



**DISTRICT COURT OF APPEAL  
FOURTH DISTRICT**

**MANUAL OF INTERNAL  
OPERATING PROCEDURES**

**September 21, 2006**

**MANUAL OF INTERNAL OPERATING PROCEDURES**

**of the**

**FOURTH DISTRICT COURT OF APPEAL**

**of the**

**STATE OF FLORIDA**

## **FOURTH DISTRICT COURT OF APPEAL**

Created in 1965, by section 35.042, Florida Statutes (1965), which provided:

The fourth appellate district is composed of Brevard, Broward, Indian River, Martin, Okeechobee, Orange, Osceola, Palm Beach, St. Lucie and Seminole Counties.

This section required approval of the electorate, by constitutional amendment, which occurred on November 2, 1965.

Subsequently, the jurisdiction of the court was reconstructed to comprise Broward, Indian River, Martin, Okeechobee, Palm Beach and St. Lucie Counties.

## TABLE OF CONTENTS

NO.	TOPIC	PAGE
<b>1.</b>	<b>GENERAL PROCEDURES</b>	<b>1-3</b>
1.1	Scope and Purpose	
1.2	General Information	
1.3	Court Open to Public	
1.4	Terms of Court and Holidays	
1.5	Judges' Meetings	
1.6	Recusal of Judge	
1.7	Disclosure of Assigned Judge	
1.8	Absence of Judges	
1.9	Court Property	
1.10	Conventions and Conferences	
1.11	Administrative Orders	
1.12	Enactment of Amendments and New Procedures	
1.13	Personal Staff of Judges	
<b>2.</b>	<b>CHIEF JUDGE</b>	<b>4-5</b>
2.1	General	
2.2	Powers and Duties	
2.3	Central Staff Attorneys	
2.4	Reduction in Caseload	
<b>3.</b>	<b>CLERK</b>	<b>6-8</b>
3.1	Appointment	
3.2	Emergency Requests and Habeas Corpus	
3.3	Non acceptance of Pleadings by Fax Machine	
3.4	Assignment of Cases to Conference and Oral Argument Panels	
3.5	Maintenance of Records	
3.6	Filing Fees	
3.7	Issuance of Mandate or Decision of Court	
3.8	Return of Original Papers	
3.9	Maintenance of Procedures Book	
3.10	Exhibits	
3.11	Voluntary Dismissals and Waiver of Oral Argument	
<b>4.</b>	<b>MARSHAL</b>	<b>9</b>
4.1	Appointment and Compensation	
4.2	Power to Execute Process	
4.3	Duties	
4.4	Employment or Change of Job Classification	

<b>5.</b>	<b>DECISIONS</b>	<b>10-12</b>
5.1	Decision Making Process	
5.2	Opinions	
5.3	Facing Sheets	
5.4	Monthly Reports	
<b>6.</b>	<b>ORAL ARGUMENT</b>	<b>13</b>
6.1	Procedure	
6.2	Time Allotted	
<b>7.</b>	<b>PANEL ASSIGNMENT AND CIRCULATION</b>	<b>14</b>
7.1	Motion Panel	
7.2	Merits Panel	
<b>8.</b>	<b>ORAL ARGUMENT WAIVED CASES</b>	<b>15</b>
8.1	Procedures	
<b>9.</b>	<b>MOTIONS</b>	<b>16</b>
9.1	Procedure	
9.2	Motion to Advance the Cause	
9.3	Consolidation	
9.4	Alternates	
<b>10.</b>	<b>AVOIDING CONFLICTS</b>	<b>17</b>
<b>11.</b>	<b>PROCEEDINGS EN BANC</b>	<b>18-21</b>
11.1	Hearing or Consideration En Banc	
11.2	Rehearing En Banc	
11.3	General	
11.4	Meeting for En Banc Consideration	
11.5	Policy	
11.6	Miscellaneous	
<b>12.</b>	<b>ATTORNEYS</b>	<b>22</b>
<b>13.</b>	<b>ASSOCIATE JUDGES</b>	<b>23</b>
13.1	Entitlement	
13.2	Notification	
13.3	Responsibilities of Presiding Judge*	
13.4	Responsibilities of Staff	
<b>14.</b>	<b>PERSONNEL REGULATIONS</b>	<b>24</b>
<b>15.</b>	<b>FASTRACK PROCEDURE (eliminated 9/10/01)</b>	

## **1. GENERAL PROCEDURES**

### **1.1 Scope and Purpose**

The Florida Rules of Appellate Procedure and rule 2.210, Florida Rules of Judicial Administration, govern the operation of the Fourth District Court of Appeal. The internal operating procedures set out herein are intended as a supplement to those rules and as an aid to those who come before the court and desire information as to the internal operation of the court. Copies of this manual are available from the clerk.

### **1.2 General Information**

The headquarters of the Fourth District Court of Appeal is located at 1525 Palm Beach Lakes Boulevard, West Palm Beach, Florida. The telephone number is (561) 242-2000.

The court is comprised of twelve judges who serve different terms of six years each. The official office of each judge is at the headquarters of the court.

The court hears criminal and civil appeals and other applications for relief for a six-county area including Indian River, St. Lucie, Martin, Okeechobee, Palm Beach and Broward Counties.

### **1.3 Court Open to Public**

The court is open to the public at all times it is in session and court personnel are available to respond to any inquiries by the public as to the operation and function of the court. Tours of the court facilities may be arranged with the Marshal.

### **Law Library**

The Law Library contains primary and secondary legal materials, including Federal and State laws, reporters, slip opinions, legal reference materials, and Reporter publications for all areas of the nation. Westlaw and Lexis are in-house for staff use only. Services include limited reference and document reproduction. Hours are 8:00 A.M. to 3:45 P.M.

**Compliance with the Americans with Disabilities Act (ADA)**

The court is in compliance with the ADA regarding facilities, services, and programs. The Marshal's Office can provide special accommodations to all people including people with disabilities. Special accommodations may require up to 7 days advance notice.

#### **1.4 Terms of Court and Holidays**

The court is open continuously from 8:00 a.m. to 4:00 p.m. on weekdays during the year. The court holds two terms each year commencing on the second Tuesday in January and July. No oral argument sessions are scheduled in the month of August. The court closes in observance of the holidays established by the Florida Supreme court and on the Friday following Thanksgiving.

#### **1.5 Judges' Meetings**

Unless dispensed with by the Chief Judge, there shall be a meeting of the judges on the first Monday of every month. Other meetings may be scheduled after due notice by the Chief Judge or upon the request of two or more judges. The presence of seven judges shall constitute a quorum. Minutes shall be recorded in brief and summary form by the Chief Judge or the Chief Judge's designee and circulated to all judges, Clerk and Marshal.

#### **1.6 Recusal of Judge**

Any judge recusing from a case shall notify the Chief Judge, Clerk, and other panel members, in writing. Upon a recusal, the Clerk shall assign another judge to the panel based upon a blind system which assures equality in distribution of cases. The Clerk shall maintain statistics as to recusing judges and judges sitting for recused judges, and shall furnish a recapitulation of such statistics at year's end to the Chief Judge, who shall then institute a procedure for equalization of sittings.

#### **1.7 Disclosure of Assigned Judge**

It shall be the policy of the court that the identity of the "assigned judge" on any case be disclosed to no one other than personnel of the court. The term "assigned judge" refers to that judge on a three-judge panel who has the initial responsibility for the disposition of a case.

## **1.8 Absence of Judges**

Each judge shall maintain his or her official office at the headquarters of the court. Judges shall notify the Clerk of any contemplated absence from the court. When possible the Clerk will be furnished an address and telephone number where the absent judge may be reached.

## **1.9 Court Property**

All court property is inventoried by number and recorded in the Marshal's office. No books, furniture, or equipment shall be removed from the court building without the permission of the Chief Judge.

## **1.10 Conventions and Conferences**

Prior approval of the Chief Judge must be secured before any judge or other court personnel may attend any convention or conference where such attendance involves the expenditure of court funds. The Chief Judge shall be notified in advance of the attendance by a judge or other court personnel at any convention requiring the judge or other personnel to be away from the court for more than one day. Such attendance shall not be scheduled so as to interfere with the orderly disposition of the court's business.

## **1.11 Administrative Orders**

All original administrative orders from the Chief Justice and the Chief Judge shall be in the custody of the Clerk.

## **1.12 Enactment of Amendments and New Procedures**

An affirmative vote of seven judges personally present at a meeting called for that purpose shall be necessary to amend these procedures or enact a new procedure. There shall be no voting by proxy. It shall be the duty of the Clerk to provide all of the judges with the contents of any new procedures or amendments so that the procedures may be kept current.

## **1.13 Personal Staff of Judges**

Each judge has personal staff consisting of two staff attorneys and one judicial assistant.



## **2. CHIEF JUDGE**

### **2.1 General**

The term of service for a Chief Judge shall be two years, commencing July 1 of the odd calendar year.

A Chief Judge may be removed by a two-thirds vote of the active judges.

The election of a Chief Judge shall be conducted on the first Monday in May of the odd calendar year.

Balloting shall be secret with majority vote of the judges of the court controlling.

The selection of a Chief Judge shall not be by rotation or seniority, but shall be based upon managerial, administrative and leadership ability.

Nominations shall be made from the floor at the meeting called for the election of a Chief Judge.

The judges recognize that campaigning for the office of Chief Judge can have a negative impact on the court. Therefore, it is the desire and view of the judges that the office of Chief Judge shall seek the judge rather than vice versa.

### **2.2 Powers and Duties**

The Chief Judge shall be the administrative officer of the court and responsible for the dispatch of its business. The Chief Judge shall have the power to assign cases to the judges for the preparation of opinions or orders and shall also be responsible for the scheduling of all oral argument sessions and decision conferences in cases where oral argument has been dispensed with or waived. Generally the assignment of cases and the scheduling of arguments and conferences may be delegated to the Clerk who shall employ a blind but equal system of assignment.

### **2.3 Central Staff**

Central staff, when available, shall work for the entire court and operate under the direction and supervision of the Chief Judge. However, the judges shall determine the requirements for Central Staff, adopt procedures for their selection, make the selection and determine their duties. Central Staff shall do no work for individual judges of the court without permission of the judges.

#### **2.4 Reduction in Caseload**

In consideration of the administrative responsibilities connected with the office, the Chief Judge shall be entitled to be excused from two oral argument sessions per year in addition to the number of occasions when all judges are permitted to secure associate judges to sit for them. Such extra entitlement shall be made possible by the use of associate judges.

### **3. CLERK**

#### **3.1 Appointment**

The court shall appoint a Clerk who shall hold office at the pleasure of the court and perform such duties as the court directs. The Clerk's compensation shall be fixed by law. The Clerk's office shall be at the headquarters of the court. The Clerk shall devote full time to the duties of the office and shall not engage in the practice of law or any other business while occupying the office of Clerk.

#### **3.2 Emergency Requests and Habeas Corpus**

Any request for emergency action shall be marked urgent and delivered by the Clerk at once to the motion or merits panel of judges assigned to the case. Petitions for Writ of Habeas Corpus shall be treated as emergency matters except when the request for relief therein is solely for delayed appellate review.

#### **3.3 Nonacceptance of Pleadings by Fax Machine**

The court does not accept pleadings by fax machine, unless specifically ordered by the court.

#### **3.4 Assignment of Cases to Conference and Oral Argument Panels**

Assignment of cases is to be done by the Clerk under the supervision of the Chief Judge. The assignment of cases to the judges on a conference or oral argument panel shall be done by blind draw in such manner that neither the judges, lawyers, nor the litigants have any influence in the selection of any judge or panel to consider any particular case.

#### **3.5 Maintenance of Records**

The Clerk shall be responsible for the maintenance of all official records of the court and such other records as the court may direct, including keeping a docket of all cases that are appealed to, or originate in, the court. Each case shall be docketed and numbered in the order that the certified copy of the notice of appeal or other document originating the proceeding is filed. All books, papers, files and the seal of the court shall be kept in the office and custody of the Clerk. The Clerk shall provide photographic copies of public records at the statutory charge of \$1.00 per page. Section 28.24, Florida Statutes. The Clerk shall not allow any book, paper, record, or file to be taken from the office except by a judge of the court or upon order of the court.

Each case orally argued shall be recorded by video. Any individual wishing to obtain a CD ROM copy in Mpeg format shall pay \$25.00 per copy. No employee of the court is in a position to nor authorized to certify the contents of a tape or its authenticity in any regard. Recording of oral argument sessions is a convenience to the judges, only, and may be dispensed with by vote of the judges at any time and from time to time.

### **3.6 Filing Fees**

In all appeals and cases originating in the court, at the time the certified copy of the notice of appeal, petition, or other initial pleading is filed, the Clerk shall require the payment of a fee as required by law. Failure to pay such fee, after notice from the court, may result in the dismissal of the case. The payment shall not be exacted in advance in criminal appeals in which the defendant has been adjudicated insolvent for the purpose of an appeal, or in appeals in which the state is the real party in interest as the moving party. The payment of the fee or any costs shall not be required in habeas corpus proceedings or appeals therefrom, arising out of or in connection with criminal actions.

### **3.7 Issuance of Mandate or Decision of Court**

The Clerk shall issue such mandates, process, or orders as may be directed by the court. Upon the issuance of any mandate the Clerk shall record the issuance in a book kept for that purpose, noting therein the date of issuance and the manner of transmittal of the process. The Clerk shall immediately notify the parties or the attorneys of record of the issuance of any mandate or the rendition of any decision of the court. The Clerk shall furnish without charge to all parties or attorneys of record a copy of any order or written opinion rendered in such action. The Court does not issue a mandate when it dismisses or denies a petition for extraordinary relief.

### **3.8 Return of Original Papers**

The Clerk shall retain all records on appeal for a period of not less than thirty days after issuance of the opinion or order denying petition for rehearing, whichever is later. If no petition for review or appeal to the Supreme Court has been filed within thirty days of rendition, the Clerk shall transmit to the clerk of the trial court the records on appeal. If a petition for review or appeal has been filed, the records on appeal shall be retained by the Clerk until disposition by the Supreme Court and final disposition by the court pursuant to any mandate issued by the Supreme Court.

### **3.9 Maintenance of Procedures Book**

It shall be the duty of the Clerk, under supervision of the Chief Judge, to maintain in book form, as an up to date official court record, an original copy of these procedures. Such record shall be available for inspection during regular office hours.

As these procedures may be amended, supplemented, or annulled, it shall be the duty of the Clerk to see that such changes are immediately and properly incorporated in such procedures book so that same may be always annotated and in current form. Copies of such changes shall be furnished to each judge and the Marshal contemporaneously.

### **3.10 Exhibits**

The Clerk shall maintain an inventory and index for all exhibits received. Such exhibits may be checked out from the Clerk's office for use in court but are not allowed to be removed from the court premises.

### **3.11 Voluntary Dismissals and Waiver of Oral Argument**

Cases scheduled for oral argument and assigned to a panel which are voluntarily dismissed by the parties will be treated as follows:

(a) If the notice of dismissal is filed less than three weeks prior to the Monday of the oral argument session, no substitute case need be placed on the oral argument calendar, nor will another case be assigned to that panel in lieu thereof. If the notice of dismissal is filed three weeks or more prior to the Monday of the oral argument session, a substitute case will be placed on the oral argument calendar and assigned to the same panel.

Cases scheduled for oral argument and assigned to a panel where the parties subsequently file waiver of oral argument will be treated as follows:

(b) If the waiver is filed less than three weeks prior to the Monday of the oral argument session, no substitute case will be placed on the oral argument calendar and the panel assigned will retain the case. If such waiver is filed at least three weeks prior to the Monday of the oral argument session, a substitute case will be placed on the calendar and assigned to that panel and the panel will retain the prior case as an OAW with proper credit for same.

## **4. MARSHAL**

### **4.1 Appointment and Compensation**

The court shall appoint a Marshal who shall serve at the pleasure of the court and perform such duties as the court directs. The Marshal's compensation shall be fixed by law. The Marshal's office shall be in the headquarters of the court and shall devote full time to the duties of the office and shall not engage in the practice of law or any other business while occupying the office of Marshal.

### **4.2 Power to Execute Process**

The Marshal shall have the power to execute process of the court throughout the state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

### **4.3 Duties**

The Marshal is responsible for preparing and managing the budget and accounting procedures of the court, making or authorizing any necessary purchases, maintaining a sufficient supply of materials needed by judges and the court personnel, supervising the personnel procedures of the court, supervising the court's office automation system, and maintaining complete records of these activities in accordance with the requirements of the state auditor and good accounting procedures.

The Marshal shall be custodian of any premises occupied by the court, whether an entire building or part thereof. The Marshal shall keep a current written inventory of all court property and mark each item of property in accordance therewith.

### **4.4 Employment or Change of Job Classification**

Agency heads shall employ or change job classification of any personnel only after clearance with the Marshal and approval by the Chief Judge.

## 5. DECISIONS

### 5.1. Decision Making Process

Three judges shall constitute the merits panel for, and shall consider, each case. All appeals are assigned to a motion panel initially and, upon perfection, to the merits panel. The concurrence of a majority of the panel shall be necessary to a decision. The decision making procedure may be basically divided into three (3) categories:

(a) Argument Cases: Final appeals in which oral argument has been requested shall be assigned to a merits panel of three judges after the filing of the answer brief. The panel will review the briefs and decide if the case warrants oral argument, and if so, how much time will be allotted. Thereafter the assigned judge on the panel shall be provided the entire appellate file and trial court record and the other two panel members furnished with copies of all briefs. Prior to oral argument, the assigned judge is responsible for the preparation and distribution to the other panel members of a detailed written preliminary analysis of the case. Prior to oral argument, each judge shall read the briefs and the preliminary analysis and conduct such further research as the judge deems necessary. Immediately after oral argument, a preliminary decision conference shall be held in which each of the judges shall express his or her views on the case. The assigned judge shall be responsible for the preparation and circulation of the initial opinion if he or she is in the majority; otherwise the junior judge of the panel shall have said responsibility.

Cases in which the panel has determined that there will be no oral argument will be considered at a conference of the panel.

(b) Oral Argument Waived Cases: A panel of judges shall meet each Thursday for a decision conference on criminal and civil appeals in which oral argument has been denied or waived. Prior to the conference, the procedure and preparation by the judges shall be the same as that involved in oral argument cases. Procedure at the conference and thereafter shall be the same as that followed in oral argument cases.

(c) All other cases: In all other cases, upon assignment the file shall be delivered to the assigned judge who shall read the briefs, review the record as necessary, be responsible for the preparation of a preliminary analysis of the case, and forward the file with the written opinion to the two other judges on the panel. Those judges shall follow the same procedure as the assigned judge except that the extent of the legal research and record investigation may be alleviated by that done by the

assigned judge. A decision conference in such cases shall be held when requested by one of the panel members. In all cases there may be oral or written communications between the judges during the decision making process. Oral argument shall be scheduled in any case where a majority of the panel so directs.

## **5.2 Opinions**

Opinions shall be issued each Wednesday. Copies of all opinions shall be circulated by the Clerk to all judges and staff attorneys for critical review and examination two weeks prior to issuance. An en banc opinion shall circulate for one week prior to issuance.

Upon authorization of the Chief Judge, the Clerk may issue opinions in expedited or emergency cases after circulation to all of the judges for a period of time less than one week, which period is to be cited in the above authorization.

In order to withdraw an opinion prior to issuance, any member of the panel or the Chief Judge shall timely initiate a written memorandum to the Clerk and circulate a copy of the memorandum to all judges. Withdrawal of a PCA prior to issuance shall require circulation of a memorandum only to members of the panel.

## **5.3 Facing Sheets**

All appeal files shall contain a facing sheet setting forth the case number, style of the case, the trial court or administrative body involved, the lower tribunal case number, the name of the attorneys of record, the document on appeal, the panel assigned, the date of assignment, the disposition of the case, and the signatures of all judges indicating their ruling on the case and their acknowledgment of any special concurrence or dissent. Where a substantial change of opinion requires new endorsements by panel members, a new facing sheet, or its equivalent, shall be prepared.

No facing sheet will be required on a writ which is denied without opinion unless one of the panel members disagrees with the assigned judge's recommended disposition. In such event, the panel member will return the wallet to the assigned judge for preparation and recirculation of a facing sheet. This will afford an opportunity to the assigned judge to consider the panel members' views as to either the disposition on the merits or as to an order to show cause. Upon completion of the facing sheet, the assigned judge will sign off accordingly and recirculate the writ to the other panel members in the usual manner.

#### **5.4 Monthly Reports**

Each judge shall be responsible for submitting to the Chief Judge, at the end of every month, a report showing each of the outstanding cases assigned to the judge, the date of assignment, and the date of the first circulation of the file. The report shall also indicate the number of circulating cases under consideration from other judges. Central Staff's report due the 5th working day; the Clerk's report due the 7th working day and the J.A.'s report due the 10th working day of each month.

## 6. ORAL ARGUMENT

### 6.1 Procedure

It is expected that oral argument will be requested (and will be granted by the court) only in those cases where it is genuinely believed to be necessary for disposition of the cause. Unless a panel requests it, there will be no oral argument on motions, original proceedings and appeals from non-final orders. The assignment of judges to oral argument sessions shall be the responsibility of the Chief Judge. The court may employ an internal screening procedure to determine the necessity for oral argument in selected cases.

Oral argument shall be scheduled on any case when requested by two members of the panel of assigned judges, though not requested by the parties.

The Clerk shall schedule cases for oral argument with a minimum of 30 days' notice to the parties except when it is necessary to schedule a substitute case for a session after a dismissal or continuance and in such cases a minimum of 21 days' notice will be given.

### 6.2 Time Allotted

The amount of time allotted each side for oral argument will generally be from 10 to 20 minutes and will be reflected on the notice of oral argument.

No additional time per side shall be allowed in consolidated cases or cases involving multiple parties unless specifically authorized by the court prior to oral argument. The court may shorten the allotted time at oral argument.

## **7. PANEL ASSIGNMENT AND CIRCULATION**

### **7.1 Motion Panel**

Any matter not initially assigned to a merits panel shall be immediately assigned to a motion panel which shall act on all motions prior to assignment on the merits. One judge may dispose of most motions, except that a ruling constituting final disposition of an appeal requires action by three judges and concurrence by two.

Whenever a judge of this court shall be absent from court for a period of three or more days, he or she shall notify his or her alternate, and the alternate of such absent judge shall serve in the place and stead of the absent judge on all emergency matters and all appropriate motion panels of which the absent judge is a member. An alternate judge may, in his or her discretion, decline to act on any non-emergency motion.

### **7.2 Merits Panel**

Every appeal from a final or non-final order shall be assigned to a merits panel of judges as soon as reasonably possible after the final brief is scheduled to be filed.

Appeals from orders denying motion for post-conviction relief, filed pursuant to Rule 9.141, Florida Rule of Appellate Procedure, are assigned to a merits panel as soon as central staff has completed its memorandum on the merits.

In original proceedings the case is assigned to a merits panel of judges as soon as central staff has completed its memorandum on the merits.

## 8. ORAL ARGUMENT WAIVED CASES

### 8.1 Procedures

(a) Except in cases to which Section 6 or paragraph (b) of this section applies, all cases shall be considered by panels of three judges who shall conduct conferences on Thursday of each week for the purpose of considering the disposition recommended by the assigned judge as to each case and exchanging views on all cases assigned to the panel for that week.

(b) Original proceedings, appeals from summary denials of motions for post-conviction relief and any other appeal not scheduled for conference shall first be considered by the assigned judge who shall then forward his or her recommended disposition, together with a memorandum of the facts and law where appropriate, to the other panel members. During the circulation process, decision conferences may be conducted or judges may exchange their views orally or in writing.

## **9. MOTIONS**

### **9.1 Procedure**

Except for certain procedural motions decided by the Chief Judge, motions shall be decided without oral argument by a panel of judges assigned to a case when the case is filed as the motion panel for that case. Oral argument on a motion shall be scheduled only upon the concurrence of a majority of the judges on the panel considering the motion. Motions for consolidation shall be determined by the panel assigned to the case involved bearing the lowest case number.

### **9.2 Motion to Advance the Cause**

The court may alter the usual procedure for the disposition of a case and such action may include: acceleration of the time for the filing of briefs, other memoranda, or the record; the early scheduling of oral argument; the dispensing with oral argument; or such other measures as may be calculated to insure advanced disposition of the cause. Advancement shall only occur in extraordinary circumstances.

### **9.3 Consolidation**

Cases on appeal may be consolidated for all purposes or for use of a common record only or to some other limited extent to be established by the order effecting consolidation. Consideration of cases for consolidation may be initiated by any party by motion filed at any time, in which event any party affected may file a response within ten days or consolidation may be initiated by the court sua sponte. Except in cases consolidated as to common record only or upon order of the court for good cause shown, appellants' briefs shall be consolidated, appellees' briefs shall be consolidated and the briefs of any cross-parties (with the same or similar interests) shall be consolidated.

### **9.4 Alternates**

The court shall adopt, from time to time, an informal policy providing for judge alternates to sit on motion panels for judges who are temporarily absent from the courthouse.

## 10. AVOIDING CONFLICTS

(a) The assigned judge shall, and any other judge may, call to the attention of the court a proposed opinion or decision of this court that specifically or by necessary implication recedes from or otherwise conflicts with a prior holding of this court. In such event the procedure shall be the same as hereinafter provided for a hearing en banc or rehearing en banc, as may be appropriate. It is declared to be the policy of this court that no panel of judges shall be authorized to recede from, overrule or otherwise cause conflict with a prior ruling of this court and that such a result may only be achieved by the en banc procedure (which may result in a majority vote that no conflict is created).

(b) If a merits panel decides unanimously to recede from a prior opinion of this court, the panel may circulate a proposed "En Banc Opinion" to all of the judges. Unless there is objection, the opinion shall issue. If any judge objects to the opinion by memorandum to the panel with copies to the other judges, the Chief Judge shall promptly schedule an en banc meeting of the judges as provided in section 11.4.

## 11. PROCEEDINGS EN BANC

### 11.1 Hearing or Consideration En Banc

(a) At any time after circulation of an opinion, any judge may poll the judges to determine whether a hearing en banc (or consideration en banc if no oral argument is granted) is desired by a majority of the judges. In the event that one-third of the judges vote to consider the matter en banc, the Chief Judge shall promptly schedule an en banc meeting of the judges as provided in section 11.4. The circulating opinion will not be released or published until the poll is complete.

(b) When two panels of the court have concurrently reached conflicting written opinions in two separate cases, which have not been issued, the cases shall be set for en banc conference wherein the judges, en banc, shall decide which conclusion shall be adopted by the court.

(c) If a merits panel unanimously decides that the court should recede from a prior opinion of this court, the panel may circulate a proposed "En Banc Opinion" to all of the judges. Unless there is objection, the opinion shall issue in due course. If any judge objects to the opinion by memorandum to the panel with copies to the other judges, the Chief Judge shall promptly schedule an en banc meeting of the judges as provided in section 11.4.

### 11.2 Rehearing En Banc

(a) Upon the filing by a party of a motion for rehearing en banc, the clerk shall forward the motion and the wallet to the assigned judge of the merits panel and shall furnish a copy of the motion to all judges. Judges not on the panel are under no obligation to consider the motion. If any non-panel judge does consider the motion and decides that action be taken or needs more time to consider the motion, notice thereof shall be given to the assigned judge, the Chief Judge, and the clerk's office within 14 working days from receipt of a copy of the en banc motion. If a judge on the panel votes to grant the motion or if any other judge requests en banc consideration, the clerk shall recirculate the wallet with the en banc voting form attached. In the event that one-third of the judges votes to consider the case en banc, the Chief Judge shall promptly schedule an en banc meeting of the judges as provided in section 11.4.

(b) In the absence of a motion for rehearing en banc by a party any judge may instruct the clerk to circulate the EN BANC

FORM. In the event that one-third of the judges vote to consider the matter en banc, the Chief Judge shall promptly schedule an en banc meeting of the judges as provided in section 11.4

### **11.3 General**

The judge who initially requests to en banc consideration of an opinion is required to complete a standard form and set forth the reason(s) why a conference should be held. The completed form shall accompany the polling sheet. A copy of the poll showing the results of the voting shall be furnished to each judge. Any judge opposed to en banc consideration is encouraged to circulate a memorandum stating the reasons for opposition. Each judge shall attempt to expedite the consideration of any en banc request. Circulation of the polling sheet shall begin with the requesting judge, then to the assigned judge of the panel and to the remaining panel members, and then to the remaining members of the court in reverse order of seniority.

### **11.4 Meeting for En Banc Consideration**

Upon the affirmative vote of one-third of the judges participating, the Chief Judge shall cause notice to be given and shall schedule a meeting of the judges for hearing or rehearing of the matter en banc. Proponents and opponents of en banc consideration are encouraged to circulate memoranda in support of their views to the other judges in advance of the meeting.

A judge who opposes an en banc consideration shall be designated by the Chief Judge to express that point of view. The requesting judge shall express the en banc position. The first order of business at such a meeting shall be to discuss whether the case is of such exceptional importance or that such consideration is necessary to maintain uniformity in the court's decision. Fla. R. App. P. 9.331(a). In due course a vote shall be taken on that question.

If a majority finds such a basis, then the matter shall be determined en banc.

In the event the court determines that en banc consideration is appropriate then, after discussion, the court en banc may at that time, or at a later meeting to be scheduled for that purpose, determine whether a prior opinion is to be followed or overruled or receded from or explained or whether prior conflicting opinions may be reconciled or may take any other appropriate action by majority vote. The en banc discussion shall be formalized. Each judge will be allotted a specified amount of time to express his or her view. The requesting judge will speak first. The designated judge will speak next. The panel members will then speak, followed by the non-panel members in reverse order of seniority. The requesting and designated judges will be allowed rebuttal. A vote shall then be taken. Thereafter, the

Chief Judge is responsible to see that the case is moved along. It is suggested that the majority opinion shall be drafted and circulated in no more than 30 days. Copies of the majority opinion and any dissents or concurrences shall be distributed to all judges at the time such opinions are drafted.

Oral argument may be scheduled at any time, whether on hearing en banc or on rehearing en banc and either before or after a vote is taken by the court en banc as to whether conflict in fact exists or would be created by a proposed opinion or that some other basis for en banc consideration is present.

The Chief Judge shall assign the writing of an en banc ruling or opinion to any judge who voted for the majority view. The Chief Judge shall monitor the progress of en banc cases in order to assure that they are expedited.

### **11.5 Policy**

A majority of the participating judges shall be necessary for the issuance of any en banc decision. In the absence of such a majority the case shall revert to the originally assigned panel of three judges; the order granting en banc consideration shall be vacated and the case finally disposed of by the original three judge panel. In accordance with Florida Rule of Appellate Procedure 9.331(a), en banc consideration shall not be ordered unless the case is of exceptional importance or unless necessary to maintain uniformity in the court's decisions.

### **11.6 Miscellaneous**

(a) After the court has voted to en banc a case, the clerk shall forthwith issue an order advising the parties of that fact and notifying them whether oral argument and/or supplemental briefs are required.

(b) En banc consideration of a case may be terminated upon the majority vote of those judges participating; whereupon the order notifying counsel that the case has been en banded shall be vacated.

(c) All en banc opinions shall indicate the case is en banded by stating in capital letters in the middle of the first page, under the style and names of counsel, the words EN BANC. The author of the majority opinion has the option, as in any other case, of identifying himself or herself or submitting it per curiam.

(d) The author of all opinions, majority, special concurrence, or dissent, shall send a copy to all judges for consideration and comment to help expedite the ultimate

disposition of the case. The assigned judge shall try to circulate his/her opinion within 30 days and all remaining judges shall try to sign off within 5 days of receipt of the file. Any judge writing a concurring or dissenting opinion shall try to circulate the concurring or dissenting opinion within 20 days of receipt of the assigned judge's opinion.

(e) En banc cases shall be shown on the monthly report of the judge in whose office the case is lodged on the last day of the month.

(f) The Chief Judge shall vote on all en banc cases as any other judge.

## 12. ATTORNEYS

The practice of attorneys before the court is governed by Part V of the Florida Rules of Judicial Administration. The withdrawal of an attorney may be granted upon the filing of a motion containing the written authorization of the client and a statement as to whether future representation of the client will be pro se or by other counsel. If the client does not consent to withdrawal, the motion should so reflect and contain a concise statement of the factual basis upon which withdrawal is sought. Such motion shall reflect that a copy was served upon the client and other parties and reflect the address of the client. Thereafter, if the client objects, the court will provide the client with the opportunity to show cause why withdrawal should not be permitted before deciding the motion.

## **13. ASSOCIATE JUDGES**

### **13.1 Entitlement**

Every judge on the court shall be entitled to have an active appellate judge from another district court of appeal, or senior justice or judge, or active circuit judge from any circuit sit in their place for one oral argument session each year. The additional entitlement of the Chief Judge is provided in 2.4.

### **13.2 Notification**

It shall be the responsibility of each judge to notify the two remaining members of the panel in sufficient time for them to select the associate and judge for the Chief Justice to issue an order of assignment after notification by the Chief Judge.

### **13.3 Responsibilities of Presiding Judge**

No associate judge may be invited to sit if that judge has previously sat on this court within the 12 months preceding the invitation or if that judge has previously assigned cases as to which an opinion by that associate judge is due. It shall be the responsibility of the presiding judge on the panel to inform the new associate judge of the court's relevant procedures prior to oral argument, to monitor the completion of every associate judge's case obligations within a reasonable period and to request the assistance of the Chief Judge in the event of nonperformance.

The term "monitor" means that, at a minimum, the presiding judge shall communicate with the associate judge not later than 6 months after the conference, and that the Chief Judge shall communicate with the presiding judge not later than 9 months after the conference. Both the presiding judge and the Chief Judge have the discretion of conducting any communications through a volunteering judge of this court.

### **13.4 Responsibilities of Staff**

It shall be the responsibility of the staff of the judge whom the associate judge has replaced to process the associate judge's proposed opinions, with the knowledge and consent of the associate judge.

#### **14. PERSONNEL REGULATIONS**

All personnel practices of the court are governed by the Personnel Regulations Manual of the Florida State Court System as adopted by the Florida Supreme Court. The Marshal shall be responsible for maintaining a current copy of these regulations available for inspection at all times.