Judge for May through August and finally, the third Judge shall be the Presiding Judge for September through December. The Presiding Judge over any case may be changed by agreement amongst the Judges on the panel.

5. The Presiding Judge shall hear all motions filed in every appeal assigned to the panel. This includes whether oral argument should be granted. If oral argument is granted, the Presiding Judge shall coordinate scheduling of the oral argument with the remaining panel members. If a Judge is unable to attend the oral argument, that Judge must obtain a substitute Judge who shall then be responsible for that panel member's case. Any Judge who obtains a

substitute shall notify the other panel members and ensure that the Substitute Judge receives the documents filed in the case prior to oral argument.

6. Each Judge is ultimately responsible for every appeal filed during the time he or she is Presiding Judge. The determinative date for assignment to a particular panel is the day the Notice of Appeal is filed with the Clerk of the Circuit Court.

7. When a Judge assigned to an appellate panel is absent, is disqualified in an action, or is otherwise unable to perform the duties regarding the appellate cases to which that Judge is assigned, then the Administrative Judge of the Appellate Division shall reassign another Judge to serve on the panel for the case. If the Judge who is unable to serve was the presiding Judge of the panel, then the newly assigned Judge will become the presiding Judge of the panel.

B. ORAL ARGUMENT

1. If oral argument is scheduled on a case, the documents filed in the appellate case file shall be reviewed by the Presiding Judge prior to oral argument. The Presiding Judge shall give the initial presentation to the remaining panel members at the panel conference.

2. If oral argument is held, the panel will immediately thereafter conference in order to decide the appeal. No per curiam reversals are permitted. The proposed opinion will be circulated simultaneously to the other panel members for consideration. Any Judge may write a concurring or dissenting opinion which must also be circulated prior to the filing of the majority opinion.

C. EN BANC

1. A hearing en banc may be ordered only by a majority of the Presiding Judges, so designated based upon the specific administrative order which governs the panel assignment of the particular appeal. A party may not request an en banc hearing. A motion seeking an en banc hearing shall be stricken. The same Judges who were Presiding Judges at the time the decision was made to determine the issue en banc, shall constitute the en banc panel. En banc hearings and rehearings shall not be ordered unless the case is of exceptional importance or unless necessary to maintain uniformity within the Circuit. The en banc decision shall be by the majority of the en banc panel. In the event of a tie vote, the panel decision shall stand as the decision of the Court. If there is no panel decision, a tie vote will affirm the lower court decision.

2. A rehearing en banc is an extraordinary proceeding. A rehearing en banc may be ordered by the Court on its own motion or on motion of a party. Within the time prescribed by rule 9.330, Florida Rules of Appellate Procedure, a party may move for an en banc rehearing solely on the grounds that the case or issue 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 shall be stricken. A response may be served within ten (10) days of service of the motion.

A vote will not be taken on a motion for rehearing en banc unless requested by a Judge. Judges who did not sit on the panel are under no obligation to consider the motion unless a vote is requested. A motion for rehearing en banc shall be disposed of by order. If rehearing en banc is granted, the Court may limit the issues to be reheard, require the filing of additional briefs, and may require additional argument.

II. THE CLERK OF COURT

A. ACKNOWLEDGMENT

1. The Clerk will send an Acknowledgment of Filing the appeal to the Presiding Judge, all counsel of record and all pro se parties, substantially in the form attached hereto as “Exhibit A,” for Orange County and “Exhibit “B,” for Osceola County indicating the panel and panel members to which the case is assigned, date filed and appellate case number.

2. The Acknowledgment will contain a notification that all documents are to be filed with Clerk’s Office, not with Presiding Judge.

3. A Notice to Attorneys and Parties, in a form substantially similar to “Exhibit C” attached hereto, will be available on the Court’s website.

B. FILING FEE

1. If an appeal is filed without either the filing fee or an application for determination of indigent status finding appellate indigent, the Court may enter an “Order to Comply with Appellate Rules or Show Cause Why Sanctions Should Not Be Imposed” within the time as determined by the Court after the Notice of Appeal has been filed.

2. If a response to an Order to Show Cause is filed, the Clerk will immediately notify the Presiding Judge of the response for review.

3. If a response is not filed, the filing fee is not paid or an application for determination of indigent status finding appellant indigent is not submitted within the time as directed by the Court, the Court may enter a “Final Order Dismissing Appeal Pursuant to Rule 9.410.”

C. RECORD ON APPEAL

1. If the appellant fails to pay the lower court for preparation of Record on Appeal, such record will not be filed with the appellate court Clerk but will be retained by the lower court Clerk until payment is made.

2. If time has expired for filing of the Record on Appeal, the Court may enter an “Order to Comply with Appellate Rules or Show Cause Why Sanctions Should Not Be Imposed.”

3. If a response to the Order to Show Cause is filed, the Clerk will immediately notify the Presiding Judge of the response for review. If a response or the Record on Appeal has not been filed within the time directed by the Court, the Court may enter a “Final Order Dismissing Appeal Pursuant to Rule 9.410.”

D. MOTIONS

The Clerk will notify the Presiding Judge of the motion within five (5) days after filing of a motion.

E. BRIEFS

1. All briefs shall be filed with the Clerk of Court.

2. If the initial brief is not filed within the time set forth in the Florida Rules of Appellate Procedure, the Court may enter an “Order to Comply with Appellate Rules or Show Cause Why Sanctions Should Not Be Imposed.”

3. If a response to an Order to Show Cause is filed, the Clerk will immediately notify the Presiding Judge of the response for review. If a response or initial brief is not filed within the time directed by the Court, the Court may enter a “Final Order of Dismissal Pursuant to Rule 9.410.”

4. If an answer brief is not filed within thirty-five (35) days of filing the Initial Brief, the Court may enter an “Order to Comply with Appellate Rules or Show Cause Why Sanctions Should Not Be Imposed.”

F. FINAL DECISION

When an appeal has been perfected for decision (i.e., all briefs have been filed or the time for filing briefs has expired), the Clerk will notify the appropriate Panel for decision. The Clerk will prepare and issue a mandate fifteen (15) days from date of final order unless the order states mandate to be issued forthwith. If motion for rehearing or clarification is filed, the Clerk will notify the Panel five (5) days after the motion is filed.

G. VOLUNTARY DISMISSAL

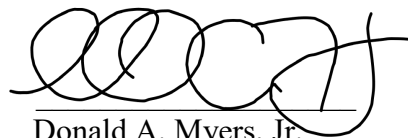
When a voluntary dismissal or joint stipulation of dismissal is filed in the Clerk’s Office, the Court will enter a “Final Order Dismissing Appeal.”

H. RETURNING COURT ORDERS TO CLERK’S OFFICE

After entry of an order at any stage of the appellate process, the Judicial Assistant will send out all necessary copies and immediately e-file or forward the original order to the Clerk’s Office to be filed.

Administrative Order 2015-10-02 is vacated and set aside except to the extent that it has been incorporated and/or amended herein. Vacating an Administrative Order that vacates a prior Order does not revive the prior Order.

DONE AND ORDERED at Orlando, Florida, this 11th day of February, 2021, *nunc pro tunc* to January 1, 2021.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

Donald A. Myers, Jr.
Chief Judge

Copies provided to:

Clerk of Courts, Orange County
Clerk of Courts, Osceola County
General E-Mail Distribution List
<http://www.ninthcircuit.org>

“Exhibit C”

NINTH JUDICIAL CIRCUIT COURT — APPELLATE DIVISION

NOTICE TO ATTORNEYS & PARTIES

RE: APPEALS FROM FINAL ADMINISTRATIVE ORDERS OF LOCAL GOVERNMENT
CODE ENFORCEMENT BOARDS AND OF REVIEWS AND APPEALS AS OTHERWISE
EXPRESSLY PROVIDED BY LAW

The following rules of the Ninth Judicial Circuit Court should be followed by all attorneys and parties filing appeals from final administrative orders of local government code enforcement boards and of reviews and appeals as otherwise expressly provided by law.

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.

**THE FLORIDA RULES OF APPELLATE PROCEDURE APPLY TO ALL APPEALS
AND ORIGINAL PROCEEDINGS.**

A. Appeal of final Administrative Orders of Local Government Code Enforcement Boards and of Reviews and Appeals as Otherwise Expressly Provided by Law

1. The 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. *See* Florida Rule of Appellate Procedure 9.110(c).
2. Persons seeking indigent status must comply with Florida Rule of Appellate Procedure 9.430.
3. The Notice of Appeal must be served on all parties or their attorneys. *See* Florida Rule of Appellate Procedure 9.420(c).
4. The date of rendition of the order must be indicated on the Notice of Appeal. *See* Florida Rule of Appellate Procedure 9.020(i).
5. The Notice of Appeal shall contain the names of all parties to the appeal whether it is an appeal of a final or non-final order.

6. For record preparation, comply with Florida Rules of Appellate Procedure 9.200. You must pay the Clerk for the cost of any record preparation or your appeal may be subject to dismissal. 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 Clerk of Court.
7. If no transcript of the lower court's proceedings exist, you may file a statement of the evidence, which is your best recollection of the proceedings, with the lower court, and serve a copy on all parties or their attorneys, who may serve objections or proposed amendments to it within 15 days of service. The lower court must approve the statement of the evidence before it is filed in this Court. It is the Appellant's responsibility to obtain this approval. *See* Florida Rule of Appellate Procedure 9.200(b).
8. In civil cases, the Appellant must file with the Notice of Appeal: (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.
9. The Court must be advised 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 (non-final orders, zoning and land use orders, and other quasi-judicial local government action)

1. The Petition and the Appendix shall be filed together with payment of the appropriate filing fee. *See* Florida Rule of Appellate Procedure 9.100(g) for the required contents of the Petition.
2. Persons seeking indigent status must comply with Florida Rule of Appellate Procedure 9.430.
3. The Petition shall be served on all parties or their attorneys and shall contain a certificate of service and certificate of compliance.
4. The Petitioner must include in the Appendix a conformed 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.

5. The Court must be advised in writing as soon as possible of any other cases pending before this Court involving related issues of which you have personal knowledge.

C. Motions

1. Motions must be filed with the Clerk of Court. Do not file or send courtesy copies unless requested. Any record material necessary for resolution of the motion should be attached to the motion as an Appendix. *See Florida Rule of Appellate Procedure 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 a party seeks disposition of all or part of another party's appeal) that opposing counsel has been contacted and will or will not stipulate to the relief requested.
3. Responses to motions shall be served within 15 days after service of the motion. No reply will be considered unless specifically authorized by the Court. Any unauthorized reply will be stricken without consideration. *See Fla. R. App. P. 9.300.*
4. Request for Oral Argument should be filed as a separate document in compliance with Florida Rule of Appellate Procedure 9.320. Oral argument, if granted, will generally be limited to 10 minutes per side. If there are multiple parties to a side, then the parties must determine among themselves how to split the 10 minutes per side among them. Oral Argument will be granted by the Court only in those cases where it is genuinely believed necessary for disposition of the cause.
5. Excessive and unnecessary motion practice is discouraged and may result in the imposition of sanctions under Florida Rule of Appellate Procedure 9.410. *See Dubowitz v. Century Village East., Inc.*, 381 So. 2d 252 (Fla. 4th DCA 1979).

D. Briefs

1. All briefs shall be filed with the Clerk of Court. *See Florida Rule of Appellate Procedure 9.210* for required contents of and procedure for briefs. Do not file or send courtesy copies unless requested.
2. An initial brief must be served within 70 days of filing the notice of appeal. *See Florida Rule of Appellate Procedure 9.110(f).*

3. An answer brief must be served within 30 days of service of the initial brief, and any reply brief must be served within 30 days of service of the answer brief.
4. All briefs shall include a certificate of service showing service of the brief on the opposing parties or their attorneys, as well as a certificate of compliance pursuant to Florida Rule of Appellate Procedure 9.210.
5. Failure to cite to the record for facts stated in the brief, in compliance with Florida Rule of Appellate Procedure 9.210, may result in the brief being stricken.
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.
7. If not filed electronically, all briefs shall be securely stapled with one staple in the upper left-hand corner and without brief covers. No onion skin or similar quality copies will be accepted.

E. Extensions of Time

1. In expedited cases, no motions for extensions of time will be granted.
2. Requests for extension of time should be filed in compliance with Florida Rule of Appellate Procedure 9.300(a). No motion for extension of time will be granted that does not contain a certificate that opposing counsel has been contacted, and the position opposing counsel takes on the extension. A motion for extension of time served after the time for serving the brief or response has expired will not be granted absent a showing of good cause.
3. In lieu of an agreed motion for extension of time to file a brief, the Court will accept a notice from a party that the parties have agreed to a specific extension of time. This notice shall state that the parties have agreed on the extension, how long the agreement entails, and when the new due date will be. Agreed notices for extension of time will be accepted for a total of 90 days for an initial or answer brief and 60 days for a reply brief. The notice need not be signed by both parties. No order will issue from the Court. This procedure shall not apply to any expedited or emergency appeals. A notice of agreed extension of time filed after the time for serving the brief or response has expired will be stricken absent a showing of good cause.

F. Other Information

1. To ensure you receive copies of all motions, orders, and opinions, **FILE A NOTICE OF CHANGE OF ADDRESS WHEN YOU MOVE.**
2. Requests for the status of the matter pending before the Court should be directed to the Clerk of Court either at the Orange County Clerk of Courts at (407) 836-2000 or the Osceola County Clerk of Courts at (407) 742-3500, depending upon which Clerk's Office you filed. The Clerk can only tell you what has or has not been filed into the Appeal case file. You should not ask the Clerk legal questions because they are not trained or licensed to give legal advice.