



**INTERNAL OPERATING PROCEDURES
FIRST DISTRICT COURT OF APPEALS, FLORIDA
SECTION V: PROCEEDINGS BEFORE A PANEL**

{AS OF: 12/1/2023}

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INTERNAL OPERATING PROCEDURES | 1DCA (FL)

SECTION: V

TITLE: PROCEEDINGS BEFORE A PANEL

RULES: 5.1 through 5.6



IOP 5.1 | SCHEDULING AND ASSIGNING CASES

The clerk prepares the court calendar and assignment of judges to panels under the supervision of the chief judge. In preparing the schedule, the clerk assigns the judges to merits panels and writs and motions panels. The merits panel assignments are made using a blind draw system in a manner that neither judges, lawyers, nor litigants have any influence in selection of any judge or panel to consider any particular case.

5.1.1 Emergency Panels

Writs and motions panels decide all motions not decided by the chief judge or acting chief judge that are filed prior to the time of the assignment of the case to a merits panel. In addition, writs and motions panels dispose of extraordinary writ petitions, including those assigned for consideration of whether to order a response to the petition. Suggestions filed under Rule of Appellate Procedure 9.125 shall be assigned, out-of-cycle, to the writs and motions panel serving at the time the suggestion was filed. In supervising the preparation of the court calendar, the chief judge shall designate in advance the day and time each weekly panel's service will begin and end. The Chief Judge may direct the extent to which attorneys on the court's central staff shall be responsible for aiding the weekly panels.

5.1.2 Emergency Matters

Emergency matters consist of petitions, cases, and other filings requiring immediate attention. Such matters shall be assigned to the writs and motions panel serving at the time the matter requiring immediate attention was filed. Upon assignment to a writs and motions panel, the clerk shall assign the case to that panel for ultimate disposition. Attorneys on the court's central staff shall be responsible for aiding the panel in the resolution of emergency matters, unless the primary judge assigned to the matter affirmatively indicates to the director of central staff that assistance from central staff is not necessary. If an emergency matter is filed in a case that has already been assigned to a regular merits panel, then the clerk shall assign the matter to that merits panel. Suggestions filed under Rule of Appellate Procedure 9.125 shall not receive emergency treatment, regardless of how the suggestion is characterized.



5.1.3 Merits Panels

Appeals that have matured, meaning that all briefs have been filed, or the time for filing has passed, and the record has been filed, are assigned to one of the regular merits panels. Each judge on a merits panel will be the primary judge on one-third of those cases, with the assignment of the primary judge being made in the clerk's office by random selection. When a judge is primary on a case, he or she makes the initial determination of whether oral argument will be granted, presents the case at conference or by circulation, and has responsibility for preparation and distributing a summary of the case to each member of the panel. The merits panel also rules upon any motions filed in the appeal after it is assigned to the panel. The summary is provided to the panel along with the briefs, any appendices, and other conference materials, which typically include excerpts from the record, copies of opinions, and copies of relevant statutes or rules.

5.1.4 Expedited Processing of Certain Cases Involving Children

Consistent with the Florida Court System's emphasis on cases affecting children, this court has accelerated procedures for processing appeals involving the Termination of Parental Rights and Finding a Child Dependent. This court also expedites certain other categories of cases, including Juvenile Delinquency, Family Law cases affecting child custody or support, Baker Act Appeals, and other cases individually expedited by court order.

Cases that appear to address termination of parental rights or child dependency are reviewed by the court staff immediately after they are filed to identify any jurisdictional defects and to determine if the case is properly classified as a termination or dependency case. The court then issues an order which:

- (1) expedites the case;
- (2) provides that extensions of time will not be granted to court reporters, lower tribunal clerks charged with preparing the record, or to the parties, except when emergency circumstances are shown; and
- (3) requires the appellant to notify the court of the name and address of the court reporter who is to prepare any transcripts.



To help ensure prompt identification of expedited cases by all court personnel, all termination of parental rights and dependency cases are marked as such in the court's case management system.

Prior to being assigned to a panel of judges for merits consideration, each dependency and termination case is reviewed weekly in the clerk's office to ensure that it is proceeding in accordance with the rules. If action is required to assure that the case is treated by the parties as an expedited case, the court will issue any necessary orders. These expedited cases are assigned to regular merits' panels for a decision in certain predesignated expedited case slots that are held for sensitive cases. If even quicker action is required the case will be assigned to the weekly emergency panel. Further, law clerks, judges and panels are expected to review dependency and termination of parental rights cases and other expedited cases ahead of their other cases.



IOP 5.2 | ORAL ARGUMENT

The members of the panel assigned the case are responsible for granting or denying oral argument. The judge who is primary on the case shall screen the oral argument requests within five days of receipt of the file from the clerk's office. If that judge concludes that the oral argument should be granted, he or she will grant it and assign the length of argument per side. If the primary judge believes the request should be denied, that judge will forward the case and recommendation to the other panel members who shall promptly notify the primary judge whether they agree or disagree with the recommendation. If any panel member disagrees with the recommendation to deny oral argument, the oral argument shall be granted. The primary judge shall be responsible for notifying the clerk's office of the panel's decision.



IOP 5.3 | PANEL CONFERENCE

After the judges have had an opportunity to review the summaries, briefs and attachments or petitions and responses, and undertake any other research (and after oral argument, if there is oral argument), the case is conferenced by the panel. At conference, the panel decides the cases. At conference, the primary judge speaks or writes first and presents the case. Following the presentation, the other judges may ask questions of the primary judge. The next judge to speak or write is the junior in terms of length of service on the court of the two other judges, followed by the senior of the two non-primary judges. Once each of the judge's views are fully expressed, determinations are made regarding the drafting of opinion(s).



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.



IOP 5.5 | REHEARING MOTIONS

Rehearing motions are held by the court to allow time for the opposing party to file a response in accordance with Florida Rule of Appellate Procedure 9.300(a). If there is consent by opposing counsel indicated in the motion, a response is filed sooner than the full time permitted, or the panel shortens the time due to exigent circumstances, the rehearing motion may be circulated prior to the expiration of the hold time. Motions for rehearing are considered by the panel originally assigned the case. Motions for rehearing en banc are made available to all members of the court and any member of the court can move for en banc consideration.



IOP 5.6 | HANDLING OF POST-DISPOSITION MOTIONS BY ASSOCIATE JUDGES AND SENIOR JUDGES

An associate or senior judge assigned to a case shall also consider any motion for rehearing, clarification, certification, or issuance of a written opinion or any other post-decision motions, including attorneys' fees motions, filed in the case. However, associate judges and senior judges may not request en banc consideration of a panel decision, nor vote on any motion for rehearing en banc whether filed by a party or requested by a judge in regular active service on the court.



IOP 5.7 | MANDATES

Unless otherwise directed by the Court, a mandate will issue as soon as practicable after the expiration of fifteen days from the date of issuance of a dispositive opinion in an appeal or an opinion granting relief in an original proceeding. If a timely motion authorized by Florida Rule of Appellate Procedure 9.330 or 9.331 is filed in response to such an opinion, the mandate will issue as soon as practicable after the expiration of fifteen days from the date of a decision on the motion or a final disposition in the case, whichever is later. No mandate will issue in a case decided by order or in an original proceeding when the case is dismissed or relief is denied.



APPENDIX



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