

**THIRD DISTRICT COURT OF APPEAL**

**MANUAL OF INTERNAL OPERATING  
PROCEDURES**

**Adopted**

**2015**

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## **1. INTRODUCTION<sup>1</sup>**

The purpose of this manual is to serve as a repository of the internal operating procedures of the Third District Court of Appeal. The court continually reviews and improves its internal procedures. This manual will be updated periodically to include new procedures and modifications of existing procedures.

This manual, including all of its appendices, is intended to be an integral part of a uniform and comprehensive system of personnel administration. The manual neither supplants the Florida Rules of Appellate Procedure nor creates any substantive rights. These procedures are supplementary to the Florida Rules of Judicial Administration and the Personnel Regulations Manual adopted by the Supreme Court of Florida, effective September 1, 1978, as amended, and revised August 2012.

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<sup>1</sup> This section of this manual is derived, in part, in the Personnel Regulations Manual adopted by the Supreme Court of Florida, effective September 1, 1978, as amended, and revised August 2012.

## **2. ADMINISTRATION<sup>2</sup>**

The Chief Justice of the Supreme Court of Florida is the Chief Administrative Officer of the Judicial Branch of Florida State Government and has the final authority and responsibility for the application and administration of the rules and regulations governing all state court employees, except where that authority otherwise is vested in another by law or such rule or regulation.

The day-to-day application and administration of the rules and regulations in the Third District Court of Appeal are vested in the chief judge or his/her designated representative.

Implementation, interpretation and administration of the state courts system classification and pay plan, personnel evaluations, and dissemination of personnel information and statistics is the responsibility of the Office of the State Courts Administrator.

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<sup>2</sup> This section of this manual is modeled after the section “Administration” found in the Personnel Regulations Manual adopted by the Supreme Court of Florida, effective September 1, 1978, as amended, and revised August 2012. The phrase “state court employees,” as used in this section of this manual, means all employees of the State Courts System except judicial officers (justices and judges), the Clerk of the Supreme Court of Florida, the Marshal of the Supreme Court of Florida, the Clerk of each District Court of Appeal, the Marshal of each District Court of Appeal, and the State Courts Administrator. *See* Personnel Regulations Manual at p. 10.

### **3. POLICY STATEMENT<sup>3</sup>**

The employees of the Florida State Courts System are exempt from the State of Florida Career Service System under Chapter 110, Florida Statutes.

In accordance with recommendations of the Auditor General, it is the intention of the Supreme Court of Florida to create a uniform Florida State Courts Personnel System which shall govern, regulate, and coordinate all personnel and employment practices and activities with respect to recruitment, examination, appointment, training, promotion, retention, separation, or any other employment practice.

All employees of the Florida State Courts System are at-will employees and serve at the pleasure of the appointing authority. For the purposes of these regulations, the Chief Justice of the Supreme Court of Florida, the chief judges of the district courts of appeal, and the chief judges of the judicial circuits of Florida exercise administrative supervision over court personnel in their respective jurisdictions. Judicial assistants and appellate law clerks serve as personal staff to their individual judicial officers and are subject to their individual officer's plenary authority over the employment relationship—including all hiring, supervisory, and firing decisions.

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<sup>3</sup> This section of this manual is modeled after the "Policy Statement" in the Personnel Regulations Manual adopted by the Supreme Court of Florida, effective September 1, 1978, as amended, and revised August 2012.

It is the policy of the State Courts System (SCS) to provide a workplace free from any and all forms of illegal discrimination, and to provide equal employment opportunity to every employee and applicant for employment based solely on his or her qualifications to perform the job, and without discrimination on account of race, ethnicity, sex, religion, national origin, disability, marital status, sexual orientation, or age, except as provided by law, with respect to recruitment, appointment, training, promotion, retention, separation, or any other employment practice.

In accordance with Title 1 of the ADA of 1990, the SCS will not discriminate in any employment practice against qualified individuals with a disability, individuals regarded as having a disability, or individuals with an association with a person with a known disability. Furthermore, it is the policy of the SCS to provide a reasonable accommodation, if necessary, to all qualified individuals with a disability in order to assure equal opportunity in the application process, to enable a qualified individual with a disability to perform the essential functions of a job, and to enable an employee with a disability to enjoy equal benefits and privileges of employment. A reasonable accommodation will be made, on a case by case basis, if it does not impose an undue hardship on court operations.



It is the policy of the SCS to make the workplace free of sexual harassment. Sexual harassment occurs if there are unwelcome sexual advances; unwelcome requests for sexual favors; or unwelcome verbal or physical conduct of a sexual nature from or involving an employee's supervisors, peers, subordinates or other persons in contact with an employee during the course of the conduct of the employee's business when:

1. Submission to such conduct is either explicitly or implicitly a term or condition of employment; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

It is the policy of the SCS that all complaints of discrimination shall be treated seriously and acted upon promptly. The Chief Justice will approve procedures adopted by the Court for all Supreme Court officers and employees. Each chief judge will approve procedures adopted for all court officers and employees under his or her jurisdiction.

Failure to comply with this policy may result in discipline up to and including dismissal. Allegations of judicial misconduct in violation of this policy

will be referred to the appropriate enforcement and disciplinary body. No individual shall be discriminated against, harassed, threatened, or intimidated for filing a complaint under these policies. Any employee who knowingly files a false complaint may be subject to discipline up to and including dismissal.

The regulations relating to pay grades, classifications, and attendance and leave for exempt and non-exempt employees are set forth in the State Courts System Personnel Regulations manual. A copy of these regulations is available from the marshal.

## **4. COURT STRUCTURE**

The Third District Court of Appeal is comprised of ten judges who serve terms of six years. The judges collectively appoint a clerk and a marshal, who are constitutional officers and serve at the pleasure of the Court. Both the clerk and the marshal are exempt from the Florida State Courts System Classification and Pay Plan.

Each judge is authorized to employ at state expense two law clerks and one appellate judicial assistant. These employees are designated as personal staff of judicial officers and are subject to their individual officer's plenary authority over the employment relationship—including all hiring, supervisory, and firing decisions. The positions held by these employees are "FLSA Excluded Positions" under the Fair Labor Standards Act (FLSA).<sup>4</sup> Employees designated as personal staff are included under the Personnel Regulations for the Florida State Courts System only to the extent stated therein.

The clerk's and marshal's offices include both "FLSA Excluded Positions" and "FLSA Included Positions." These employees are governed by all sections of the State Courts System Personnel Regulations Manual.

All employees of the Florida State Courts System are at-will employees and serve at the pleasure of the appointing authority. The traditional relationship

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<sup>4</sup> The positions held by the employees of the Third District Court of Appeal are either "FLSA Included Positions" or "FLSA Excluded Positions." Those occupying "FLSA Included Positions" are not permitted to work overtime except in emergency situations and shall be compensated in accordance with Section 4.06(3) of the Personnel Regulations Manual. Employees occupying "FLSA Excluded Positions," with the exception of personal staff, may be permitted to accumulate compensatory leave for any overtime hours worked in excess of forty hours during a regular workweek or on an official judicial holiday in accordance with Section 4.04(3) of the Personnel Regulations Manual. Judges are not considered employees for purposes of the Manual.

between employer and employee is for no fixed period of time and may be terminated at any time by either party unilaterally, with or without cause.

## **5. CHIEF JUDGE**

The chief judge is the administrative officer of the court responsible for the dispatch of the court's business.

The chief judge will serve a two-year term commencing the first day of July of each odd-numbered year. The chief judge will be selected by a majority vote of all active judges on the court and may be selected from any of their number irrespective of seniority or rotation. The chief judge shall be chosen primarily based on administrative ability and not on seniority or rotation.

In the absence of the chief judge, the following will act as chief judge in his or her stead: (1) the chief judge-elect, if present; (2) a judge designated by the chief judge to serve as acting chief judge; or (3) the most senior judge present. The acting chief judge may exercise any and all powers of the office of chief judge.

The chief judge will be responsible for:

- (1) Approving all opinions before they are released;
- (2) Ruling on the following motions to:<sup>5</sup>
  - (a) supplement the record
  - (b) extend the time for filing briefs
  - (c) accept briefs as timely filed
  - (d) substitute or withdraw
  - (e) relinquish jurisdiction
  - (f) appear as amicus curiae
  - (g) correct the record
  - (h) appear pro hac vice

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<sup>5</sup> If the Chief Judge determines that an unusual question is presented by a motion or otherwise desires a panel to rule on it, the Chief Judge may direct the Clerk of Court to assign it to a panel and designate an assigned Judge.

The Chief Judge may also delegate authority to the Clerk to approve certain motions. *See* Appendix "A" for authority delegated by the Chief Judge to the Clerk. The Chief Judge shall provide to the members of the Court a copy of any change in the delegation of authority to the Clerk.

- (i) extend the time to file record or transcript
  - (j) consolidate
  - (k) expedite
  - (l) file enlarged brief
- (3) Reinstating cases;
  - (4) Dismissing cases for failure to comply with the rules;
  - (5) Coordinating scheduling of panels for oral argument calendars;
  - (6) Approving changes, improvements, or repairs to the court;
  - (7) Approving expenditures for other than ordinary operating expenses;
  - (8) Approving monthly payrolls;
  - (9) Approving travel connected with state business;
  - (10) Overseeing preparation of the budget, including:
    - (a) providing information to be included in legislative budget requests;
    - (b) attending budget hearings or delegating responsibility;
    - (c) providing information requested by the Office of State Courts Administrator regarding budget or other matters;
  - (11) Approving budget transfer requests between appropriations;
  - (12) Responding to inquiries regarding research and judicial assistant positions;
  - (13) Approving all new hires, discharges, and resignations;
  - (14) Preparing the agenda for, and presiding over, monthly court conferences;

- (15) Implementing all policy decisions approved by the court;
- (16) Coordinating induction ceremonies for new admittees to the Florida Bar;
- (17) Representing the court (or designating a representative to represent the court) at conferences with the Supreme Court and other district court of appeal judges;
- (18) Coordinating investiture ceremonies for new judges appointed to the court;
- (19) Liaising with the clerk and marshal of the court;
- (20) Representing the Court in audit conferences with the Auditor General's office;
- (21) Monitoring pending legislation potentially affecting the courts;
- (22) Corresponding with the Chief Justice to request associate judges;
- (23) Receiving new members of the court and administering their oath, if so requested;
- (24) Conducting "memorial services" for deceased members of the court;
- (25) Writing "thank you" or "sympathy" notes on behalf of the court;
- (26) Interviewing and hiring staff attorneys;
- (27) Liaising with the Florida Bar, and all voluntary bar associations;
- (28) Liaising with the Florida Bar Appellate Rules Committee.

## **6. CLERK**

The Clerk of the Third District Court of Appeal serves at the court's pleasure and shall be exempt from the Florida State Courts System Classification and Pay Plan.

The clerk may appoint a chief deputy clerk to discharge the clerk's duties during the clerk's absence and such other clerical assistants as the court deems necessary.

The clerk shall oversee operations of the clerk's office which, shall be open to the public between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, with the exception of court holidays. The clerk's office will be responsible for receiving all documents and papers filed with the court, and for time stamping as received all such documents and papers as of the date actually received. Documents and papers placed in the court's night box before that box is opened at or just after 8:00 a.m. each day on which the court is open, will be deemed filed as of the preceding day on which the court was open. Such deemed filing date will control for all, including jurisdictional, purposes.

Questions by non-court personnel regarding the court and its work shall be directed to the clerk's office rather than to the office of any judge.

The clerk shall make all court records available for public inspection with the exception of judicial and staff work product, vote and remark records on individual cases, judges' assignment records maintained by the clerk's office, and portions of case records sealed by a court.

The clerk shall annually prepare a schedule for approval by the chief judge and for distribution to members of the court for three-judge panels to hear oral argument for the upcoming year. The schedule will assign judges on a random rotating basis so that each judge, with the exception of the chief judge, will sit



approximately an equal number of times each year, with each judge to sit with two other judges approximately an equal number of times. The chief judge, at his or her option, may be assigned one or two fewer sittings than the other members of the court each year. Any judge may exchange a day, a week, or a portion of a calendar with any other judge to accommodate personal needs or plans (e.g., vacation), and shall notify, in writing, the chief judge, the clerk's office, and the other judges of the court of any such change.

The clerk shall assign all merits cases when "at issue," on a random basis, to a weekly calendar for which a three-judge panel has been assigned and shall, on a random basis, designate one judge on the assigned panel as the judge primarily responsible for each case. If a judge on emergency duty will be away from his/her chambers on a day he/she is assigned emergency duty, the judge shall assure that a law clerk is present in chambers. Cases initially assigned to a judge by the clerk cannot be changed except by the chief judge or the head of a panel unless a recusal occurs.

The clerk shall deem a case "at issue" when the appellee's brief is filed. If no oral argument is requested, the case will be assigned on a rotating basis to a "no request" three-judge panel. "At issue, no request" cases will be assigned to three-judge panels at least monthly. If the judge to whom a "no request" case is assigned desires to have the case set for oral argument, the case will be set for oral argument. However, the judge requesting that a "no request" be set for oral argument, but not necessarily the other two judges assigned to the no request panel, will be assigned to the oral argument panel hearing the case. If the second judge on the "no request" panel requests the case be set for oral argument, then that judge, together with the judge to whom the case is assigned (but not necessarily the third judge on the "no request" panel), will be assigned to the oral argument panel hearing the case. If the third judge on the "no request" panel desires to set the case

for oral argument, then all three judges on the “no request” panel will be assigned to the oral argument panel hearing the case. Special settings may be required to accomplish any such request.

If oral argument is to be heard, the case shall first be screened by the chief judge or his or her designee and then be placed on the oral argument ready list. The clerk shall cause written notice of the date and time set for oral argument to be provided to counsel for all parties who have filed briefs in a cause.

The clerk of the court shall also assign all habeas corpus and original writs on a random basis to three-judge panels. All emergency matters will be assigned to a judge on the panel sitting for the week in which the emergency proceeding is filed.

With the exception of rules to show cause directed to inmates who abuse procedures for post-conviction relief, rules to show cause why sanctions should not be imposed upon a client or attorney in cases which have been assigned to a panel may issue only upon the concurrence of two members of the panel. Hearings on such rules to show cause also shall require the concurrence of two members of the panel.

No later than six days prior to the Monday of each calendar week, the clerk will make available a calendar of the cases to be heard for that week to the chief judge’s office, to the judges scheduled to sit that week, and to the marshal. A copy of that calendar with the names of the judges assigned to hear cases each day during that week shall be released to the public by posting the calendar on the court’s web site the Monday prior to each oral argument week. A copy of the calendar of the cases to be heard each oral argument day also will be placed in the lounge each morning before scheduled oral arguments are to begin. The clerk shall also notify the marshal of any emergency sittings so the marshal may have the courtroom ready for argument (i.e., air-conditioning and lights on).

The marshal, or his or her designee, shall be present at all oral arguments and shall note the appearances of counsel for preparation of opinions following oral argument. The clerk's office shall be responsible for checking the correctness of all information appearing on the first page of opinions and for inserting the date of release.

The clerk's office shall be responsible for all files, exhibits, and draft opinions. Each judge's chambers shall promptly circulate any document to the next judge on the panel to which each case is assigned for prompt disposition. Proposed opinions shall be circulated in the same order used for voting.

The clerk shall handle all *in forma pauperis* matters as follows: (1) on all original proceedings, except proceedings in which Rule 9.430(c)(1)(B) and Rule 9.430(d) apply, the petitioner must (a) pay the required filing fee, (b) file a sufficient affidavit of insolvency, or (c) file a trial court order adjudicating the petitioner insolvent, (2) on all appeals, except those in which Rule 9.430(c)(1)(B) or Rule 9.430(d) apply, the appellant must (a) pay the required filing fee, (b) file a trial court order adjudicating the appellant insolvent, (c) file a clerk's determination of indigent status on an application approved by the Supreme Court.

The clerk's office shall provide statistical information to the chief judge for consideration at monthly court conferences.

## **7. MARSHAL**

The marshal of the Third District Court of Appeal serves at the court's pleasure and is exempt from the Florida State Courts System Classification and Pay Plan.

The marshal is authorized to execute process of the court throughout the state and in any county may deputize the sheriff or a deputy sheriff for such purpose.

The marshal shall be responsible for the security of the court and its employees and will work with local law enforcement agencies regarding security matters.

The marshal shall be the custodian of the court building, its furnishings, and grounds; shall be responsible for keeping the building, furnishings, and grounds in good repair; and shall supervise the information technology maintenance and custodial staff.

The marshal also shall be responsible for:

- (1) preparing the courtroom for hearings;
- (2) opening and closing court as follows:

When the light goes on, the marshal will announce:

“Order in the Court”

When the first judge emerges, the marshal will announce:

“All rise”

When the judges are in place, the marshal shall state:

“The District Court of Appeal,  
Third District, State of Florida, Honorable  
\_\_\_\_\_, presiding. All persons having  
business before this court, draw nigh, give your  
attention, and you shall be heard. May God save  
the United States of America, the State of  
Florida, and this Honorable Court. You may  
be seated.”

Upon a recess or panel change, the marshal shall announce:

“There will be a brief recess”

Following a recess, the marshal shall announce:

“All rise. You may be seated.”

- (3) supervising courtroom seating for investitures and induction ceremonies;
- (4) performing other duties as assigned by the chief judge.

The marshal shall be in charge of the personnel files and is responsible for maintaining and keeping current official individual personnel files for court employees in accordance with Sections 3.03, 3.04, 3.05, and 3.06, State of Florida Personnel Regulations Manual of the Florida State Courts System.

The marshal shall act as liaison with the state on insurance matters. The marshal shall also supervise and keep current the insurance issued by private carriers.

The marshal shall prepare budgets as directed by the legislature, the Office of the State Courts Administrator, and the chief judge.

The marshal's office shall keep a daily log of all visitors to the court for security purposes. The log shall separately denote those visitors who go into the courtroom.

The marshal shall make no expenditure for purchase of equipment or supplies exceeding \$500.00 unless approved by the chief judge. All purchases are to be made by the marshal's office in compliance with applicable competitive bidding statutes. All expenditures of less than \$500.00 shall be subject to review by the chief judge at the end of each month.

The marshal's office shall control access to the supply room and shall monitor distribution of supplies.

The marshal shall serve as the court's ADA coordinator and the intake officer for all civil complaints. *See* Appendix "H".

## **8. THE ALAN R. SCHWARTZ LIBRARY AND THE COURTROOM**

The library of the Third District Court of Appeal shall be known as the Alan R. Schwartz Library. The library is open to court personnel twenty-four hours a day. It is not open to the public.

The chief judge shall have supervisory responsibility over the library. This responsibility may be delegated to another judge on the court. The chief judge shall designate one of the court's staff attorneys of the court to act as the librarian of the Third District Court of Appeal.

The librarian's duties include:

- (1) Maintaining the library in working order;
- (2) Making acquisitions, cataloging, and maintaining the library on a day-to-day basis;
- (3) Surplusing out-of-date publications;
- (4) Acquiring replacement volumes for lost or missing materials;
- (5) Assisting in selection of reference materials;
- (6) Maintaining an up-to-date inventory manual;
- (7) Performing all library related duties as required;

All library expenditures, including acquisitions, must be pre-approved by the marshal.

Each chief judge, upon expiration of his or her term, may place a portrait of himself or herself in the courtroom. The canvas size of the portrait shall be one of

two standard sizes: 24" x 30" or 30" x 40". The frame shall not exceed 3" in width. Their pose shall be consonant with the majority of the portraits then in the courtroom. The portrait shall picture the judge in either a robe or other appropriate attire. The size of the judge's head shall be no larger than "life size" and shall be in anatomical proportion with the remainder of the portrait. It is recommended, as a matter of courtesy, that the outgoing chief judge present his or her portrait plan to the court.



## **9. LAW CLERKS AND SUMMARY PREPARATION**

Each judge is authorized to employ two law clerks. The chief judge may also employ additional law clerks to serve the court.

All law clerks employed by the court must be members of The Florida Bar or preparing for membership in The Florida Bar.

Law clerks employed by the court shall devote full time and attention to their duties at the court and may accept no outside employment or compensation from any source for any purpose other than for teaching classes, and then only with prior written approval of the chief judge.

All law clerks are required to adhere to the procedures detailed in Appendix "B."

The law clerks employed in each judge's chambers shall be responsible for preparing case summaries for each of the cases for which his or her judge has been designated as "primary" judge on the panel. If there is an exchange in judges for an entire week, summaries should be prepared by the law clerks employed in the chambers of the judge who will actually sit during each week. When an exchange in judges for only a single day is involved, summaries shall be prepared by the law clerks for the judge originally scheduled to sit each of those days. Every judge may, however, agree between and among themselves to alter these responsibilities.

Former law clerks may not participate in any cause pending before this court prior to and including the day on which he or she terminates employment with the court. Specifically, former law clerks may not participate in any case which has been docketed and received a number in this court.

Each Judge is authorized to utilize interns. Each intern shall be provided with a copy of the Court's Intern Handbook and acknowledge receipt of it before commencing an internship with the court. The intern shall return his or her copy of

the handbook to the marshal on the last day the internship, together with all security passes.

## **10. ORIGINAL PROCEEDINGS**

Certiorari. Petitions for certiorari shall be assigned to a panel with a primary judge according to a rotation formula established by the clerk. If the primary judge assigned finds no merit in the petition, that judge should so note and forward the petition to the other members of the panel. If any judge on the panel to which the petition is assigned determines that a rule to show cause should issue or that a response should be filed, that judge should so note and forward the petition to the clerk for issuance of the appropriate order. Upon return of the rule or response, the matter may either be disposed of by the panel following consideration of the return or response or may be set for oral argument.

General Original Proceedings (Other than Certiorari). Petitions for writs of habeas corpus, mandamus, prohibition, quo warranto, and initial pleadings in other original proceedings (other than certiorari) shall be docketed by the clerk, treated as emergencies, assigned to a judge on the panel sitting for the week in which the emergency proceeding is filed, and forthwith forwarded to the assigned judge, who may have a summary prepared if necessary.

Habeas Corpus. Pursuant to a rotation formula established by the clerk, each petition for writ of habeas corpus will be assigned to a judge and a panel. If the assigned judge votes to deny or grant the petition, or votes to transfer the case to another court, the petition shall be circulated to the other two panel members for consideration. If, however, any judge on the panel directs issuance of a show cause order or response, the petition will not be further circulated to the other panel members. The case will, however, remain with the assigned judge until a response is received, at which time the petition will be circulated to the other panel members. Oral argument will be heard on these petitions only upon request by a panel member.

Mandamus, Prohibition, Quo Warranto, and Initial Pleadings in Other Emergency Filings Other Than Certiorari. Once an emergency matter has been docketed, the assigned judge shall confer with the other two panel members. If the assigned judge votes to deny the petition or motion, the petition or motion shall be circulated to the other two panel members for consideration, all of whom shall note his or her vote on the original petition or motion. If, however, any member of the panel directs issuance of a show cause order or orders a response, the matter shall be returned to the original panel for consideration after a response has been filed. Any further proceedings may be directed by that panel.

Improper Legal Remedy Sought and Transfer. Where a party seeking District Court of Appeal review has filed an appeal, a petition for writ of certiorari, a petition for habeas corpus, or other pleading which the court considers to have merit, but incorrectly sets forth the legal ground for relief, the court will treat the matter as if the proper legal remedy had been sought. Where the case should have been filed in the Supreme Court or another district court of appeal or in a circuit court, this court will transfer the case to the appropriate court, provided that the jurisdiction was timely and properly invoked. When an initial pleading is inadequate to notify the clerk of the nature of the case, the matter shall be returned to the sender by the clerk upon approval of the chief judge.

Correspondence Addressed to Individual Judges. Correspondence to individual judges by parties or attorneys regarding matters pending before the court shall either be forwarded to the clerk to be returned to the chief judge for reply, forwarded to the clerk's office for inclusion in the court file, or disposed of in such other manner as the recipient may desire.

Untimely Filings. Untimely filings shall be docketed, with the court to advise the filing party by letter that the cause is subject to dismissal if timeliness is not established within ten days or such other time as deemed appropriate.

## **11. APPEALS**

General. In all cases in which oral argument has been requested, either by application of a party or by a member of the court, the clerk shall set the matter on an oral argument calendar as soon as possible, pursuant to Section 6. The clerk shall assign the matter to an appropriate panel and judge, and notify the assigned judge's chambers of the case for preparation of a summary, which shall be circulated at least ten days prior to the date set for argument.

No Request. Cases in which no oral argument is requested shall be at issue upon the expiration of time for filing appellant's reply brief and assigned to a judge and panel. Any judge to whom a case is assigned without oral argument may request oral argument. This automatically will cause the matter to be set for oral argument before a panel upon appropriate notice by the clerk.

## 12. HEARINGS

Oral Argument on Merits; Pre-Argument Procedures. Except for state holidays and during the summer and winter recesses, oral arguments generally will be scheduled each week of each month. Except for expedited cases, the assigned judge's office will be notified of the cases for preparation of a summary at least 30 days before the date on which oral argument has been scheduled. At least 10 days before the date set for oral argument, all appropriate judges' offices shall be notified that summaries and briefs are available for review.

Oral Argument on Motions. As provided in Section 5(2)-(4), the chief judge disposes of routine motions. The chief judge may, however, refer unusual motions or orders to a panel for consideration without argument. If any judge on the panel requests oral argument, it will be set. When successive substantive motions are filed in a cause, the matter should be decided by the same panel that considered the initial motion unless a merits panel has been assigned.

### [Recusals] Disqualifications:

- (1) When a judge disqualifies himself or herself from a case or matter before it is assigned to a panel, the clerk shall assign the case or matter to another judge.
- (2) When a judge who is assigned primary responsibility on an appeal disqualifies himself or herself from a case or matter before oral argument, the case or matter will be reassigned to the junior Judge on the panel and the clerk will find a third judge to fill the panel. The clerk also will re-assign to the disqualifying judge a case of the junior judge. In that way, the disqualifying judge always will receive another case for primary responsibility.
- (3) When a judge decides to disqualify himself or herself after a case or matter has been argued, that judge will notify the other two panel members and request that the clerk assign the case or matter to a third judge. If the third judge decides, after reviewing the briefs and record and archived video, that he or she wants to

hear the case, the clerk will so notify the other two panel members and the case will be reset for oral argument.

Duties of Chief of a Panel. The amount of time allotted for argument is set in the order scheduling oral argument and is shown on the oral argument calendar. However, it has been the policy of this court to liberally extend the time allotted during oral argument, if needed. The decision to allow more time for argument will be controlled by the chief of the panel. If the chief of the panel accords additional time to one side, he or she should allow a like amount of additional time to the other. If a motion for extension of time allotted for oral argument is filed prior to the day of oral argument, it will first be presented to the judge to whom the case is tentatively assigned for recommendation and then to the chief of the panel for an order thereon. The chief of the panel will call the cases for oral argument in the order listed on the calendar for that day and is responsible, with the marshal, for maintaining decorum and order in the courtroom.

Coffee is available in the lounge from 8:00 a.m. to the end of the oral argument calendar. During the morning recess, judges may join persons in the lounge for conversation unrelated to any case before the court.

Oral Argument Procedures. Oral argument shall begin at 9:30 a.m. At 9:20 a.m., the judges shall assemble in the robing room to don their robes for the bench. At 9:30 a.m., the judges will enter the courtroom, led by the chief of the panel, and followed by the remaining judges in order of seniority. Retired judges or judges assigned to temporary duty on the court shall enter last. Seating alternates from right to left based on seniority. All judges will remain standing until the chief of the panel indicates that all judges are in place.

Whenever the chief judge is not sitting with the panel, the judge with most seniority, or that judge's nominee from the panel, shall act as chief of the panel and exercise all the authority and responsibility of the chief judge.

The chief judge will control the order of argument and the time allowed to any party. The division of time for argument between co-counsel or among multiple counsel on one side of a case and between counsel's main presentation and rebuttal is solely counsel's responsibility. Any judge may ask questions or make comments at any time. The chief judge has discretion to authorize a recess during oral argument and, by tradition, has done so midway into the calendar.

At the conclusion of the calendar, the court will be adjourned. The judges will leave the bench in the order they entered and reassemble in the robing room for a preliminary conference on the cases on the calendar. No person may enter the robing room without the invitation of the court. By tradition, the marshal prepares the robing room for conference and takes leave when the conference convenes. Only the judges attend these conferences.

Electronic Transmission[cription]. The court makes oral arguments available via live stream as they occur, and in an electronically accessible archive. An electronic reproduction of oral arguments also may be purchased on request to the clerk.

Court Reporters. A party who desires to bring a court reporter to an oral argument must seek permission from the court by motion at least ten days before the date of the oral argument. The motion shall include the name of the court reporting company, the name of the court reporter, whether the reporter is certified, the method by which the transcription will be taken, and the reason(s) the party desires to transcribe the proceedings rather than avail itself of the opportunity offered by the court to obtain a copy of the court's own recording of the proceeding. The chief of the panel which will hear the oral argument shall grant or deny the motion in his or her discretion.

The marshal shall determine the placement of the court reporter in the courtroom. The court reporter shall not interrupt the oral argument for any reason, including inability to transcribe the proceedings due to multiple speakers speaking



at once. In accordance with court protocol, the reporter will not carry a tape recorder or similar recording device into the courtroom.

Any transcript prepared by the court reporter shall state prominently on the face of the transcript: “This transcript is not an official transcript of the proceeding before the Third District Court of Appeal.” Only a party to the case being argued before the court is entitled to seek permission to bring a court reporter to an oral argument.

The first session of court on an oral argument day begins at 9:30 a.m. The second session begins 10:30 a.m. An approved court reporter shall present himself or herself to the marshal thirty minutes before the beginning of the session of court at which the oral argument will be heard. An approved reporter shall sign an acknowledgment of the requirements and conditions placed upon his or her appearance at an oral argument before entering the courtroom to transcribe an oral argument. *See* Appendix “C.”

Press or Media Coverage of Courtroom Proceedings. Electronic media and still photography coverage of public judicial proceedings in the court shall be allowed in accordance with standards of conduct and technology promulgated by the Supreme Court of Florida, subject at all times to the authority of the chief judge or chief of a panel to (i) control the conduct of proceedings before the court, (ii) ensure decorum and prevent distractions, and (iii) ensure the fair administration of justice in the pending case. All equipment and positions for such shall be cleared with the marshal and the chief of the panel; shall be set up prior to the convening of court and remain in place until the court session is concluded. The court will not recess or delay convening, either to have equipment set up or taken down.

Time Allotted for Oral Argument.

- |                           |                                 |
|---------------------------|---------------------------------|
| (1) Plenary Appeals       | 10, 15, or 20 minutes to a side |
| (2) Interlocutory Appeals | 10 minutes to a side            |
| (3) Petitions             | 10 minutes to a side            |
| (4) Motion                | 10 minutes to a side            |

All times may be altered by the chief judge or the panel.

### **13. CONSIDERATION AFTER ORAL ARGUMENT**

Following oral argument, the panel judges shall confer and take a tentative vote on the cases heard on the calendar that day. The judge to whom a case is tentatively assigned will vote first, the judge with the least seniority will vote next, and the chief of the panel will vote last. Discussion may be had either before or after a tentative vote takes place. Following all discussion, a formal vote shall be taken and if the judge to whom the case tentatively was assigned is in the majority, that judge will be responsible for drafting the opinion. If the judge to whom the case tentatively was assigned is in the minority, the senior member of the panel aligned with the majority will reassign the case.

Each judge's office shall be responsible for preparation of opinions for final release. The first page of every opinion prepared for final release will include: the court's name; the name of the judge whose final judgment or order is under review; the names of counsel for the respective parties as they may appear of record; and the names of counsel who participated in oral argument. After an opinion has been completed, the opinion will then be circulated to the other two judges on the panel in the same order used for voting. Each panel member who approves of the opinion so indicate by noting the opinion. Any judge may designate an opinion for question or additional conference. Any judge may prepare a concurring opinion or a dissent, which then will be circulated to the other panel members for consideration and notation. If the chief of the panel determines that a case should be reassigned after an opinion begins to circulate, the panel chief shall, prior to reassignment, notify the author of the original opinion and the other member of the panel in writing of the reasons for reassignment.

After all judges on a panel have noted their vote on a proposed opinion, the opinion then will be sent to the chief judge, who will approve the opinion for final release.

Opinions will be released on Wednesday of each week at 10:30 a.m. Copies of opinions to be released (whether the opinions are on the merits, on motions, or on rehearings) will be electronically distributed to each judge by the clerk at least nine days in advance of the release date, except when the chief judge, in his discretion, determines that a shorter circulation period is necessary. Opinions in emergency or expedited matters may be released following electronic transmission to each judge simultaneously with the release. Each judge shall review and correct opinions to be released for grammatical or judicial errors or for potential conflicts in the court. Any judge on the court may stop the release of an opinion by written notification to the clerk, the chief judge, and each judge of the court.

Hard copies of released opinions are provided free of charge to the parties, the press, and such others as may be directed by the court or an individual judge. All other interested persons may obtain hard copies at the cost of one dollar per page.

All proceedings in the court are confidential. Each judge, the clerk, and marshal are responsible for assuring that confidentiality is maintained. No discussion regarding assignment of matters or cases, drafting of opinions, orders, or results may take place between court personnel and anyone outside the court. Any violation of the breach of confidentiality warrants immediate and summary dismissal of any employee and subjects a judge to censure. *See* Appendices “D” and “J” attached.

Recently released opinions shall not be discussed by any member of the court with the media or members of the Bar because cases do not become final until disposition of motions for rehearing and rehearing en banc. Members of the

court shall not discuss with the media, members of the Bar, or the public, personal disagreement with cases or matters decided by this court. This does not mean that judges may not urge en banc rehearing of any case in accordance with the en banc rule.

#### **14. APPELLATE ATTORNEYS' FEES**

The Court generally grants entitlement to an appellate fee award with a remand to the lower tribunal to set the amount. Should this Court elect to set the amount of an appellate fee award, the notation granting such fees should include the amount of the fee to be awarded.

## **15. REHEARING/REHEARING EN BANC MOTIONS**

Motions for rehearing, whether or not accompanied by a motion for rehearing en banc, first shall be considered by the assigned panel with the author of the majority opinion voting first. Any panel member, except a member who dissented, may request oral argument of the motion for rehearing.

Withdrawal or substantial revision of a majority opinion by the assigned panel renders moot an accompanying motion for rehearing en banc. Such a revised opinion will include the following notation prominently displayed at the top of the revised opinion:

**THIS OPINION IS NOT FINAL UNTIL DISPOSITION OF ANY FURTHER MOTION FOR REHEARING AND/OR MOTION FOR REHEARING EN BANC. ANY PREVIOUSLY-FILED MOTION FOR REHEARING EN BANC IS DEEMED MOOT.**

Denial by a majority of the assigned panel of a motion for rehearing accompanied by a motion for rehearing en banc will be followed by circulation of the opinion to the entire conference for en banc consideration.

A motion for rehearing en banc made without an accompanying motion for rehearing will be treated as including a motion for rehearing and circulated first to the assigned panel for resolution as provided in 13 above.

En banc circulation of a file to the conference will proceed from the assigned panel members to the other members of the conference beginning with the junior-most to the senior-most member and will be accompanied by the following notation:

**A MOTION FOR REHEARING EN BANC HAS BEEN FILED IN THE ABOVE CASE. ANY JUDGE MAY REQUEST A VOTE AS TO WHETHER AN EN BANC REHEARING SHALL BE CONDUCTED. DO YOU REQUEST A VOTE TO BE TAKEN?**

After one “yes” vote has been made by a member of the conference, the motion will be returned to the clerk for re-circulation to the entire conference. This re-circulation will bear the following notation:

**THERE HAS BEEN ONE VOTE FOR REHEARING EN BANC.  
DO YOU VOTE FOR REHEARING EN BANC?**

If four members of the conference vote “yes” to rehear a matter en banc, the matter will be placed on the next court conference agenda for discussion. The chief judge may postpone placing the matter on the conference agenda for a reasonable amount of time to allow sufficient notice to the conference to consider the matter.

At any time after four members of the conference have voted “yes” to rehear a matter en banc, but before the conference votes whether to rehear a case en banc, the assigned panel may ask the conference to permit the panel to reconsider its initial decision to deny rehearing. The conference may, upon majority vote, agree to allow the assigned panel to revise the original panel decision and either (1) submit the revised opinion to the conference for reconsideration before issuance, or (2) issue the revised opinion without review by the conference. In the event the conference permits the panel to issue a revised opinion without conference review, either the chief judge or the judge responsible for taking the minutes of the conference will notify the clerk that the file has been relinquished to the assigned panel and is no longer before the conference.

Any opinion revised by an assigned panel and issued without further conference review will bear the following notation:

**THIS OPINION IS NOT FINAL UNTIL DISPOSITION OF ANY  
FURTHER MOTION FOR REHEARING AND/OR REHEARING  
EN BANC. ANY PREVIOUSLY-FILED MOTION FOR REHEARING  
EN BANC IS DEEMED MOOT.**



A vote of a majority of active members of the conference actually present and participating is necessary to order en banc hearing or rehearing. If a majority of the active members of the conference vote to order an en banc hearing or rehearing, the chief judge or, if the chief judge is not participating, the senior-most judge of the court shall serve as the panel chief. The chief judge or his/her alternate shall be responsible for assigning the author of the primary majority and dissenting opinions.

An en banc decision on the merits must be approved by a majority of the active conference members actually participating and voting. In the event of a tie vote, the panel decision stands as the decision of the conference. If there is no panel decision, a tie vote will affirm the decision on review.

Non-substantive changes to previously issued panel or en banc opinions may be accomplished by clerk's order rather than by issuance of a new opinion (e.g., a corrected opinion for scrivener's errors).

Oral argument on motions for rehearing en banc may be set upon a majority vote of the active conference members actually participating and voting. In the event of a tie vote, oral argument will not be heard on a motion for rehearing en banc. At argument, the proponent of the motion for rehearing or rehearing en banc will argue first, followed by the respondent, with rebuttal by the proponent unless the court orders otherwise.

## **16. COURT CONFERENCES**

The judges will meet privately on the second Thursday of each month at 10:00 a.m., or as soon thereafter as the chief judge otherwise directs. Any judge may request that a matter be placed on the agenda prepared by the chief judge for circulation in advance of the conference. The chief judge may schedule additional conferences at his or her discretion. Action taken by the court in conference on matters other than case dispositions shall be recorded in the minutes of the meeting, prepared by the junior-most judge in tenure and approved by the court.

## **17. EMPLOYEE PAY GRADES, CLASSIFICATIONS, VACATION SCHEDULES AND SICK LEAVE**

The chief justice, through the court administrator, is charged with the responsibility of promulgation of job classifications, pay grades, and attendance and leave regulations to which the Court is required to conform.

The regulations relating to pay grades, classifications, and attendance and leave for exempt and non-exempt employees are set forth in the State Courts System Personnel Regulations manual. A copy of these regulations is available from the marshal.

Court personnel, with the exception of those employees designated as personal staff to the judges, will be given a periodic written performance evaluation by their supervising employer at the end of their first six months of employment and annually thereafter, for the primary purpose of determining eligibility for retention, promotion and advancement in accordance with Section 2, State of Florida Personnel Regulations Manual of the Florida State Courts System. Although personal staff is exempt from performance evaluations pursuant to the State Courts System Personnel Regulations Manual, evaluation forms will be provided by the marshal to judges upon request, for evaluation of their own personal staff.

Records of leave maintained by the judges for their personal staff will reflect only leave used, and compensatory time earned, used, and accrued. At the end of the calendar year, the records will be sent to the marshal's office to be placed in the employee's personnel file. All clerk's and marshal's offices employees must use the electronic *Attendance Reporting System* to request authorization to use leave, document all leave used and track leave balances.

Personal staff shall be eligible to receive up to eight weeks of paid parental leave, subject to the approval of the supervising judge.

Each employee, including those designated as personal staff, occupying a regular full-time established position with at least six months of continuous state service shall be eligible for one eight-hour personal leave day each fiscal year (July 1 – June 30). The personal holiday must be used by June 30 each year, or it is forfeited.

## **18. MISCELLANEOUS**

Judges' offices should be open daily no later than 9:00 a.m. and by 8:45 a.m. on days when a judge is on the bench.

All requests for a visiting judge to replace a judge of this court assigned to a panel shall be made by the chief judge to the chief justice.

When a visiting judge is sitting for a member of this court, the judge for whom the visiting judge is sitting will supply secretarial and research services to the visiting judge. The visiting judge may either occupy an office supplied for a visiting judge or the office of the judge being replaced.

Each judge shall notify the chief judge and the clerk in writing any time he or she will not be reachable by means of electronic communication for a period in excess of twenty-four hours. Each judge also shall notify the chief judge and the clerk in writing of his or her contact information for the summer recess period, December holiday period and periods of vacation.

Neither the court nor any employee of the court shall evaluate candidates for nomination to fill vacancies on the circuit court or county court. The chairman of the Circuit Court Judicial Nominating Committee of the Eleventh Circuit has been so apprised.

Judges may not invite to visit or entertain attorneys in their chambers who have either just filed motions or pleadings with the court or who have just participated in oral argument. If a request for such a meeting or visit is requested, the attorney should be referred to the following notice, posted at the information window:

NOTICE TO ALL ATTORNEYS

ATTORNEYS PRESENT AT THE COURT FOR ORAL ARGUMENT, TO FILE MOTIONS OR PETITIONS (ESPECIALLY EMERGENCY MOTIONS OR PETITIONS), OR TO TRANSACT ANY OTHER SUCH BUSINESS WITH THE COURT ARE STRONGLY URGED **NOT** TO REQUEST VISITS WITH THE JUDGES, THEIR STAFF, OR OTHER COURT PERSONNEL.

THANK YOU.

## **19. AMENDMENTS**

These procedures may be amended by a majority vote of the members of the court upon seven days' written notice of any proposed amendment. By vote of two-thirds of the members of the court, these procedures may be amended without seven days' notice in writing.

## **20. STAFF ATTORNEYS**

From time to time, the court may be authorized to hire one or more additional law clerks in addition to those who serve on the personal staff of the judges of the court. The additional law clerks shall be hired by and work under the direction of the chief judge.



## **21. SECURITY PLAN**

**NOTE: This security plan is exempt from public disclosure pursuant to Fla. R. Jud. Admin. 2.420(c)(2); §§ 119.071, 218.301, Fla. Stat. (2004).**

## **APPENDIX A**

**(See Section 5)**

(Referenced at p. 9)

### **MEMORANDUM**

TO: Mary Cay Blanks, Clerk

DATE: December 9, 2015

FROM: CHIEF JUDGE SUAREZ

RE: Motions

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With the exception of motions for extension of time filed in criminal appeals where the defendant's sentence is two years or less, the clerk of the court is authorized to grant the following motions without chief judge approval:

For unopposed motions<sup>1</sup> for extensions of time to file records in civil appeals under Rule 9.110; in criminal appeals under Rules 9.140 and 9.141(b)(3); and in juvenile delinquency appeals under Rule 9.145, one 60-day and one 30-day extension of time for no more than 90 days. With the approval of the chief judge, a further 30-day extension may be granted by the clerk with no further extensions allowed (“nfe”) for a total of 120 days.

For court reporter's requests for extensions of time to file transcripts in civil appeals under Rule 9.110; in criminal appeals under Rules 9.140 and 9.141(b)(3); and in juvenile delinquency appeals under Rule 9.141(b)(3), no more than 90 days. With the approval of the chief judge, a further 30-day extension may be granted by the clerk with no further extensions allowed (“nfe”) for a total of 120 days.

For unopposed motions for extensions of time to file initial or answer briefs in civil or criminal appeals, the clerk may grant extensions of time for no more than 120 days. With the approval of the chief judge, a further 30-day extension may be granted by the clerk with no further extensions allowed (“nfe”) for a total of 150 days.

For unopposed motions for extensions of time to file initial or answer briefs in non-final civil appeals under Rule 9.130, the clerk may grant extensions of time for

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<sup>1</sup> This includes both motions stating (a) the opposing side had agreed to the extension of time; or (b) that an attempt to contact the opposing side has been made.

no more than 60-days. With the approval of the chief judge, a further 30-day extension may be granted by the clerk with no further extensions allowed (“nfe”) for a total of 90 days.

For unopposed motions for extensions of time to file initial or answer briefs in juvenile delinquency appeals under Rule 9.145, the clerk may grant extensions of time for no more than 90 days. With the approval of the chief judge, a further 30-day extension may be granted by the clerk with no further extensions allowed (“nfe”) for a total of 120 days.

For unopposed motions to file reply briefs in civil, criminal, and juvenile appeals when no oral argument has been requested, the clerk may grant extensions of time for no more than 30 days. With the approval of the chief judge a further 30-day extension may be granted by the clerk with no further extensions allowed (“nfe”), for a total of 60 days.

The clerk of the court is further authorized to grant the following motions without chief judge approval:

- Unopposed motions<sup>2</sup> to supplement the record on appeal;
- Motions to accept briefs as timely filed.

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<sup>2</sup> This includes both (a) motions stating that the opposing side has agreed, and (b) motions which do not contain such a statement but, after waiting the prescribed time for a response, no objection is filed.

## **APPENDIX B**

**(See Section 9)**

(Referenced at p. 23)

### **PREPARATION OF CASE SUMMARIES**

The law clerks for each judge shall prepare summaries for each case assigned to that judge as primary pursuant to the following procedures:

1. Each judge's law clerks will be responsible for preparing summaries for each of those weeks (as set forth on the court's yearly calendar) assigned to that judge as primary. If there is an exchange of judges for an entire week, the law clerks for the judge who actually will be sitting will be responsible for preparation of summaries for that week. Where there is an exchange in judges for only a single day, however, the law clerks for the judge originally scheduled to sit will remain responsible for preparation of the summaries for that day, unless the judges involved in the exchange agree otherwise. The law clerks for the chief judge will remain responsible for preparation of summaries for those cases assigned to the chief judge as primary irrespective of any exchange.

2. The law clerks for each judge to whom a case has been assigned as primary are responsible for accessing the case files on the court's electronic case management system, along with information on the date on which oral argument is set for each case and the identity of the other panel members assigned to each case. Summaries are to be completed and uploaded to the court's electronic management system at least ten days before oral argument on which the matter is scheduled to

be heard. An email should be sent to the other panel members' suite, informing them that the summary has been uploaded. For visiting judges, the judge for whom the visiting judge is sitting should be notified.

3. All briefs and critical portions of the record, as well as any critical cases and statutes, should be reviewed before a summary is prepared.

4. Each law clerk preparing a summary also must become acquainted with the court's jurisdiction to consider an appeal and determine whether the court has jurisdiction to hear the matter being summarized. If jurisdiction is in doubt, the assigned judge must be consulted.

5. The summary itself must be short, without sacrificing accuracy, and get to the essence of the case immediately. In most cases, a summary should not exceed three letter-sized, single-spaced pages and should contain only a short statement of the parties' contentions. Lengthier summaries, required in unusually complex cases, should be approved by the judge to whom the case is assigned.

6. Summaries should be drafted using Times New Roman 14-point font and the Third District Court of Appeal summary template, and should be comprised of a heading, an introductory paragraph, a fact summary, and a body summarizing the parties' legal arguments and contentions and noting any appendices filed.

7. The heading of each summary should include: (a) the name of the panel members (upper left hand corner); (b) the style of the case (just beneath the name of the panel members); (c) the specified abbreviation for the judge to whom the

case is assigned, followed by the case number (upper right hand corner); (d) the date and time of oral argument (just beneath the case number); and (e) the court from which the appeal is taken with the name(s) of the judge(s) who signed the appealed order(s) (beneath the date). The clerk will maintain a list of abbreviations of the judges' names for use in summaries. There are no standard abbreviations for visiting judges, whose names should be spelled out in full.

8. The introductory paragraph should appear immediately beneath the heading, specifying: (a) the nature of the order(s) under review; and (b) the identity of the party or parties appealing, their position or positions in the lower court (e.g., plaintiff, defendant, petitioner, etc.), and their position or position in this court (appellant, respondent, etc.). For the sake of clarity, when referring to the parties in the body of the summary it may be advisable to refer to their roles, for example, as the landlord, tenant, seller, buyer, husband, or wife. In exceptionally complex cases, a diagram of the parties may be advisable and helpful to the panel.

9. A summary of the facts should follow the introductory statement, and to facilitate readability, should be broken into appropriate paragraphs. The court should be advised of any factual dispute and where such a dispute exists, an independent examination of the record should be undertaken to accurately describe the facts.

10. The body of the summary, summarizing the legal issues and contentions raised by the appellant, should follow the fact summary. This section should be

broken into separate paragraphs for each argument. Those legal issues and contentions raised by the appellee should follow those raised by the appellant and should be broken into separate paragraphs for each argument. Where separate briefs are filed by multiple appellants and appellees, separate paragraphs summarizing the issues and contentions should be included in the summary.

Recent decisions from the Florida Supreme Court, this court, or of any other district court of appeal which have been released since briefs were filed and which may control the case or provide persuasive authority, should be included in the summary.

An independent legal analysis of the case in the body of the summary is permissible, so long as it is relatively brief. It **MAY NOT** include any recommendation as to how the case should be decided.

The existence of an appendix or appendices also should be noted in the summary.

11. Quotations from the record on critical points are encouraged in the body of the summary, so long as they are relatively short.

12. Late-filed briefs or reply briefs arriving after a summary has been prepared and distributed should be reviewed for preparation of a revised summary, if necessary.

13. Summaries will be saved in the T:drive in a folder designated "summaries." The naming convention for the summary shall include the case

number in the following format: 3D07-1000.sum. If the filed summary is subsequently amended or corrected, the law clerk should amend or correct the original summary and rename it using the following format: 3D07-1000.sum.amd. If any supplements to the summary are filed, the following format for the supplement(s) should be used: 3D07-1000.supp; 3D-07-1000.suppl, etc.

14. All summaries, briefs, and appendices, if any, for visiting judges should be delivered to the judge for whom the visiting judge is sitting.



**APPENDIX C**

**(See Section 12)**

(Referenced at p. 31)

**RULES FOR COURT REPORTERS AT  
THE THIRD DISTRICT COURT OF APPEAL**

Court reporters are permitted to transcribe oral arguments at the Third District Court of Appeal only upon approval of the court. As a reporter who has been approved by the court to transcribe the oral argument indicated below, I agree that:

A. I will sit in the place in the courtroom assigned to me by the court's marshal.

B. I will not interrupt the proceedings for any reason, including inability to transcribe the proceedings due to multiple speakers speaking at once.

C. The only record I will make of the proceeding is the stenographic record that has been authorized by the court. In accordance with court protocol, I will not carry a tape recorder or similar recording device into the courtroom.

D. Any transcript of the proceeding prepared by me will include the following legend, prominently placed on the face of the transcript: "This transcript is not an official transcript of the proceeding before the Third District Court of Appeal."

E. I will abide by any other instructions pertaining to my appearance at the court given by the marshal, or by the panel whose oral argument I will be transcribing.

Oral Argument Reported:

Name:

Date:

Case Number:

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Signature of Court Reporter

Firm Name:

Address:

Telephone Number:

e-mail address:

## **APPENDIX D**

**(See Section 13)**

(Referenced at p. 36)

### **EMPLOYMENT STANDARDS**

All employees of the court are at will employees and serve at the pleasure of the court. All employees are exempt from career service.

It is the policy of the Third District Court of Appeal to provide a workplace free from any and all forms of illegal discrimination and to provide equal employment opportunity to every employee and applicant for employment based solely on his or her qualifications to perform the job, and without discrimination on account of race, ethnicity, sex, religion, national origin, disability, marital status, sexual orientation, age, except as provided by law, with respect to recruitment, appointment, training, promotion, retention, separation, or any other employment practice. All court personnel are governed by Part III, Chapter 112, Florida Statutes, the Code of Ethics. For employees working in federally funded programs, the federal Hatch Act also may apply. *See* 5 U.S.C. § 1501, et seq.

Except for teaching (with written approval by the chief judge), no law clerk shall be employed outside the court. No other employee shall be employed outside the court without written approval of the personnel officer and chief judge.

Employees shall not reveal to any person not a court officer or employee the court's deliberations, discussion or other work product concerning decisions, the identity of a judge assigned primary responsibility for a pending decision, the author of an opinion signed only by the court, or any other information or document which, by the court's local procedures, is confidential.

Upon commencement of employment, each employee of the court shall be provided with a copy of the Third District Court of Appeal Employee Handbook. The marshal shall be responsible for the preparation and maintenance of the employee handbook. The handbook shall, at a minimum, include reference to the court's policies related to outside employment, the Fair Labor Standards Act, Equal Employment Opportunity, Civil Rights Complaint Procedure, Sexual Harassment Complaint Procedure, Fraud Policy, Prevention of Violence in the Workplace Policy, Gift Policy, Confidentiality, Attendance and Leave, Computer Use Policies and Injuries on the Job. On the last day of employment, employees

shall return the handbook to the marshal, together with the court-issued state ID, keys and all security access cards.

**APPENDIX E**  
**SECTION 5**

**POLITICAL ACTIVITIES, UNLAWFUL ACTS, AND PENALTIES<sup>1</sup>**

5.01 Scope and Purpose

This chapter sets forth the regulations relating to political activities and unlawful acts for employees in the State Courts System and the penalties for violation of these regulations.

5.02 Statements of Policy

1. The chief justice shall be responsible for preparing the standards of conduct for public employees, as provided in Part III of Chapter 112, Florida Statutes, in an appropriate format for distribution, through the employer, to all State Courts System employees. If deemed appropriate, the chief justice may establish additional standards of conduct for State Courts System employees.
2. Each employer shall ensure that all agency employees are completely familiar with the state's standards of conduct for public employees and that each employee is given a copy of these standards.

5.03 Political Activities and Unlawful Acts

1. No person shall be appointed to, demoted, or dismissed from any position in the State Courts System or in any way favored or discriminated against with respect to employment in the State Courts System because of race, color, sex, religious creed, national origin, or political opinions or affiliations.
2. No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the State Courts System, or an increase in pay or other advantage in employment in any such position, for the

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<sup>1</sup> Adopted from Section 5 of Florida State Courts Personnel Regulations Manual, effective September 1, 1978, as amended, and revised August 2012.

purpose of influencing the vote or political action of any person, or for any consideration; provided, however, that letters of inquiry, recommendation, and references by public employees or public officials shall not be considered political pressure unless any such letter contains a threat, intimidation, irrelevant, derogatory, or false information. Provided further for the purpose of this section, the term “political pressure,” in addition to any appropriate meaning which may be ascribed to be lawful authority or influence in any manner, is prohibited by this section.

3. No person shall directly, or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for, to, or any advantage in, a position in the State Courts System. The provisions of this subsection shall not apply to private employment agencies licensed pursuant to the provisions of Chapter 449, Florida Statutes, when the services of such private employment agency are requested by an agency, and neither the state nor any political subdivision pays the private employment agency for such services.
4. As an individual, each employee retains all rights and obligations of citizenship provided in the constitution and laws of the state and the constitution and laws of the United States. However, no employee in the courts system shall:
  - A. Hold, or be a candidate for, public or political office while in the employment of the state or take any active part in a political campaign while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the state. However, when authorized by the employing chief judge or chief justice, a court employee may be a candidate for or hold a local public office which involves no interest which conflicts or interferes with his or her court employment.
  - B. Employees who seek to run for state office shall submit a written resignation to their employing chief judge or chief justice at least ten (10) days prior to qualifying for the office. County and circuit judgeships are state offices. The resignation will be effective the date the employee qualifies for the office he or she intends to seek. Prior to commencing campaign activities, employees must provide notice of their intent to run for state office to the chief judge or chief justice. If the employee is unsuccessful in seeking office, the chief

judge or chief justice may authorize re-employment of the employee. Successful candidates may not be re-employed by the court, except as provided in section 5.03(4)(D).

- C. The chief judge or the chief justice shall approve or deny employee requests to run for local office based on the presence or absence of a conflict of interest. The following procedures shall apply to requests to run for local office:
- i. The employee shall submit a written request to run for local public office in writing to the chief judge or chief justice no less than thirty (30) days prior to qualifying for the office.
  - ii. The chief judge or chief justice shall render and communicate a decision, in writing, at least ten (10) days prior to the qualifying deadline of the local public office for which the employee seeks to run.
  - iii. Prior to commencing campaign activities, the employee must secure permission to run for local office from the chief judge or chief justice.
  - iv. If the request to run is approved, the employee may not campaign or, if elected, perform activities related to the office during the employee's assigned working hours with the court.
  - v. The employee may not use court facilities, personnel, equipment or supplies for any activities related to either the campaign or to the public office.
  - vi. The employee may not solicit or accept campaign contributions from persons or entities who are regulated by or are doing business with the court, or whose interests have come, or are likely to come before the court in a case or controversy.
  - vii. Employees may use accrued annual or compensatory leave credits for campaigning and, if elected, for activities related to the office.
- D. Court employees who resigned to run for state office and who are elected may be temporarily re-employed by their court between the election, or the date of qualifying if unopposed, and taking office in the discretion of the chief judge or chief justice.

5. No state employee or official shall use any promise of reward or threat of loss to encourage or coerce any employee to support or contribute to any political issue, candidate, or party.
6. Employees filling positions in agencies receiving federal funds and whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency may be subject to the provisions of the Federal Hatch Act regarding political activities.
7. All employees are subject to the provisions of Part III of Chapter 112, Florida Statutes, and governing standards of conduct.

#### 5.04 Penalties

Any person who willfully violates any provisions of these rules and regulations shall be subject to the penalties set by law.

## APPENDIX F

### **THIRD DISTRICT COURT OF APPEAL** **CIVIL RIGHTS COMPLAINT PROCEDURE**

This procedure was adopted pursuant to Administrative Order In Re: Personnel Rules and Regulations issued by the Chief Justice of the Supreme Court on September 23, 1993, and amended pursuant to In Re: Amendments to the Florida Supreme Court Civil Rights Complaint Procedure, AOSC12-21 (June 29, 2012). The procedure sets forth the steps to be taken to investigate and provide for a prompt and equitable resolution to complaints of discrimination in employment decisions.

Only complaints of discrimination, by and against all judicial and other constitutional officers and employees of the Third District Court of Appeal, because of race, religion, and sex, including sexual harassment, national origin, age, disability, marital status or retaliation, may be filed using the procedures described herein. Complaints of sexual harassment against judges must be addressed through the separate procedures outlined in In re: Sexual Harassment Policy and Procedures for Complaints against Justices, AOSC04-07 (March 25, 2004). Complaints of discrimination made under the Americans with Disabilities Act also must be referred to this court's ADA Coordinator or to the ADA Coordinator for the State Courts System and the Supreme Court of Florida, as adopted in January 1993 and modified in August 2007.

#### A. Intake Officer

The Chief Judge shall appoint an intake officer who shall be responsible for receiving and documenting complaints of discrimination by and against court officers and employees. The name, office location, and phone number of the intake officer shall be posted in a prominent place, along with this complaint procedure.

The Intake Officer for the Third District Court of Appeal is the Third District Court of Appeal marshal.

#### B. Procedure

1. All complaints of discrimination shall be treated seriously and acted upon promptly. Officers or employees will not be retaliated against for



exercising their right to file a complaint under this procedure or for assisting or participating in the complaint procedure. Any officer, employee, or applicant for employment, who believes that he or she is a victim of discrimination, should report the matter, either orally or in writing, to the intake officer or the employee's supervisor. Complaints of discrimination must be reported within ninety (90) days of the date of the alleged violation. If a complaint of discrimination is reported to the supervisor, the supervisor must report the complaint to the intake officer within two (2) working days.

2. The intake officer will discuss the allegations of the complaint with the complainant, advise the complainant of the options available under this complaint procedure, and document in writing the option the complainant elects to pursue. The intake officer will interview the officer or employee against whom the complaint is made and report the allegations of the complaint to the chief judge within five (5) working days. The chief judge may attempt to resolve the complaint informally, through mutual conciliation, or may appoint an investigative officer(s), who will investigate the complaint and report findings of the investigation to the chief judge.
3. If mutual conciliation is agreed upon by the complainant and the officer or employee the complaint is against, the chief judge, or his or her designee, will meet with the individuals involved to discuss the nature of the complaint and methods for resolution. The chief judge or his or her designee, may recommend alternative dispute resolution as a method for resolving the complaint. Alternative dispute resolution may be initiated at any stage of this procedure.
4. Investigations:
  - a. The investigative officer(s) shall:
    - 1) Interview the complainant concerning the nature and facts of the complaint.
    - 2) Interview the officer or employee the complaint is made against to obtain his or her response to the complaint. The officer or employee the complaint is made against may prepare a written response to the complaint.

- 3) Interview any witnesses as the investigative officer(s) deems necessary.
  - 4) Prepare and submit a written report to the chief judge describing the nature of the complaint and the findings of the investigation.
- b. The chief judge will determine the validity of the complaint. The chief judge may meet with all individuals concerned with a goal toward mutual resolution, dismiss the complaint, authorize appropriate discipline up to and including dismissal, or refer the complaint to the appropriate outside agency. The chief judge may meet with the complainant and the officer or employee against whom the complaint is made, either separately or together, and inform them of his or her decision.

## C. Confidentiality

### 1. Complaints against judges.

All records made or received by the chief judge or his or her designee through use of this complaint procedure are exempt from public disclosure under rule 2.420(c)(3)(A), Florida Rules of Judicial Administration. Such records are exempt from public disclosure for the duration of the initial inquiry, internal investigation and resolution of the complaint, and at all times thereafter, unless the records are forwarded to the Judicial Qualifications Commission.

If records pertaining to a complaint of discrimination are forwarded to the Judicial Qualifications Commission, such records will be confidential under rule 2.420(c)(3)(A) and rule 23 (a), Rules of the Judicial Qualifications Commission, until any formal charges against the judge are filed by the investigative panel of the Commission with the clerk of the Florida Supreme Court.

Records within the possession of the chief judge or designee and pertaining to a complaint of discrimination that has been forwarded to the Judicial Qualifications Commission will become public upon formal charges being filed with the clerk of the Florida Supreme Court.

## 2. Complaints against employees.

All records made or received by the chief judge or his or her designee through the use of this complaint procedure are exempt from public disclosure until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint and related records are made part of the official record of a hearing or court proceeding. Notes taken by the investigative officer, when used to prepare the investigative report and not circulated to others, are not public record.

### D. External Measures

Irrespective of these internal procedures, the complainant retains the right before, during, or after the conclusion of this procedure to seek other remedies as provided by law. The complainant may file a charge with the Equal Employment Opportunity Commission (EEOC); or with the Florida Commission on Human Relations (FCHR). The EEOC may be reached toll free at (800) 669-4000. The FCHR may be reached at (850) 488-7082. Information about how to file a charge of discrimination with either EEOC or FCHR is posted on the FCHR Internet site at <http://fchr.state.fl.us>.

Complaints against attorneys may be reported to The Florida Bar at 650 Apalachee Parkway, Tallahassee, Florida 32399-2300. The Florida Bar may be contacted at (850) 561-5600.

### E. Records

All complaints of discrimination and their resolution must be documented in writing and maintained by the intake officer. If an investigation takes place, and the investigative officer has submitted a written report to the chief judge, the record of any resulting disciplinary action will be maintained in the disciplined employee's personnel file. The investigative report will be maintained by the intake officer.

F. Designation of Responsible Persons

***INTAKE OFFICER:***

Marshal  
Third District Court of Appeal  
2001 S.W. 117 Avenue  
Miami, Florida 33175-1716  
Phone: 305-229-3200

***ADA COORDINATOR:***

Marshal  
Third District Court of Appeal  
2001 S.W. 117 Avenue  
Miami, Florida 33175-1716  
Phone: 305-229-3200

## APPENDIX G

### **SEXUAL HARASSMENT POLICY AND PROCEDURES FOR SEXUAL HARASSMENT COMPLAINTS AGAINST JUDGES**

#### 1. Policy

It is the policy of the Third District Court of Appeal to make the workplace free of sexual harassment. Sexual harassment occurs if there are unwelcome sexual advances; unwelcome requests for sexual favors; or unwelcome verbal or physical conduct of a sexual nature from or involving an employee's supervisors, peers, subordinates or other persons in contact with an employee during the course of the conduct of the employee's business when:

- A. Submission to such conduct is either explicitly or implicitly a term or condition of employment; or
- B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- C. Such conduct has the purpose or effect of interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

It is the policy of the Third District Court of Appeal that all complaints of discrimination will be treated seriously and acted upon promptly. The following procedures apply to complaints against judges made by employees or applicants for employment. Compliance with these procedures satisfies a chief judge's disciplinary responsibilities under Canon 3(D)1 of the Code of Judicial Conduct. Complaints of sexual harassment against judges made by individuals other than employees or applicants should be directed to the Judicial Qualifications Commission.

## 2. Notification

The chief judge may designate any officer or employee of the Third District Court of Appeal to be responsible for receiving and documenting complaints of sexual harassment against judges of the Third District Court of Appeal.

Any employee or applicant for employment with the court who believes that he or she is the subject of sexual harassment by a judge of the Third District Court of Appeal should report his or her complaint in writing to the chief judge or his or her designee. Student interns working at the court who believe they are the subject of such harassment may use these complaint procedures, but in all instances, should submit a complaint to their college or university in accordance with school sexual harassment complaint procedures.

If the chief judge is the subject of a complaint, the employee or applicant should report the complaint to the chief judge-elect, who will refer the complaint to the most senior judge, or next most senior judge after the chief judge. The judge to whom such a complaint is referred will assume all complaint investigation and resolution duties for which the chief judge otherwise would be responsible. The judge to whom such a complaint is referred also will be responsible for maintaining records pertaining to the complaint.

If an employee or applicant chooses not to file a formal complaint, but the chief judge or designee has actual knowledge or receives information that a substantial likelihood exists that a judge has engaged in sexual harassment, the chief judge or designee will inquire into the matter and take appropriate action.

## 3. Time for Filing Complaints

In order to ensure that Third District Court of Appeal complaint procedures can be utilized without risk of precluding the filing of a charge of discrimination with state or federal entities, an employee or applicant should report an incident of sexual harassment within ninety days of the date of occurrence.

## 4. Investigations

A complaint of sexual harassment against a judge will be investigated promptly and thoroughly. If a complaint has been made to the chief judge, he or she may designate another person to make an initial inquiry into the complaint.

The chief judge or his or her designee will interview the complainant within five days of the submission of the complaint to ascertain relevant facts and circumstances. If the complainant does not divulge names or details of the incident(s), the chief judge or designee will rely upon information that is available, to the extent possible. If another person has been designated to make an initial inquiry into the complaint, the designee will report details of the complaint to the chief judge within ten days of the submission of the complaint.

The chief judge may dismiss the complaint as unfounded or insufficient to constitute sexual harassment. If the complaint is sufficient to constitute sexual harassment, the chief judge may appoint an investigating officer or officers to formally investigate the complaint.

The chief judge or investigating officer will interview the complainant, the judge involved, and witnesses, if any, and will review relevant documents. If any investigating officers have been appointed, they will submit a written report to the chief judge within thirty days of the submission of the complaint.

## 5. Resolution

The chief judge shall determine the course of action for resolution of the complaint, and may appoint another person to resolve the complaint.

The chief judge may attempt to resolve the complaint informally through mutual conciliation by meeting with the complainant and judge to discuss a method of resolution, including alternate dispute resolution. In attempting to resolve the complaint, the chief judge may counsel or take another appropriate direct action with the judge involved.

If the complaint and investigation raise a substantial question as to a judge's fitness for office, the chief judge shall refer the complaint and all written documentation pertaining to the complaint to the Judicial Qualifications Commission.

## 6. Documentation and Confidentiality

All information pertaining to a complaint of sexual harassment must be documented and maintained by the chief judge or designee.

All records made or received by the chief judge or his or her designee through use of these complaint procedures are exempt from public disclosure under

rule 2.051(c)(3)(A), Florida Rules of Judicial Administration. Such records are exempt from public disclosure for the duration of an initial inquiry, formal investigation and resolution of the complaint, and at all times thereafter, unless the records are forwarded to the Judicial Qualifications Commission.

If records pertaining to a complaint are forwarded to the Judicial Qualifications Commission, such records will be confidential under rule 2.051(c)(3)(A), and rule 23(a), Rules of the Judicial Qualifications Commission, until any formal charges against the judge are filed by the Investigative Panel of the Commission with the clerk of the Florida Supreme Court.

Records within the possession of the chief judge or designee and pertaining to a complaint that has been forwarded to the Judicial Qualifications Commission will become public upon formal charges being filed with the clerk of the Florida Supreme Court.

7. Referral to the Judicial Qualifications Commission

These procedures do not preclude the referral of a complaint against a judge at any time by any person to the Judicial Qualifications Commission. If a complaint against a judge has been referred to the Judicial Qualifications Commission, no further action by the chief judge or designee is required.

The Commission is responsible for investigating all reported instances of judicial misconduct. The Commission is located at 1110 Thomasville Road, Tallahassee, Florida 32303-6224. The Commission's Executive Director, Brooke S. Kennerly, can be contacted at (850) 488-1581.

8. Referral to the Florida Commission on Human Relations or the United States Equal Employment Opportunity Commission

These procedures do not preclude the filing of a charge of employment discrimination with the Florida Commission on Human Relations or the United States Equal Employment Opportunity Commission.

The Florida Commission on Human Relations is located at: 2009 Apalachee Parkway, Suite 100, Oakland Building, Tallahassee, Florida 32301-4857. The telephone number for the Commission is: (850) 488-7082.

The Equal Opportunity Board with jurisdiction over complaints arising in Miami-Dade County is located at: 111 N.W. First Street, Suite 2150, Miami,



Florida 33128-1965. The telephone number for the Miami office is: (305) 375-5272.

**APPENDIX H**  
(Referenced at p. 20)  
**THIRD DISTRICT COURT OF APPEAL**  
**STATE OF FLORIDA**

**AMERICANS WITH DISABILITIES ACT**  
**GRIEVANCE PROCEDURE<sup>1</sup>**

**I. AUTHORITY**

Federal regulations implementing the Americans with Disabilities Act of 1990 (ADA) require public entities with fifty or more employees to designate a responsible employee and adopt grievance procedures providing for prompt and equitable resolution of complaints alleging noncompliance or complaints alleging any actions that would be prohibited under Title II of the ADA (28 C.F.R. § 35.107).

**II. INTENT AND PURPOSE**

It is the intent of the Third District Court of Appeal to fully comply with the ADA and to assure equity, fairness, and full participation in the judicial system for persons with disabilities.

The purpose of this procedure is to establish a mechanism for resolving complaints without requiring the complainant to resort to federal complaint procedures. However, complainants would not be required to exhaust this grievance procedure before they could file a complaint at the federal level.

It is the intent of the Third District Court of Appeal that complainants be consulted and advised, and that communications be maintained, at each step of the grievance process. It is further the intent of the Third District Court of Appeal to engage alternative dispute resolution techniques whenever necessary, and at any point in the grievance process.

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<sup>1</sup> This procedure is modeled upon and intended to complement the Florida Supreme Court Americans With Disabilities Act of 1990 Designation of Responsible Person and Internal Grievance Procedure for the Supreme Court and State Courts System, dated January 1993.

### III. DEFINITIONS

- A. *Americans with Disabilities Act (ADA)* - Public Law 101-336, the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability.
- B. *ADA Coordinator* – Same as “Responsible Employee.”
- C. *Disability or Persons with Disabilities* – With respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such an impairment as defined in Public Law 101-336 and 28 C.F.R. § 35.104.
- D. *Grievance* – A formal complaint made by a person, or on behalf of a person, alleging that he or she has been subjected to unlawful discrimination, or inaccessibility to facilities, programs, services, benefits, or activities on the basis of a disability.
- E. *Office of the General Counsel* – An operational division of the Office of the State Courts Administrator, Supreme Court of Florida, Tallahassee.
- F. *Office of the State Courts Administrator (OSCA)* – The administrative office of the Supreme Court of Florida, Tallahassee, which serves as the liaison between the Supreme Court and other court entities and other branches of government.
- G. *Responsible Employee* – An employee designated to coordinate a public entity's efforts to comply with and carry out its responsibilities under Title II of the ADA. These responsibilities include any investigation and/or follow through of any complaint alleging noncompliance or alleging any actions that would be prohibited by Title II of the ADA.
- H. *Administrator* – Administrator of the Office of State Courts Administrator.
- I. *Title II* – The second section of the ADA that prohibits discrimination on the basis of disability in state and local government services.

#### IV. DESIGNATION OF RESPONSIBLE PERSON

The ADA Coordinator for the Third District Court of Appeal is:

The Marshal  
Third District Court of Appeal  
2001 S.W. 117 Avenue  
Miami, Florida 33175-1716  
(305) 229-3200

#### V. GRIEVANCES

A complaint shall contain the following minimum information:

- A. Name, address and telephone number of the complainant on whose behalf the complaint is being made.
- B. The court facility in which the violation is alleged to have occurred.
- C. A complete statement of the grievance and the facts upon which it is based.
- D. The desired remedy or solution requested.
- E. The names of any witnesses who can provide supportive or relative information.

#### IV. PROCEDURE FOR GRIEVANCES RELATING TO THE THIRD DISTRICT COURT OF APPEAL

- A. Filing
  - 1. Complaints must be filed with the ADA Coordinator no later than one hundred eighty (180) days from the date of the alleged violation.
  - 2. The filing deadline may be extended upon a show of good cause.

B. Assessment and Determination of Team Members

1. The ADA Coordinator will determine which function(s) of the court is at issue: facilities, programs, services, benefits, or activities.
2. The ADA Coordinator will notify the chief judge, administrator(s), and Office of the General Counsel of the complaint.
3. A team consisting of the chief judge, ADA coordinator, the administrator(s), and a member of the Office of the General Counsel shall address the complaint. Individuals who are charged in the complaint with alleged discriminatory conduct shall not be a member of the team.

C. Fact Finding

1. The team, or a member of the team, will review the complaint with the complainant.
2. The team, or a member of the team, will interview witnesses who can provide supportive or relative information and complete the fact finding.

D. Test of Legal Sufficiency

1. The team member representing the Office of the General Counsel will determine the legal sufficiency of the complaint.

E. Action

1. If a complaint is legally deficient, the complaint shall immediately be brought to closure.
2. If a complaint is legally sufficient, the team will seek to establish a course of action to resolve the complaint.

3. To the extent reasonably possible and within its resources, the Third District Court of Appeal will make reasonable modifications to its programs, services, benefits, and activities to ensure future compliance with the ADA.
4. The court may invoke the course of action described in the regulations implementing the ADA (28 C.F.R. § 35,164) when modifications would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

F. Closure, Notification, and Records Retention

1. The ADA Coordinator shall communicate the results of the investigation and the chosen course of action to the complainant not later than thirty (30) working days from the date the complaint was filed.
2. A record of the grievance shall be maintained for three (3) years; the record shall be located with the marshal of the Third District Court of Appeal.

## **APPENDIX I**

### **FLORIDA STATE COURTS SYSTEM**

#### **FRAUD POLICY**

Approved by Florida Supreme Court on September 25, 2012

#### **I. APPLICABILITY**

This policy applies to all officers and employees of the State Courts System (SCS), and to all consultants, vendors and contractors who enter into a business relationship with a State Courts System entity.

#### **II. POLICY STATEMENT**

The SCS is committed to establishing and maintaining an organizational culture that will ensure fraud prevention and detection are integral parts of all activities, consistent with Standards of Conduct contained in the Code of Judicial Conduct and the Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes). The SCS will not tolerate or condone fraudulent, unethical or dishonest activities. It is the policy of the SCS to identify and promptly investigate suspected fraudulent, unethical or dishonest activities, and, if substantiated, to pursue legal remedies available under the law.

### **III. DEFINITION OF FRAUD**

Fraud is a willful or deliberate act or omission by which an individual intends to obtain an unauthorized benefit, service, property or something of value by deception, misrepresentation or other unethical or unlawful means. Fraud may be committed through many different methods, including mail, e-mail, telephone or the internet. Fraudulent, unethical or dishonest acts include, but are not limited to:

- Forgery or unauthorized alteration of documents or computer records;
- Falsification or misrepresentation of reports to management and external agencies, including time sheets, official travel claims for reimbursement or other expense reimbursement reports;
- Authorizing or receiving payment for time not worked;
- Misappropriation of funds, supplies or other assets;
- Impropriety in handling or reporting of money or financial transactions;
- Unauthorized activities that result in a conflict of interest;
- Disclosure of confidential or proprietary information to unauthorized individuals;

The SCS Inspector General (IG) shall provide guidance to management as to whether specific actions constitute fraud.



#### **IV. MANAGEMENT’S RESPONSIBILITIES**

- A. “Management” refers to any marshal, administrator, manager, director, supervisor or other individual who manages or supervises SCS funds, entities, offices, or personnel.
- B. Management is responsible for ensuring implementation of an effective system of internal controls for detecting and preventing fraudulent or dishonest activities. These internal controls should ensure that transactions are properly authorized and recorded, assets are properly safeguarded, and accountability for actions and resources is appropriately identified and documented. Management should be familiar with the types of improprieties that could occur and be alert for any indication of improper activity, misappropriation, or dishonest activity. When improper activity is suspected or detected, management should promptly determine to the extent possible if the activity occurred because of an error or mistake or because of fraud or dishonesty.
- C. If management suspects an activity may involve fraud or dishonesty, management shall report the suspicious activity to the chief justice or chief judge and the IG. The IG will conduct an investigation, contacting and involving internal and external entities and offices as deemed appropriate. After reporting suspicious activity to the IG, management should not attempt to conduct investigations, interviews, or interrogations. Management is responsible for implementing corrective actions to ensure adequate controls exist to prevent reoccurrence of improper activities.

## **V. EMPLOYEE RESPONSIBILITIES**

When suspected fraudulent, unethical or dishonest activities are observed by or made known to an employee, the employee must:

- i. Report the incident to his/her supervisor for subsequent reporting to the chief justice or chief judge and IG. When the employee believes the supervisor may be involved in the inappropriate activity, the employee shall make the report directly to the next higher level of management or the IG.
- ii. Refrain from further investigation of the incident, confrontation with the alleged violator, or further discussion of the incident unless otherwise directed by the IG or law enforcement personnel.

## **VI. INVESTIGATION OF ALLEGATIONS OF FRAUD**

### **a. Authority to Investigate Allegations of Fraud**

- i. The IG is authorized under section 20.055(6), Florida Statutes, to initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government. The IG is also authorized to receive and investigate complaints filed pursuant to the Whistle-blower's Act in section 112.3187-112.31895, Florida Statutes. The IG shall refer complaints involving judges, attorneys or other licensed or regulated individuals to the appropriate oversight or regulatory body for investigation and determination of probable cause.

ii. In the course of investigating fraud, suspected fraud or other wrong-doing within the scope of this policy, the IG shall have free and unrestricted access to all records and premises required to evaluate allegations. When investigating fraud, suspected fraud or other wrong-doing within the scope of this policy, the IG may inspect, examine, copy or remove SCS records and property without prior consent of any individual who may have custody of such items.

**b. Complaint Procedures**

Complaints may be filed with the IG by telephone at 850-488-9123 or email at [Ispgenl@flcourts.org](mailto:Ispgenl@flcourts.org).

The State of Florida has established a whistle-blower hotline through which individuals can anonymously submit complaints of fraud, waste, abuse, or misuse of State resources. The State of Florida Whistle-blower Hotline number is 1-800-543-5363.

**c. Inspector General Review**

The IG shall, after sufficient review or investigation, determine whether the allegations contained in a complaint are substantiated. The IG shall also determine whether violations discovered during the course of an investigation are criminal in nature and shall report such violations to the Florida Department of Law Enforcement or other law enforcement agency as deemed appropriate.

**d. Reporting**

The IG shall report the outcome of all investigations of fraudulent, unethical or dishonest activities, except investigations involving the Whistle-blower Act, to the chief justice, and when applicable, to the chief judge. Based upon the IG findings, the chief justice or chief judge, in consultation with the State Courts Administrator and the OSCA General Counsel's Office, will determine the appropriate responsive actions. Whistle-blower Act investigations will be conducted and reported in accordance with section 112.3189, Florida Statutes.

**e. Confidentiality of Records**

Information provided to the IG will be confidential to the extent permitted by law or court rule. Complaints alleging misconduct against judges, including complaints forwarded to the Judicial Qualifications Commission, are confidential under rule 2.420(c)(3)(A), Florida Rules of Judicial Administration, until probable cause is established. Complaints alleging misconduct against entities or individuals licensed or regulated by the courts are confidential until a finding of probable cause or no probable cause is established under rule 2.420(c)(3)(B), Florida Rules of Judicial Administration. Reports of the IG are public record except for information that is made confidential or exempt from public disclosure by statute or court rule. The name or identity of an individual who makes a complaint under the Whistle-blower's Act is confidential under section 20.055(5)(b), Florida Statutes,

unless the complainant consents to disclosure, or the inspector general determines that such disclosure is unavoidable during the course of the investigation.

**f. Sanctions**

If an investigation results in substantiated allegations by the IG, a recommended course of action will be developed for approval by the hiring judge or justice for personal staff of the chief justice, chief judge, marshal, trial court administrator, state courts administrator or manager for consultants, contractors or vendors, or employees of a court or administrative office of a court who are not personal staff.

**APPENDIX J**  
(Referenced at p. 36)

**THIRD DISTRICT COURT OF APPEAL**

**CONFIDENTIALITY POLICY**<sup>1</sup>

This Appendix sets forth the confidentiality requirements of the Third District Court of Appeal for all staff and interns to the extent that they receive, through any means, information identified as confidential in this document. Compliance with this policy is a condition of employment or internship with the court.

For purposes of this policy, confidential information is: (a) written, electronic or oral information relating to cases filed in the Third District Court of Appeal, except statements made in oral arguments or in other venues open to the public, briefs and other papers filed with the clerk's office, and opinions or orders made public through issuance by the court; (b) information concerning the court's decision-making process; and (c) information pertaining to administrative matters of the court identified by the chief judge, or his or her designee, as confidential. Confidential information under this policy is not equivalent to confidential or exempt information under Florida's public records laws and court rules.

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<sup>1</sup> This policy is modeled on the Florida Supreme Court Confidentiality Policy.

Staff covered by this policy are all employees of the Third District Court of Appeal, including but not limited to personal staff to judges, staff attorneys, employees of the clerk's office, marshal's office and library. Interns covered by this policy are all interns working for the Third District Court of Appeal.

PURSUANT TO THIS POLICY:

A. Court files may not be removed from the Court building without prior authorization from a judge of the court. Materials removed from the court may not be displayed or used in any law library or other public place so as to permit any non-court personnel to observe research results; to discern a possible position or outcome; or to determine that a decision will soon issue from the court.

B. Staff shall not disclose confidential information acquired in the course of their work with the court other than to current staff who are bound by the terms of this policy and who are authorized to have access to the information.

C. Staff shall not comment publicly about unannounced case-related matters that were, presently are, or will be before the court in its decision-making capacity, except comments authorized by the chief judge, including responses to routine public information and public records requests made by the clerk's office and the Public Information Office.

D. Lawyers or others visiting the court usually are here on legal or other such business which in all likelihood may not require non-judicial involvement. Conversations with these individuals are, therefore, to be avoided.

E. Because the public, including lawyers practicing before this court, make use of the court's library and facilities, conversations should be avoided with any lawyer or fellow court employee in the library or elsewhere concerning research or any aspect of cases filed in this court.

F. Court employees may not enter the lounge when lawyers not employed by the court are present, nor may court employees talk to or meet with lawyers outside the Lounge. Law clerks may not communicate with lawyers at oral arguments or to file documents with the court.

G. All inquiries concerning legal or procedural issues are to be referred to the clerk's office.

H. All inquiries from the media shall be promptly referred to one of the judges of this court.

I. Staff and Interns may not discuss cases (even in the abstract) with anyone at any time outside the court.

J. Any writing produced by interns or attorneys while working on court business is the property of the court and is therefore confidential. Should an intern or attorney wish to use such a writing as a sample to be submitted with an



application for employment, he or she shall delete all identifying information from the subject document and shall submit the redacted document, together with the original document, to his or her supervising judge for approval. No such writing may be used until the opinion to which the memo applies has been issued.

K. Employee misconduct involving unauthorized disclosure or use of confidential information will result in discipline up to and including dismissal.

L. Any violation of the confidentiality requirements applicable to attorneys, whether committed during or after their employment at the court, will be treated as a violation of the Rules of Professional Conduct and may be reported to The Florida Bar.

M. Intern misconduct involving unauthorized disclosure or use of confidential information may result in termination of the internship and submission of a report to The Florida Board of Bar Examiners for consideration in determining fitness to practice law.

N. This confidentiality requirement continues after termination of employment or an internship with the court.

**APPENDIX K**  
**THIRD DISTRICT COURT OF APPEAL**  
**VENDOR GIFT POLICY**

This policy governs the solicitation, acceptance and reporting of gifts from vendors by employees of the Third District Court of Appeal. For purposes of this policy, Third District Court of Appeal employees include interns and volunteers.

This policy does not govern the solicitation, acceptance or reporting of gifts by employees from attorneys, law firms or others whose interests have come, or may come, before the court in its adjudicatory capacity. Canon 5, Code of Judicial Conduct, as it indirectly applies to court employees, governs such conduct with respect to those individuals or entities.

(A) Definitions

1. Vendor

A vendor is any person or entity, or the agent of such person or entity, that has a business relationship with the Third District Court of Appeal, in the past has had such a relationship, or seeks to have such a relationship.

2. Gift

For purposes of this policy, a “gift” is anything of value that is accepted for personal use by an employee or a group of employees, or by another on the employee’s behalf.

3. Not a Gift

- a. A campaign contribution or expenditure reported pursuant to chapter 106, Florida Statutes, campaign-related personal service provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party.
- b. An award, plaque, certificate, or similar personalized item given in recognition of the employee’s public, civic charitable or professional service.
- c. An honorary membership in a service or other organization presented merely as a courtesy by such organization.
- d. Marketing or promotional items that are offered to all attendees at vendor exhibitions, conferences, trade shows, etc.
- e. Goods or services that are provided at no cost for reasonable and legitimate testing, evaluation or assessment for potential future use by the State Courts System.

- f. Gifts received from relatives, provided the relative is not a vendor.
- g. Gifts received from personal friends in the ordinary course of friendship, provided the personal friend is not a vendor.
- h. Hospitality, such as meals or drinks, provided at a conference to all attendees

(B) Prohibition against Acceptance of Gifts by Third District Court of Appeal Employees

No Third District Court of Appeal employee may accept any gift from a vendor.

(C) Prohibition against Acceptance of Money

No Third District Court of Appeal employee may accept money from a vendor.

(D) Prohibition against Solicitation of Gifts

No Third District Court of Appeal employee, acting on behalf of the court, may solicit gifts from a vendor, or any other business entity. This prohibition includes the solicitation of gifts to be used as prizes for charitable events or awards to employees.

(E) Reporting of Violations

Any violations of this policy should be reported immediately to the marshal or chief judge.

## **APPENDIX L**

### **FLORIDA'S THIRD DISTRICT COURT OF APPEAL SECURITY POLICIES FOR COMPUTER USE**

Adopted by the Third District Court of Appeal December 13, 2007

**NOTE: The security policies are exempt from public disclosure pursuant to Fla. R. Jud. Admin. 2.420(c)(2); §§ 119.071, 218.301, Fla. Stat. (2004).**

## APPENDIX M

### **POLICIES FOR THE PREVENTION OF VIOLENCE IN THE WORKPLACE FOR THE THIRD DISTRICT COURT OF APPEAL<sup>1</sup>**

#### **I: Scope and Purpose**

The Third District Court of Appeal is committed to providing and maintaining a safe, secure workplace, free from violence or threats of violence for all employees and citizens conducting business with the court. Consistent with this commitment, the Third District Court of Appeal has established the following policy. Employees shall refer any questions regarding their rights and obligations under this policy to the court marshal.

#### **II. Statements of Policy**

Violence in the workplace will not be tolerated. Acts of violence or threats (direct or implied), including severe, offensive, or intimidating conduct against persons or property, create a hostile or intimidating work environment for employees or citizens conducting business with the court. Acts of violence or threats prohibited under this policy include, but are not limited to, harassment, written, verbal or physical abuse, stalking, infringing on personal space,

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<sup>1</sup> This policy is modeled on the Policies for the Prevention of Violence in the Workplace for the Florida Supreme Court and the Office of the State Courts Administrator, adopted by the Supreme Court on January 17, 2013.

intimidation, hitting, shoving, and unauthorized possession or inappropriate use of firearms, weapons, or any other dangerous devices on court property. This policy extends to contractors as well as employees of the court. Violations of this policy will result in an appropriate response, which may include disciplinary action, up to and including dismissal, and criminal prosecution.

1. The marshal's office will provide education and mandatory training for employees regarding workplace violence, to include: the identification and/or warning signs of inappropriate behavior, guidelines for the reporting of incidents and the prevention and/or de-escalation of workplace violence situations. In addition, the court has an Employee Assistance Program (EAP) available to all court employees and their families. The EAP is a confidential program consisting of trained counselors who will work with employees to address the difficulties and stresses that may lead to violent behavior. Management referrals should be made to the EAP for employees who exhibit behavior consistent with warning signs of potentially violent behavior, e.g., verbal threats, challenges to authority, or vandalism.
2. With the exception of judges and authorized security personnel, possession or use of a weapon is not permitted in the workplace. Weapons include guns, knives (excluding pocket knives and standard cutting tools used by maintenance workers), explosives, and other items

with the potential to inflict harm. While section 790.25 1(4)(d), F.S., permits an employee with a concealed firearms permit to keep a firearm concealed in his or her vehicle in the workplace parking lot or garage, employees are not permitted to bring a firearm into the court building.

3. Any employee who threatens, harasses, or batters someone in the workplace, or outside the workplace while on court business, using court resources, including e-mail, facsimile machines, telephones, or other means, may be subject to corrective or disciplinary action, up to and including dismissal and/or prosecution. Such action may also be taken against employees who are arrested, convicted, and/or subject to an injunction for protection as a result of domestic or sexual violence. The EAP can provide resources for employees who experience, observe or otherwise may be affected by domestic or sexual violence.

### **III. Procedures**

1. In all situations in the workplace, if violence appears to be imminent, employees must take the precautions necessary to ensure their own safety and the safety of others. Employees must immediately report knowledge of potentially violent situations or observed acts of violence to security personnel in the marshal's office and to their immediate supervisor. If the situation involves an injury that requires immediate medical attention, the employee must call 911, contact security personnel,



and then notify a supervisor. Supervisors who receive reports of violent behavior or knowledge of potentially violent situations must immediately report this information to security personnel and should initiate appropriate action to protect themselves and others from harm. Such reports will be investigated by the marshal's office. In the event the perpetrator is not an employee, the marshal's office will notify local law enforcement of their findings.

2. Employees must report to their immediate supervisors any criminal charges filed against them, or if they are arrested for any violent crimes, within 24 hours of arrest or charges being filed. Failure to report this information may result in disciplinary action, up to and including dismissal.
3. An employee who is subject to a domestic or sexual violence injunction or restraining order must notify the marshal's office in writing of the existence and terms of the injunction or restraining order within twenty-four (24) hours of time served, or when made aware of the existence of the injunction or restraining order, whichever is earlier. Any modifications to the injunction or restraining order must be reported by the employee in writing to the marshal's office within twenty-four (24) hours of the employee's knowledge of the modification.
4. An employee who is a victim of domestic or sexual violence should

contact his or her immediate supervisor or the marshal or deputy marshal, to help ensure that appropriate security measures are taken in the workplace. The employee should provide the marshal or deputy marshal with a copy of any injunction or restraining order issued by a court, as well as the name and photograph of the perpetrator. The marshal's office shall ensure that all personal identifying information relating to an employee or an employee's family or household members who are victims of domestic or sexual violence are kept confidential in accordance with section 19.07(2)(h), Florida Statutes. The marshal's office may disseminate this confidential information only in furtherance of its official duties and responsibilities, as permitted under section 119.07 1(2)(h)(2), Florida Statutes.

5. Employees who have been employed with the court for at least three months and are victims of domestic or sexual violence are entitled to three days of paid or unpaid leave per year in accordance with section 741.313, F.S. When the employee requests leave under section 741.313, court personnel shall ensure that personal identifying information of the employee or the employee's family or household members who are victims of domestic or sexual violence are kept confidential, and shall also ensure that the employee's request for leave under section 741.313, and timesheets reflecting the leave request, are kept confidential for one

year after the leave is taken.

6. The marshal's office has the responsibility of providing these policies and procedures to contractors performing work on behalf of the court.