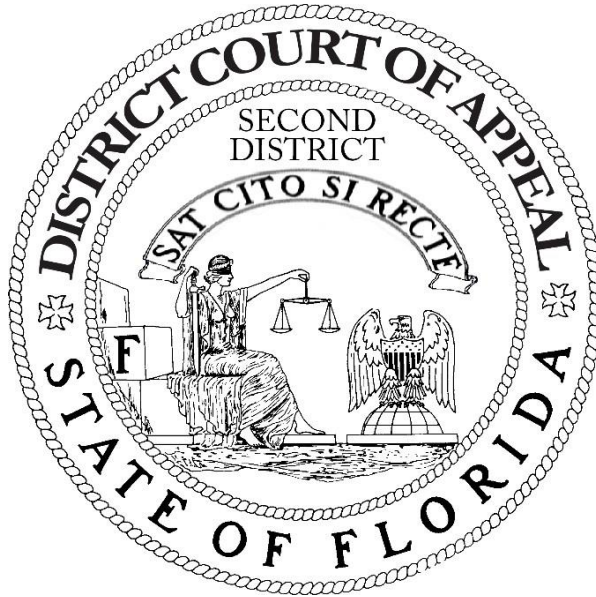


SECOND DISTRICT COURT OF APPEAL



INTERNAL OPERATING PROCEDURES

January 12, 2023

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SECTION 1. GENERAL RULES

1.1 Scope and Purpose

The Florida Rules of Appellate Procedure and Florida Rule of General Practice and Judicial Administration 2.210 govern the operation of the Second District Court of Appeal. These internal operating procedures do not supplant rules promulgated by the Supreme Court of Florida, nor are they intended to create any substantive or procedural rights. This manual is designed merely to disclose established practices in the court, to aid practitioners and the public at large to understand the structure and functioning of the court, and to orient new employees of the court.

1.2 General Information

The temporary headquarters of the Second District Court of Appeal is located at 1700 N. Tampa Street, Tampa, Florida 33602. The telephone number for the headquarters is (727) 610-3740. Additional contact information is available on the court's website, <https://2dca.flcourts.gov>.

1.3 Jurisdiction of the Court

The court hears appeals from final orders and certain nonfinal orders entered by all divisions of circuit and county courts and from final administrative orders entered by many governmental agencies. It also considers original proceedings governed by Florida Rules of Appellate Procedure 9.100 and 9.141(c, d), including petitions for certiorari, mandamus, prohibition, and habeas corpus. It also has authority to grant review of orders that incorporate questions properly certified by county court judges. The territorial jurisdiction of the court covers the six counties found in the sixth, twelfth, and thirteenth judicial circuits of Florida.

The court is comprised of fifteen judges who are selected by the merit retention system, under which qualified applicants apply to a nominating committee that provides a list of nominees to the governor. The governor selects a new judge from the committee's list, and the judge then stands for

merit retention by the voters at a subsequent general election. Thereafter the judge may qualify for merit retention every six years.

1.4 Use of Court Facilities

The clerk's office is open to the public from 8 a.m. until 5 p.m., Monday through Friday. There is no public law library. The court holds oral arguments in the William Reece Smith, Jr., Courtroom on the ground floor of the Stetson University College of Law, Tampa Law Center. These proceedings are open to the public. Organizations that may wish to use the courtroom or other facilities at this location must contact Kristina Macys at the Stetson University College of Law at 813-228-6625.

1.5 Website

The court maintains a website at <https://2dca.flcourts.gov>. The court posts all written opinions of the court on the website and provides online access to the court's docketing information for the use of the general public on this website. Court holidays, when the court is closed pursuant to the rules established by the Supreme Court of Florida, are posted on the court's website. Also posted on the website are oral argument calendars; employment opportunities with the court; links to research materials, including all rules of court promulgated by the Supreme Court of Florida; and directions to the court. It contains profiles of the judges, clerk, and marshal. The marshal is responsible for appointing a webmaster. These internal operating procedures are available on the website.

1.6 Court Conference

Monthly court conferences are conducted at a location designated by the chief judge. Additional conferences for special matters are scheduled by the chief judge. The presence of a majority of judges of the court constitutes a quorum. Whenever possible, the court attempts to act upon a consensus vote of the judges, but a majority vote of those present constitutes official action of the court, except as provided in section 1.9. The clerk serves as the secretary to the conference and is

responsible for recording the minutes. The marshal also attends the conference. The director of central staff presents a regular report to the conference, and other employees of the court attend as necessary to inform the judges of their activities.

1.7 Judicial Recusal

In order to facilitate the assignment of cases, the clerk maintains a list for each active judge of persons or entities who are likely to appear before the court and whose involvement in a proceeding will require the judge's recusal. Each judge is responsible for keeping the clerk informed as additions to or deletions from this recusal list come to the judge's attention. Parties may inquire of the clerk to determine whether any judge is recused in their case.

The court recognizes that this list will not identify all cases involving conflicts. If a judge identifies a conflict necessitating recusal from a case on which the judge has already been assigned, the judge shall notify the clerk, who will designate a substitute judge. If the judge identifying the conflict is primary on the case, to the extent possible the judge's staff will remain involved to assist the substitute judge. Postponement of a scheduled oral argument shall be a last resort in solving problems associated with late-detected conflicts requiring recusal.

1.8 Court Property

The marshal is the custodian of court property and inventories it annually. Judges, legal staff, and the clerk may check out books, court files, and portable electronic equipment. No other court property may be removed from the premises without consent of the marshal.

1.9 Amendment of Court Policies

An affirmative vote of a majority of the judges of the court is necessary to amend these policies. Proposed amendments must be circulated to the judges of the court not less than seven days prior to any meeting at which a judge intends to call for a vote to amend this internal operating procedures manual.

1.10 Holidays and Scheduling

The court is open from 8 a.m. to 5 p.m. weekdays throughout the year, except for holidays. Holidays are posted on the court's website. It should be noted that legal holidays, which are used to compute time for the filing and service of documents in the appellate courts, are identified in Florida Rule of General Practice and Judicial Administration 2.514(a)(6). Oral arguments are not scheduled during the month of July.

1.11 Sittings away from the Court Headquarters and Branch Office

The court conducts at least one oral argument session annually in each of its circuits. It welcomes requests to sit in any community within its district and attempts to coordinate with schools and civic organizations to make these special sessions useful to the community. Requests to sit in any community may be made to either the clerk or the chief judge.

SECTION 2. CHIEF JUDGE

2.1 Selection of the Chief Judge and Duties of Office

Prior to July 1 of each odd-numbered year, the judges of the court elect a chief judge, who serves a term of two years. This election, under normal circumstances, occurs no less than four months prior to the expiration of the sitting chief judge's term. Details regarding succession in the event a judge does not complete the term, as well as a description of the duties of the chief judge, are set forth in Florida Rule of General Practice and Judicial Administration 2.210(a)(2).

2.2. Workload

The chief judge's administrative responsibilities can affect this judge's ability to handle and resolve a normal caseload on a timely basis. Accordingly, the chief judge may, as he or she determines, be excused from participating in motions panels and may direct the clerk to make appropriate reductions in the assignment of the judge's oral argument, oral argument waived, or central staff panels.

2.3 Committee Assignments

The chief judge assigns judges of the court to internal committees designed to enhance administration of the court. These include standing committees overseeing budget, long-term planning, central staff, technology, liaison with bar groups, and case management. Temporary committees are created at the discretion of the chief judge as necessary to accomplish the effective administration of the court.

2.4 Administrative Orders

All administrative orders issued by the chief judge, as well as those received from the chief justice, are maintained in the custody of the clerk. Those orders entered by a prior chief judge remain in effect until rescinded or replaced by subsequent order.

SECTION 3. CLERK

3.1 Appointment and Duties

Article V, section 4(c) of the Florida Constitution requires the court to appoint a clerk who shall perform such duties as the court directs. Florida Rule of General Practice and Judicial Administration 2.210(b) provides details concerning the appointment and general duties of the clerk.

3.2 Handling of Judicial Emergencies

The clerk assumes initial responsibility to screen motions and original proceedings to determine whether they may qualify for immediate judicial attention. The clerk is guided by the following definition of "emergencies" and other guidelines that follow to determine whether a matter should be brought to the attention of the director of central staff for prompt attention.

(A) "Emergencies" defined:

The court screens the following motions or proceedings to determine if they qualify for immediate judicial attention:

a) Any filing describing itself as an emergency in its title.

b) Motions to stay lower tribunal proceedings.

c) Petitions for writ of habeas corpus (excepting those petitions seeking belated appeals or challenging the effectiveness of appellate counsel per Florida Rule of Appellate Procedure 9.141(c, d) that have been mislabeled as habeas corpus petitions).

d) Petitions for writ of prohibition.

e) Motions to review the denial of supersedeas bond in criminal appeals per rule 9.140(h)(4).

(B) Fee-Readiness and the Certificate of Service:

To qualify for emergency treatment, the proceeding in which the filing is undertaken must be "fee-ready," meaning that the appellate filing fee has been paid or waived according to applicable statutes or constitutional provisions. Additionally the party filing the motion or proceeding must certify that opposing counsel has been served either by hand delivery, by e-mail, by eService, or by fax. If this has not been done, the court will advise the filing party by telephone that a conforming, amended certificate of service must be provided to the court that confirms that the opposing party is in actual possession of the document before the matter will be considered further. If a filing party fails to satisfy the court that immediate service has been undertaken and service has been by U.S. mail, the court will delay acting on the matter for five business days.

(C) Place of filing:

Filing of all emergency matters may be accomplished by mailing or hand delivery to the clerk's office for pro se litigants. Attorneys must and pro se litigants may file electronically through the

designated portal.

The clerk or a judge of the court also may authorize the filing of an emergency by email for pro se litigants unfamiliar with the e-filing portal provided a check for the filing fee is not required to accompany the filing.

3.3 Orders of Disposition

In all proceedings disposed of by order, except voluntary dismissals, the clerk identifies on the face of the order the names of the participating judges on the case, listing first the chief judge if a panel member, with all other judges listed in order of seniority.

3.4. Scheduling and Assignment of Cases

The clerk schedules and assigns cases under the supervision of the chief judge and the case management committee. Oral argument and oral argument waived panels are randomly selected, and the assignment of cases to these panels is undertaken in a manner that guarantees that litigants, attorneys, and judges have no part in the assignment of a case to a panel or a primary assignment of a case to a judge. Panels for special sittings are not always randomly created. Except to the extent that the calendar clerk may attempt to balance the assignment of large-volume appeals among the judges, assignments of cases to panels are undertaken randomly.

Decisions regarding the number of panels established by the court per month and how many cases are assigned to each panel are made by the court upon recommendation of the case management committee. If an existing backlog of cases prompts a recommendation from the case management committee to require more than eighteen cases placed on oral argument waived panels, or more than six cases on oral argument panels, or that each judge receive more than two oral argument and two oral argument waived panels per month, approval for these changes must be given by a majority of judges of the court.

3.5 Scheduling of Court Sittings Away from the Court

The liaison judge for the county of a planned out-of-town oral argument sitting coordinates details with the clerk and marshal.

3.6 Voluntary Dismissals and Continuances

From time to time cases are resolved or postponed after assignment and before oral argument or conference. At such time as the primary judge determines that a case will not be considered on the scheduled date, notification of this circumstance is promptly made to the clerk. If thirty or more days remain before the argument or conference, the clerk assigns a substitute case to the primary judge. If the case has not been disposed of by voluntary dismissal, at such time as the case is again ready for assignment, the clerk shall ordinarily assign the case back to the same judge to whom it was originally assigned.

3.7 Reports

The clerk prepares reports to assist the court in the timely resolution of cases. The clerk prepares a monthly report that identifies all cases that have been assigned but not yet decided within ninety days of conference or oral argument (within forty-five days in the case of dependency, termination of parental rights, and nonfinal appeals, and certiorari petitions), and this list is appended to the court conference agenda. A similar report is prepared for rehearings and rehearings en banc that have been pending for more than sixty days. The clerk also collects a report from each judge's judicial assistant at the close of the month that inventories the cases held in the judicial suite. The clerk distributes these reports to all suites. Consistent with the requirement of Florida Rule of General Practice and Judicial Administration 2.250(b), the clerk provides quarterly reports to the chief justice of

the Supreme Court of Florida identifying cases not resolved within the time standards outlined in rule 2.250(a)(2). Copies of these reports are appended to the court conference agenda.

3.8 Maintenance of the Internal Operating Procedures Manual

The clerk maintains the original Internal Operating Procedures Manual as a court record. This record is available for inspection by any interested person during business hours. The court also posts a copy of the manual on the court's website. It is the clerk's responsibility to review the manual periodically and present proposed changes to the court.

SECTION 4. MARSHAL

4.1 Appointment and Duties

Article V, section 4(c) of the Florida Constitution requires the court to appoint a marshal who shall perform such duties as the court directs. Florida Rule of General Practice and Judicial Administration 2.210(c) provides details concerning the appointment and general duties of the marshal. The marshal's responsibilities also include:

- (A) Preparing an annual budget to be approved by the court for submission to the legislature.
- (B) Controlling monies that the legislature appropriates to the court.
- (C) Making or authorizing expenditures for the operation of the court, including executing contracts necessary for same.
- (D) Paying bills owed by the court.
- (E) Maintaining a record of all assets of the court; designation and disposition of surplus court

property pursuant to statute.

(F) Initiating payroll changes and distributing payroll to employees.

(G) Serving as personnel officer of the court, including maintaining personnel records and providing orientation for new employees.

(H) Serving as the Public Information Officer for the court.

(I) Maintaining the court's computer and communication operations.

(J) Providing for the operation and security of the court's facilities by establishing operating procedures and assigning administrative activities related to providing for and maintaining the operation and safety of the building and grounds, judges, court staff, and visitors.

(K) Maintaining the court's administrative records and responding to requests for such records.

(L) Providing security and personnel to open and close court during sessions of oral argument and other open sessions of the court.

4.2 Procurement and Custodian

No person is permitted to make purchases or incur obligations on behalf of the court except the marshal, the marshal's designee, or the chief judge. Appropriating furnishings, equipment, research materials or other physical assets of the court without the leave of the marshal, marshal's designee, or the chief judge is prohibited.

4.3 Compliance with the Americans With Disabilities Act

The court is committed to full compliance with the Americans With Disabilities Act and welcomes suggestions from anyone concerning methods to make its facilities, proceedings, and procedures more accessible for those with disabilities. The marshal's office provides accommodations

necessary for people with disabilities to participate in court employment, and court programs or activities. <https://2dca.flcourts.gov/About-the-Court/Marshal-s-Office/Persons-with-Disabilities>

SECTION 5. CENTRAL STAFF

5.1 Director of Central Staff

The director of central staff is selected by the court upon recommendations provided by the court's central staff committee and the chief judge. The central staff committee may also participate in hiring decisions of central staff attorneys and administrative assistants and court program specialists along with the director; the committee may, however, delegate these responsibilities to the director. The director and the employees of central staff are employed by the entire court.

5.2 Duties of Central Staff

(A) Screen all original proceedings and, in concert with judicial assistance, determine the necessity to solicit a response from the respondent; undertake research, prepare memoranda, and assist the court with the disposition of these proceedings.

(B) Review, undertake research, and prepare memoranda to assist the court with the disposition of all summary postconviction appeals and all dependency and termination of parental rights proceedings.

(C) Prepare and present motions on unassigned cases to the judges' motions panels. The court delegates to the central staff director or designee the authority to rule on some routine motions.

(D) Review all emergency motions and original proceedings and make expedited presentations

to judicial panels of these matters.

(E) Undertake any other research and writing obligations assigned to it by the chief judge or the court.

(F) Monitor the status of proceedings reviewing dependency orders, orders terminating parental rights, and other expedited appeals.

5.3 Responses from the Attorney General in Summary Postconviction Appeals

The court may order a response from the Attorney General on any summary postconviction appeal. The court orders responses as a matter of course in any appeal where reversal is contemplated, except those involving an award of pretrial jail credit or those that reverse for an evidentiary hearing or for further attachments to the order denying the postconviction motion.

SECTION 6. THE DECISION-MAKING PROCESS

Three judges constitute a panel for the consideration of every proceeding, excepting those that are considered en banc. Appeals are generally not assigned to panels until perfected. Matters requiring judicial attention prior to perfection are prepared by central staff attorneys and presented to regularly scheduled motions panels. Emergency panels are convened for especially time-sensitive concerns. The means of considering the disposition of proceedings in the court may be classified into three categories, addressed in sections 6.1, 6.2, and 6.3 following.

6.1 Oral Argument Cases

If a party makes a timely request, the court permits oral argument as a matter of course in most

proceedings. Oral argument is not generally permitted for motions and in the following classes of cases:

- (A) appeals in which a pro se party is incarcerated;
- (B) summary postconviction appeals; and
- (C) nonsummary postconviction appeals where the parties are not represented.

Even in these classes of cases, oral argument may be permitted by the merits panel.

Requests for oral argument in expedited proceedings, including termination of parental rights and dependency cases, are presented first to the merits panel. Upon the panel's decision to grant oral argument, the clerk will set the case on an expedited basis.

Other than expedited proceedings, cases are set for oral argument prior to the assigned panel's review. As such, the cases are provisionally set for oral argument. Should the panel of assigned judges decide unanimously that the court will not benefit from oral argument, the clerk will be directed to notify the attorneys or parties by order that the argument is cancelled. An order cancelling argument for this reason will generally issue no later than two weeks before the date of the scheduled argument.

Unless a panel grants a motion to alter the time for argument, each side in an oral argument case is allotted twenty minutes of argument. The appellant or petitioner may reserve no more than five minutes for rebuttal.

Oral argument panels generally consider six cases, with two cases assigned to each judge who assumes primary responsibility for those cases. The primary judge's staff is responsible for preparing a compilation for the benefit of the panel. The compilation combines the briefs or petitions and responses in one document, organized by issues presented.

Following arguments, the panel convenes for preliminary discussion about dispositions of the cases argued. For those cases requiring a written opinion, the primary judge assumes responsibility for its preparation and circulation provided it reflects the majority view; otherwise, the senior member of the other judges on the panel has the option to either assume responsibility for drafting of the opinion or assign that task to the other member of the panel.

6.2 Oral Argument Waived Cases

The number of cases assigned to any oral argument waived panel varies depending upon the volume of perfected cases ready to be assigned. The preparation of cases for these panels mirrors those for oral argument cases, except that the primary judge's staff is also responsible for the preparation and distribution of a legal analysis of the issues in the proceeding. The assigned staff attorney attends the conference and presents his or her analysis orally. Protocol for opinion drafting in oral argument waived cases is the same as that observed in oral argument cases.

6.3 Summary Postconviction Appeals and Original Proceedings

Summary postconviction appeals are initially screened by central staff attorneys. Select proceedings are presented to pre-assigned panels that convene twice monthly. Those proceedings that are not affirmed by these panels, as well as the other postconviction appeals not presented to those panels, are assigned to random three-judge panels by the clerk, with an assigned judge designated.

Original proceedings are screened by central staff, and if a response is ordered in a certiorari proceeding the matter is assigned to an oral argument or oral argument waived panel unless the matter is time-sensitive or the response conclusively demonstrates that the petition is without merit. Formal assignment of other original proceedings, as warranted, mirrors the procedures followed with summary postconviction appeals that proceed past the twice-monthly pre-assigned panels.

6.4 Motions Panels

Each Wednesday a two-judge motions panel convenes, and central staff attorneys present pending motions on unassigned cases to the panel for its consideration. Routine, nondispositive motions may be decided by one judge. Orders on motions to dismiss, to strike, for sanctions, to relinquish jurisdiction, to stay the appeal or lower tribunal proceedings, to expedite, to review the denial of supersedeas bonds in criminal cases, to review the denial of insolvency, and to consolidate proceedings must have the concurrence of two judges. Orders disposing of a case require the concurrence of three judges.

6.5 Certified Questions from County Court and Rule 9.125 Pass-Throughs

The issue of accepting or declining jurisdiction under Florida Rule of Appellate Procedure 9.160 must be presented by the director of central staff to the attendees at the court conference following receipt of the notice of appeal, and a majority of judges in attendance voting in favor of accepting jurisdiction is required to maintain the appeal in the court. Submissions from county court that fail because of a procedural or jurisdictional shortfall may be disposed of prior to court conference by a motions panel. The entire court likewise is engaged in decisions to certify a matter to the Supreme Court of Florida for immediate resolution pursuant to Florida Rule of Appellate Procedure 9.125.

6.6 Senior and Associate Judges

Each judge may be excused annually from service on two panels, either oral argument or oral argument waived, and have their assignment filled by a senior judge or an associate judge. Utilization of a senior or associate judge who is not a former member of the court requires approval of the chief judge. The staff of a judge exercising this option will remain responsible for all preparatory and follow-

up work on the assigned cases that the substituting judge requires. Associate judges are not assigned to appeals from orders entered in the circuit in which they hold office. County judges are ineligible to sit as associate judges. The judge exercising this option is responsible to assure that the senior or associate judge timely disposes of all matters assigned to that judge.

6.7 Opinions

The clerk issues the opinions of the court each week on Wednesday and Friday. The clerk circulates all written opinions to all judges and staff for examination no less than ten days prior to issuance. Opinions requiring expedited release are circulated by e-mail to the judges, staff attorneys, and judicial assistants no less than twenty-four hours prior to the release of the opinion.

Any panel member may direct the clerk not to issue an opinion on the prescribed date, and any judge of the court may do so provided panel members are not available to consult on the matter, or no panel member agrees to pull the opinion.

6.8 Proceedings En Banc

(A) Hearing En Banc

Experience has shown that the randomly assigned three-judge panel is almost always able to resolve a case without formal involvement of the other judges on the court. As a result, formal proceedings en banc are reserved for the most exceptional circumstances. Any judge of the court who believes that a case under consideration may benefit from, or be required for, en banc consideration may arrange to have the matter placed on the agenda for court conference. If a majority of judges in active service on the court vote to proceed en banc, the matter will be so considered. The principal purpose served by en banc consideration is consistency in the court's decisions. The court may also proceed en banc on its own initiative on the grounds that the case or issue is of exceptional

importance. En banc consideration is required if a panel intends to recede from a prior holding of the court. If en banc consideration has been scheduled after the release of a decision but prior to the mandate, the clerk shall withhold the mandate until the matter is resolved.

(B) Rehearings En Banc

The clerk forwards to the primary judge a motion for rehearing en banc, upon receipt of the motion. Provided the motion for rehearing appears to be timely and sufficient, the primary judge holds the motion for fifteen days to afford the opposing side an opportunity to respond. If no response to the motion is received any panel member may order one. If the motion for rehearing en banc is filed in conjunction with a motion for rehearing, both motions are first circulated to the assigned panel. The motion for rehearing en banc then circulates electronically to the balance of the judges in regular service on the court with a copy to the clerk. The sole question posed to the judges is: "Do you wish to have this rehearing matter considered en banc, yes or no?" If, within fourteen days, any judge communicates a desire to have the matter considered en banc, the other judges and the clerk will be advised that further response to the motion is unnecessary at that time. If, within fourteen days, any member of the panel concludes that the motion for rehearing en banc was circulated prematurely, the other judges and the clerk will be so advised, and the motion will be recirculated when ready for consideration. A judge wishing to consider the matter en banc has the responsibility to see that the issue is placed on the agenda for court conference and that the other judges receive the materials necessary to consider the matter at court conference. The judge wishing to consider the matter en banc prepares a brief internal memorandum explaining why he or she believes the case should be resolved by the entire court. A majority of judges in active service on the court must agree to consider the matter en banc or the materials will be delivered to the clerk for disposition of the motion for rehearing as directed by the panel members and for the entry of an order denying the motion for rehearing en banc.

If the court decides to proceed en banc on rehearing, a judge in the majority prepares the primary opinion for the court. In the rare event that the judges in the majority cannot agree upon the authoring judge, the chief judge selects the judge responsible for drafting an en banc decision.

(C) Chief Judge's Participation

To promote collegiality and to assure a balanced consideration, when a matter is heard en banc, the chief judge is expected to preside over the meeting with neutrality and without participating as an advocate for any position. The chief judge is the last judge to vote at the meeting. In the event that a chief judge has a strong interest in the matter presented en banc and wishes to participate in the discussion at the meeting, another member of the court who is willing to serve temporarily as chief judge will serve in that capacity for the hearing en banc. Given the logistical difficulties created by an oral argument presented to a fifteen-member court, it is the policy of this court not to conduct oral arguments in en banc proceedings.