

IOP 5.4 | OPINIONS

5.4.1 Definition of Opinion

As used throughout IOP 5.4, the term “opinion” means any explanation, including citation to a prior decision or opinion, that accompanies a disposition, by a panel or the court sitting en banc, of an appeal or petition (including determination of a petition filed pursuant to Florida Rule of Appellate Procedure 9.100(d), or 9.141(c) or (d)); or that accompanies any other decision by a panel or the whole court that effectively affirms, approves, validates, reverses, quashes, vacates, sets aside, or otherwise upholds or vitiates any part of an order or judgment of a lower tribunal. An explanation that accompanies a determination of a motion for review filed pursuant to Florida Rule of Appellate Procedure 9.140(h)(4); 9.146(c)(3); 9.190(d)(3), (e)(2), or (e)(3); 9.310(f); 9.400(c); or 9.600(c)(3) is an opinion. An explanation that accompanies an order of a panel or the whole court granting or denying a motion for stay is not an opinion. A statement, without further elaboration, that simply describes the nature of the disposition (e.g., “denied on the merits,” “dismissed for lack of jurisdiction,” “dismissed as untimely”) is not an “explanation,” as that term is used herein, and standing alone, would not be an opinion under IOP 5.4.

5.4.2 Preparation

Usually, the primary judge is also responsible for writing the opinion, if an opinion is written. If the primary judge is in the majority, he or she will write the majority opinion. If the primary judge is in the minority, the senior judge in the majority will assign responsibility for writing the majority opinion to either himself or herself or the other judge in the majority.

5.4.3 Circulation and Release

Once the panel completes the opinion, it shall be provided to all members of the court for review (“pre-release”) for no fewer than seven days prior to public release. The clerk’s office shall release opinions designated for standard release on Wednesday of each week. If required by the circumstances of a particular week, the chief judge may schedule a regular opinion release for a day other than Wednesday. An opinion



designated for expedited release shall be circulated for a period of time of at least forty-eight hours. An opinion designated for emergency release shall normally be released on the same day the request is approved or, if that is not possible, on the next day.

Expedited release and emergency release shall be reserved only for those cases which, of necessity, should not be delayed for the normal pre-release period. Requests for expedited release or emergency release must be joined by at least two panel members, and must be approved by the chief judge. In the case of the absence of the chief judge, and when the majority of the panel believes approval should not be delayed, approval of the acting chief judge is required. If there is no acting chief judge appointed or available, approval of the most senior judge of the court who is available and who is not a member of the panel on the opinion being considered must be obtained.

Along with the request for expedited or emergency release, the panel or the primary judge must include a written explanation of the necessity for expedited or emergency treatment. The request should show, at the least,

- 1) expedited or emergency treatment will prevent harm to the parties or to the public;
- 2) the justice of the cause requires expedited or emergency treatment; and,
- 3) the necessity for emergency or expedited treatment outweighs the benefit normally gained by standard circulation.

For emergency release opinions only, the moving judge shall also, by simultaneous email, provide all judges (and the clerk) a copy of the emergency release request and opinion. The decision of the chief judge concerning timing of an emergency release opinion is a matter within his or her sole discretion.

During this pre-release period, any judge on the court can contact the primary judge or other judges on the panel with comments and suggestions or make a request for en banc consideration.



No opinion may issue or be released before it has been circulated for review pursuant to this rule.

5.4.4 Changes and Withdrawal

A panel member may withdraw a panel opinion at any time before release for consideration of corrections or changes, or for the purpose of requesting en banc consideration.

If a non-panel member desires to withdraw an opinion for the purpose of recommending a change, clarification, or correction, he or she may request any panel member to do so or in the absence of all members of the panel, may request the chief judge or acting chief judge to withdraw the opinion.

Any opinion in pre-release that requires a substantive change (i.e., one that alters the meaning of the opinion or any portion thereof) must be withdrawn and recirculated on pre-release. Non-substantive changes may be made to an opinion in pre-release provided the primary judge provides adequate notice of the changes to all judges and the clerk no later than 5:00 p.m. on the Monday immediately preceding the Wednesday release date for the opinion. To provide adequate notice, the primary judge shall

- 1) email a redline version of the revised opinion to all judges and the clerk,
- 2) upload the redline version and the final version of the revised opinion to the case management system, and
- 3) send the final version of the revised opinion to the clerk's office.

In the event of a non-Wednesday regular release or an expedited or emergency release, the chief judge shall set a time certain before which non-substantive changes may be made, provided that notice is given to all judges and the clerk.

The chief judge shall have the authority to delay the release date on any opinion when it appears there are matters which the panel should address and neither the primary judge nor another panel member is available prior to the scheduled release date.

In the event a judge becomes concerned that an opinion on pre-release is inappropriate because it may be

unprofessional, may damage collegiality on the court, or may otherwise have a negative impact on the public trust and confidence in the court, the judge shall promptly advise the chief judge, who will withdraw the opinion before release. Within 5 days of receiving information concerning such a matter, the chief judge shall appoint a committee to investigate and seek to resolve the matter. The three members of the committee shall be the chief judge, the most senior judge on the court, and the most junior judge on the court. If the matter should involve any of those judges, the involved judge shall be replaced on the committee with the chief judge-designate replacing the chief judge, the second most senior judge replacing the most senior, and the second most junior judge replacing the most junior. The committee shall have the authority and discretion to delay the release of that opinion for a period not to exceed 30 days from the date it was withdrawn by the chief judge, unless a shorter period of time is voted by the majority of the court.

