

UNDERSTANDING THE APPELLATE PROCESS IN THE FOURTH DISTRICT COURT OF APPEAL

(Submitted by appellate lawyer members of the Palm Beach
County Appellate Practice Committee)

THE INFORMATION CONTAINED BELOW IS INTENDED TO BE GENERAL BACKGROUND INFORMATION TO HELP A NON-LAWYER UNDERSTAND THE APPELLATE PROCESS. IT IS NOT INTENDED, AND SHOULD NOT BE CONSIDERED, A STATEMENT OF LAW. YOU SHOULD SEEK THE ASSISTANCE OF AN ATTORNEY TO FULLY PROTECT YOUR RIGHTS.

I. TYPES OF CASES HEARD ON APPEAL

The Fourth District hears appeals from both criminal and civil cases.

A. Criminal Appeals

A criminal appeal is brought to review a matter arising from a criminal case (which is a case brought by the State in which a crime has been charged). A direct appeal may be filed by a juvenile after disposition in a delinquency case.

When a person is convicted of a crime in circuit court, that person can file a direct appeal of the conviction and sentence to the District Court of Appeal. If, however, a defendant has pled guilty or no contest to the charges, and been convicted or sentenced based on that plea, the grounds for an appeal are very, very narrow.

Defendants in criminal cases cannot take appeals from pre-trial orders (orders of the trial judge before the jury verdict). The State of Florida, as the prosecution, however, may appeal certain orders suppressing evidence or dismissing charges before trial. After a trial, the State can appeal orders granting a new trial or a judgment of acquittal after a guilty verdict.

The district court also has jurisdiction to hear extraordinary writs, such as writs of habeas corpus, certiorari, mandamus or prohibition in exceptional circumstances, both before trial and after judgment. These are requests to a court to exercise its discretionary power to decide a special class of issues, such as the legality of custody of a person.

B. Civil Appeals

A civil appeal is brought to review a matter arising from a civil case. The most common form of review is by appeal of a final order of a circuit court -- the final judgment or order that decides the merits of the case -- who wins or loses. The district court can also hear appeals from certain limited orders that the circuit court enters before the final judgment. These orders are

listed in *Florida Rule of Appellate Procedure* 9.130. Civil non-final orders other than those specifically listed in Rule 9.130 are not reviewable unless the order qualifies under the strict standards of the appellate court's discretionary extraordinary writ jurisdiction such as certiorari, mandamus or prohibition. Certain orders of the circuit courts, acting in their review capacity, as well as certain orders certified from the county courts, may also be appealed to the district court. Finally, administrative actions may be appealed as provided by general law.

In most instances, in both criminal and civil appeals, there is no potential for review beyond the decision of the district court of appeal. There is no general right of appeal to the Florida Supreme Court. The *Florida Rules of Appellate Procedure* set forth the limited circumstances where further review may be sought in the Florida Supreme Court.

II. THE BASICS OF THE APPELLATE PROCESS

A. What is an appeal?

The purpose of an appeal is to review decisions of the trial court or lower tribunal to determine if harmful legal error has occurred. Legal error is harmful if it affects the outcome of the case. Appeals are not trials and are not intended to give a litigant a second opportunity to reargue the facts of his or her case. The appellate court does not serve as a second jury.

An "appellant" is the person who files the appeal and is challenging the judgment entered by the trial court. An "appellee" is the opposing party who is, in most cases, simply trying to uphold the judgment.

An appeal is a very complicated matter usually handled by trained lawyers who follow the *Florida Rules of Appellate Procedure*. All parties in an appeal must follow all of the *Florida Rules of Appellate Procedure*. Even if you are not a lawyer, you will not be given any advantage and you are expected to follow these rules. Failure to follow the rules may result in the dismissal of the appeal. A copy of these rules can be found in the Law Library located in the 4th DCA Building, or you may buy a copy of these Rules by contacting the Florida Bar in Tallahassee at (850) 561-5843. In addition, all parties must follow the rules of the Fourth District Court of Appeal, as contained in the "Revised Notice to Attorneys and Parties." A copy of those rules are sent to the appellate parties after a notice of appeal is filed. Also, they are posted elsewhere on this web site.

B. How is an appeal started?

Most appeals are started by filing a Notice of Appeal with the Clerk of the lower court or administrative agency within the time limits specified by the *Florida Rules of Appellate Procedure* (usually, 30 days). You must also pay the necessary filing fees which are established by the State. That notice is then forwarded by the lower court or administrative agency to the District Court of Appeal. If the Notice of Appeal is not filed within the deadline provided by law, the court cannot take the appeal.

The Notice of Appeal must be accompanied by the filing fee, currently \$300, payable by check or money order to the District Court of Appeal. In addition, the lower tribunal usually requires a fee for the preparation of the record. If the person filing the appeal is indigent, these fees can be excused if, and only if, the party files a motion to declare the party indigent for the purposes of appellate costs. This requires a motion and affidavit to be filed in the lower court. The party usually must obtain a hearing before the judge to get the judge to enter an order of indigency. When a person is declared indigent for costs on appeal, this only includes the costs of filing the appeal which are paid to the clerk and the cost paid to the clerk for preparing the record. It does not include the fee required by the court reporter for transcribing the trial or other proceedings which occurred in the trial court. A party must pay for these, because the state has not provided any fund from which these can be paid, except for criminal defendants. Unfortunately, providing a transcript is the most expensive part of preparing the appeal.

Extraordinary writ procedures are started by the filing of a petition containing petitioner's arguments within the time allowed by law, as described in the *Florida Rules of Appellate Procedure 9.100*.

C. Steps in the process.

Described below is some general information about the steps involved in an appeal. The *Florida Rules of Appellate Procedure* contain much more detailed information.

1. **The Record:** The record consists of papers and documents filed in the trial court. If there is a transcript of the trial this is also included in the record. Within ten (10) days of filing your Notice of Appeal, you may direct the Clerk of the Circuit Court, in writing, to include or exclude documents or exhibits filed in the circuit court. These documents will be sent by the Clerk of the Circuit Court to the Clerk of the Fourth District Court of Appeal (Rule 9.200). The proper form for the written directions is shown in Rule 9.900(f), "Directions to Clerk". If you do not direct the Clerk, Rule 9.200 explains what documents will automatically be included in the Record. You will be charged by the clerk per document for preparation of the record.

2. **Transcript of Proceedings:** Within 10 days of filing the Notice of Appeal, you must make arrangements with the court reporter for the preparation and filing of any transcript(s) needed for the appeal, as explained in Rule 9.200(b). In a direct appeal of a criminal conviction, the trial transcript will be paid for by the County, if the defendant is indigent and obtains an order of insolvency from the trial court judge.

3. **Writing Briefs:** A brief is the written statement which sets forth the legal arguments of the party. The appellant sets forth the reasons why the trial court's judgment is wrong, supporting the argument by references to the facts in the record and the law. The appellee's brief sets forth reasoning as to why the arguments in the appellant's brief do not require the reversal of the trial court's judgment.

The Initial Brief which is filed by the appellant shall contain the following, in order:

1. A table of contents.
2. A table of citations which includes the names of cases or other legal authority upon which you rely, including statutes.
3. A statement of the case and the facts describing the nature of the case, the proceedings that have already taken place, and the decision of the Circuit Court.
4. A summary of the argument that you intend to make to the court.
5. The full argument on each issue which you intend to raise.
6. The conclusion, which shall not be more than one page and shall set forth precisely what relief is requested or what you want the Fourth District Court of Appeal to do.

See Rule 9.210 for other details and for the contents of Answer and Reply briefs which are similar.

In addition to serving a copy on each other party in the appeal, you must file one original brief and three (3) copies of the brief with the Clerk at the Fourth District Court of Appeal (Rule 9.210). In an appeal of a final order, the initial written brief must be served on the other parties and delivered to the Clerk of the Fourth District Court of Appeal within seventy (70) days of the filing of your Notice of Appeal (Rule 9.110(f)). Your name and address must be on the brief cover sheet. The Initial Brief and Answer Brief may not exceed fifty (50) pages. Any Reply Brief shall not exceed fifteen (15) pages. (See Rule 9.210).

4. **Oral Argument:** If you want to come in person to present argument to the court, in addition to your brief, your request for oral argument must be in a separate written document and must be filed not later than the last brief that you filed. The court holds oral argument sessions every week except August and the last two weeks of December. If the court grants your request for oral argument, you may present your case to the three (3) judge panel assigned to the case. You will be allowed ten, fifteen or twenty minutes for this presentation, as the court shall specify in the order setting the oral argument.

5. **Decision of the Court:** After the court receives and reviews the briefs submitted, the record, conducts its own research, and hears oral argument when granted, a panel of judges will sit and discuss, or “conference” the case. They will arrive at a decision on the issues involved. Once the court decides your appeal, you will receive written notice from the court. If the court agrees with the decision of the trial court, the written notice will state that the trial court's decision is affirmed. This written notice may include a written opinion of the court or it may simply affirm the trial court ruling without a written opinion. If the court disagrees with the decision of the trial court, it will issue a written opinion reversing the trial court and explaining why the trial court ruling was wrong. The opinion will include directions to the trial court judge about what further action should be taken.

6. **Motion for Rehearing:** If you have lost on appeal and you believe that the court has overlooked or misapprehended either the facts or the law, then you may file a motion for rehearing or clarification within fifteen (15) days of the date of the order advising that you have lost. These motions are not favored. You may not simply reargue your case. (See Rule 9.330)

7. **Mandate:** A mandate will be issued by the Fourth District Court of Appeal after it has taken all necessary actions to complete the appeal. A mandate is a written notice sent to you and to the trial court advising that the appellate process has been completed. (Rule 9.340) At that point, the trial court is once again in control of the case.

D. Preservation of error; Harmful versus Harmless Error

In order for the appellate court to consider an error in the trial court, the claim of error must have been preserved by an objection in the trial court. For instance, a party raising a claim that the trial court erred in admitting hearsay evidence must have objected at trial to the admission of that evidence.

Not all errors by the trial court will result in reversal. In deciding an appeal, one of the things the court will determine is whether the trial court's error(s) was harmful or not. The error was not harmful if it did not affect the outcome of the trial court proceeding. Only harmful errors will result in reversal of the trial court's order. In a criminal case, an error will not result in reversal if the State shows that there is no reasonable possibility that the error contributed to the conviction.

E. Other Important Information.

1. The Judges and their personal staff cannot speak to you or your attorney about your case unless it is in oral argument. This is to avoid any charges of favoritism or partiality.
2. Be aware that no person in the Clerk's office or in the court Library can give you any advice or help you with your case. While they try to be helpful, the law prevents the people who work in these offices from giving legal advice to people who have cases in this court.
3. Any documents which you file with the Fourth District Court of Appeal or the trial court must also be served upon the other parties, and you must certify that you have provided those parties with a copy of the documents. (Rule 9.420)