

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY:

Committees/Boards/Commissions/Examiners

CODE NUMBER:

AC-2-4

TITLE:

Preparation of the Record Pursuant to Appeal of a Code Enforcement Hearing Examiner Decision

ADOPTED:

03/8/95

AMENDED:

07/12/95; 08/09/05

ORIGINATING DEPARTMENT:

County Attorney

PURPOSE/SCOPE:

The purpose of this code is to provide guidance to the custodian of the record with respect to preparation of the record in the event a decision rendered by the Hearing Examiner is appealed to the circuit court.

POLICY/PROCEDURE:

A statutory right to appeal the decision of the Code Enforcement Hearing Examiner to the circuit court exists pursuant to F.S. §162.11. Any such appeal must be filed in accordance with Rules 9.110 and 9.200 of the Florida Rules of Appellate Procedure.

A. Definitions

1. Appeal. For purposes of this code "appeal" means resort to the circuit court for relief from a decision of the Lee County Code Enforcement Hearing Examiner.
2. Appellant. The party filing the Notice of Appeal and who desires to see a reversal of the Hearing Examiner decision. In most instances the appellant will be the respondent in the code enforcement case.
3. Appellee. The party having an interest in preserving the Hearing Examiner's decision and against whom the appeal is taken. In most instances this will be the County.
4. Custodian. The custodian of the records in Code Enforcement proceedings is the Department of Community Development.
5. FRAP. Florida Rules of Appellate Procedure.
6. Record. In accordance with FRAP Rule 9.200, the record consists of the original documents, exhibits etc. presented to the Hearing Examiner during the course of the code enforcement hearing and all orders rendered by the Hearing Examiner. As all code enforcement hearings are recorded, a copy of the recording will also be considered part of the official record.
7. Rendered. For purposes of this code, the date the order is "rendered" will be on the date it is reduced to writing, dated and signed by the Hearing Examiner.

B. Time for Preparation

1. Notice of Appeal
A Notice of Appeal must be filed by the aggrieved party within 30 days of the date the Hearing Examiner's order is rendered. The notice must be filed with the circuit court in the form prescribed by FRAP Rules 9.110 and 9.990(a). A copy of the Notice of Appeal must be furnished to the Department of Community Development/Code Enforcement, the County Attorney's Office and the Office of the Hearing Examiner.

2. Index

FRAP Rule 9.110(e) provides that the custodian must prepare the record and provide all parties with a copy of the index to the record within 50 days from the date the Notice of Appeal is properly filed. Prior to commencing creation of the index, the custodian should contact the Litigation section of the County Attorney's Office to determine whether the Notice of Appeal is properly filed.

3. Filing with the Circuit Court

In accordance with FRAP, a complete copy of the record must be filed with the circuit court within 110 days from the date the Notice of Appeal is properly filed. Again, the Litigation section should be consulted prior to transmission of the record to determine whether the case is scheduled to go forward.

C. Designation as to Contents of the Record

1. Written Record

If the Notice of Appeal is properly filed, the custodian will be responsible for preparation of the record. No further request is required of the Appellant, unless the Appellant seeks to limit the contents of the record.

In the event the Appellant seeks to limit the record by designating particular documents for inclusion or exclusion, a written request specifying the documents and exhibits for inclusion or exclusion must be submitted to the custodian within 10 days of the filing of the Notice of Appeal. A copy of this request must be furnished to the County Attorney's office. If a request is made to transmit less than the entire record, the Appellee will have 20 days from the date the Notice of Appeal is filed to include additional documents or exhibits.

2. Transcript of the proceedings.

A transcript of the proceedings derived from the recording will not be prepared unless requested by one of the parties.

Any request for a transcript of the recording or portion thereof, must be made in writing to the custodian within 20 days of the filing of the Notice of Appeal. This request must provide a designation as to the provider of the transcription service and the portions of the recording to be transcribed. Within ten (10) days of receiving this request the custodian will furnish a certified copy of the official recording, along with the written transcription request, to the designated provider of the transcription service. It will be the responsibility of the party requesting the transcript to alert the transcription service that the recording will arrive in this manner.

If a party requests only a partial transcript, the opposing party will have 10 days from the date of the transcript request to designate additional portions of the proceedings to be transcribed.

Within 30 days of the transcription request, or within additional time as provided for in FRAP Rule 9.200, the reporter will deliver a copy of the transcript to the custodian.

The transcript must be bound in volumes of 200 pages or less. Each volume must have an index containing the names of the witnesses, a list of all exhibits offered and introduced into evidence and the pages where each may be found.

The cost of transcription will initially be born by the party requesting the transcript. Payment for the cost of the transcription will be made directly to the provider of the transcription service.

D. Preparation and Transmission of the Record

1. Preparation of the Record:

To follow are general directions on compiling the record. The custodian is responsible for the actual preparation of the record. In the event a question arises concerning the preparation, the Office of the County Attorney should be consulted.

a. Upon receipt of any transcript received from the reporter, the custodian will number each page consecutively, starting with the index to the transcript. The custodian will not be responsible for verification of the contents of the transcript.

b. The balance of the documents and exhibits will then be compiled and numbered consecutively continuing with the sequence begun with the transcript. The documents should be ordered in a manner substantially similar to the following:

- (1) Notice of Violation
- (2) Proof of Service of Notice of Violation
- (3) Notice of Hearing
- (4) Proof of service of Notice of Hearing
- (5) Photographic Evidence (Usually County Exhibit 1)
- (6) County Exhibits (these should be listed separately and specifically identified)
- (7) Respondent Exhibits (these should be listed separately and specifically identified)
- (8) Order or orders rendered by the Hearing Examiner
- (9) Notice of Appeal

c. The above documentation should then be bound in volumes of no more than 200 pages and an index prepared for each volume. (Prior to binding this information a copy of all documentation is to be made and kept by the custodian until the circuit court returns the original record on appeal.) A sample index is attached hereto for reference. The first entry on the index should be the recording, followed by the transcript and then the written record. An index must be prepared for each separate volume. (Note, each volume should be bound in a fashion similar to a spiral notebook. The County duplicating department or the County Attorney's Office can assist with binding the documents.)

d. At the end of the index the custodian must provide a certification as to the contents of the record. The certification should be acknowledged before a notary and in the following form: "I hereby certify, as agent of the Lee County Department of Community Development/Code Enforcement, the office to whose custody the records are entrusted, that the foregoing represents the official record of these proceedings and consists of __ pages". Only one certification is necessary. The certification document should be placed after the last index page in the final volume.

2. Transmittal of the Record

a. In accordance with FRAP Rule 9.110, the custodian is responsible to transmit a copy of the index only to the parties (Appellant and Appellee) within 50 days of the filing of the Notice of Appeal. In the event a party requests a copy of the entire record or a portion thereof, the custodian may compile and transmit the items requested and charge the party accordingly.

b. The entire record, including the recording and all bound volumes must be transmitted to the circuit court within 110 days of the filing of the Notice of Appeal. This should be accomplished by the custodian through delivery to the Appeals Division of the Circuit Court located on the second floor of the Lee County Justice Center.

E. Duty of Appellant

In accordance with FRAP Rule 9.200 (e), the burden to ensure that the record is prepared and transmitted to the circuit court rests with the appellant.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA

LINDA WHITEHEAD SEARS,
Appellant,

vs.

Hearing Examiner Case # 93-564
Appeal Case No. 94-355 CA/RWP

LEE COUNTY, a political
subdivision of the State
of Florida,

Appellee.

ORIGINAL RECORD ON APPEAL

VOLUME I

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Lee County Hearing Examiner

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Copies of INDEX furnished to
the above listed attorneys via
hand delivery this 5th
day of May, 1994.

LEE COUNTY DIVISION OF CODES
AND BUILDING SERVICES

By: [Signature]
Custodian of the Records

BEFORE THE HEARING EXAMINER
LEE COUNTY, FLORIDA

LINDA WHITEHEAD SEARS,

Appellant,

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Appeal Case No. 94-355 CA/RWP

LEE COUNTY, a political
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Appellee.

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VOLUME I

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ORIGINAL RECORD ON APPEAL

VOLUME II

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LEE COUNTY DIVISION OF CODES
AND BUILDING SERVICES

By: [Signature]
Custodian of the Records

BEFORE THE HEARING EXAMINER
LEE COUNTY, FLORIDA

LINDA WHITEHEAD SEARS,

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LEE COUNTY, a political
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Appeal Case No. 94-355 CA/RWP

LEE COUNTY, a political
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Appellee.

ORIGINAL RECORD ON APPEAL

VOLUME III

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Copies of INDEX furnished to
the above listed attorneys via
hand delivery this 5th
day of May, 1994.

LEE COUNTY DIVISION OF CODES
AND BUILDING SERVICES

By: 
Custodian of the Records

BEFORE THE HEARING EXAMINER
LEE COUNTY, FLORIDA

LINDA WHITEHEAD SEARS,

Appellant,

vs.

Hearing Examiner Case # 93-564
Appeal Case No. 94-355 CA/RWP

LEE COUNTY, a political
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of Florida,

Appellee.

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I HEREBY CERTIFY, as agent of the Lee County Division of Codes and Building Services, the office to whose custody the records are entrusted, that the foregoing represents the official record of these proceedings.

DIVISION OF CODES AND BUILDING SERVICES

By:

[Handwritten signature]

STATE OF FLORIDA
COUNTY OF LEE

The foregoing was acknowledged before me on the 5th day of May, 1994 by Fred Roenigk, Code Enforcement Officer II, who is personally known to me.

[Handwritten signature]
Notary Public

