

**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

<b>CATEGORY:</b> Committees/Boards/Commissions/Examining	<b>CODE NUMBER:</b> AC-2-9
	<b>ADOPTED:</b> 03/08/95
<b>TITLE:</b> Preparation of Appendix or Record in Certiorari Proceedings	<b>AMENDED:</b> 08/09/05
	<b>ORIGINATING DEPARTMENT:</b> County Attorney Office

**PURPOSE/SCOPE:**

The purpose of this code is to provide the Lee County Custodian of the record with guidelines for the preparation of an appendix or record in the event a Petition for Writ of Certiorari is filed.

**POLICY/PROCEDURE:**

**A. Policy**

In instances where a statutory right of appeal is not prescribed, decisions of the Lee County Hearing Examiner and the Board of County Commissioners may only be challenged by filing a Petition for Writ of Certiorari with the circuit court. Examples of decisions that are "appealable" by Petition for Writ of Certiorari include, but are not limited to, administrative appeal decisions, zoning decisions and decisions regarding variances, and special exceptions.

**B. Procedure**

1. Definitions

- a. Appeal. For purposes of this code, "appeal" means resort to the circuit court for relief from a decision of the Lee County Hearing Examiner or the Board by Petition for Writ of Certiorari.
- b. Appendix. A compilation of parts of the record of the proceedings which is indexed and attached to a pleading filed with the circuit court in accordance with FRAP Rule 9.220.
- c. Board. Lee County Board of County Commissioners.
- d. Custodian. The custodian of the record is the Lee County Department responsible for scheduling the initial hearing before the Hearing Examiner or the Board. For example, the Department of Community Development, Zoning Division, is the custodian of the record for zoning and variance proceedings.
- e. FRAP. Florida Rules of Appellate Procedure.
- f. Petitioner. The party filing the Petition for Writ of Certiorari who desires to see a reversal of the underlying decision. In most instances the petitioner will be the applicant in a zoning, variance or administrative hearing.

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g. Record. In accordance with FRAP Rule 9.200, the record consists of the original documents, exhibits etc. presented to the Hearing Examiner or Board during the Hearing. It also includes any written decision rendered by the Hearing Examiner or Board.

h. Rendition or rendered. For purposes of this code, "rendition" or "rendered" have the meaning ascribed pursuant to LDC " 34-84 and 34-146. (i.e., BOCC decisions are rendered on the date of the public hearing during which a decision is made by oral motion; a Hearing Examiner decision is rendered on the date it is reduced to writing, dated and signed.)

i. Respondent. The party having an interest in preserving the decision of the Hearing Examiner or the Board. In most instances this party will be the County.

### 2. Time for Preparation.

#### a. Petition for Writ of Certiorari

In accordance with FRAP Rule 9.100, a Petition for Writ of Certiorari must be filed with the Circuit Court within 30 days of rendition of the order to be reviewed. The form of the petition is outlined in FRAP Rule 9.100(e). A copy of the Petition must also be furnished to the County Attorney's Office within this 30-day period.

#### b. Record

FRAP Rule 9.100(i) specifically states that a record of the proceedings will not be transmitted to the circuit court unless ordered by the circuit court.

In the event the circuit court requests transmission of the record, the preparation and transmission must be done in accordance with the court's order. Guidance with respect to the contents of the record can be obtained from the administrative code dealing with preparation of the record in Code Enforcement cases.)

#### c. Appendix

(1) Preparation of an Appendix by the custodian is necessary only if requested by the County Attorney's Office. If an appendix is requested, the County Attorney must designate the necessary contents.

(2) Once the contents for the appendix have been gathered, the custodian should number each page of the appendix and create an index or table of contents.

(3) If the original documents are submitted as part of the appendix, a copy of the appendix should be made by the custodian prior to releasing the documents to the County Attorney's Office.

(4) The County Attorney will establish the time frame for preparation of the appendix.

(5) The custodian is not responsible for the creation of an appendix for any party other than the County. If someone other than the County requests a copy of the record, the custodian is to make the records available and charge for copies of documents accordingly.

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d. Transcript of the Proceedings.

A transcript of the subject proceedings will not be prepared unless requested by one of the parties.

Any request for a transcript of the subject proceedings or portion thereof must be made in writing to the custodian within ten (10) days of the date the decision is rendered. This request must provide a designation as to the provider of the transcription service and the portions of the subject proceedings to be transcribed. Within five (5) days of receiving this request, the custodian will furnish a certified copy of the 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.

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 they may be found.

The cost of the transcript 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.

The official recording of hearings before the Board of County Commissioners is the audiotape on file with the Lee County Clerk's Office.

The official recording of hearings before the Lee County Hearing Examiner (except code enforcement hearings) is produced by a court reporter and kept on file at Official Court Reporter, which is located in the Lee County Justice Center.