

IN THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE ORDER NO. 4.11

**COLLATERAL RELIEF AFTER JUDGMENT AND SENTENCE
(Formerly Post-Conviction Proceedings)**

WHEREAS, collateral relief after judgment and sentence pleadings are frequently difficult to identify and interpret because the vast majority are submitted by *pro se* litigants; and

WHEREAS, due to the difficulties inherent in handling these cases, historically they have not been managed and resolved in an expeditious or systematic fashion; and

WHEREAS, the various collateral relief cases can be managed and resolved most efficiently by assignment to one judge; It is therefore

ORDERED that:

Intake of Documents

1. This order applies to all collateral relief after judgment and sentence proceedings in felony cases in Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties. These proceedings will be referred to as “collateral relief” proceedings and are defined in paragraphs 5, 6, and 7. All such proceedings brought in the Eighth Judicial Circuit shall be assigned to Division VI.

2. Upon receipt of a motion, petition, pleading, or written request which *appears* to seek collateral relief, the Clerk of Court shall immediately deliver such document(s) to the Criminal Staff Attorney at the Alachua County Criminal Justice Center.

3. If the Criminal Staff Attorney determines that such a pleading does not seek collateral relief, he or she shall return it to the Clerk with directions for appropriate handling.

4. Any collateral relief pleading delivered directly to a judge’s office from a litigant shall be delivered immediately to the Clerk for filing, following which it shall be forwarded to the Criminal Staff Attorney.

5. The Criminal Staff Attorney and judges receiving pleadings after conviction are advised that a motion to withdraw a plea brought within 30 days of sentencing pursuant to Fla.R.Crim.P. 3.170(l) is not a collateral relief proceeding. See Padgett v. State, 743 So.2d 70 (Fla. 4th DCA 1999). As part of the trial proceeding, such a motion should be forwarded to the case judge for handling.

Procedure for Processing Collateral Relief Pleadings

6. Upon receipt of a collateral relief pleading, the Criminal Staff Attorney shall determine the type or types of relief sought by pre-existing coded categories, as well as by rule number. Upon determining a code, the Staff Attorney shall e-mail the case number and code to the designated deputy clerk in the appropriate county and enter all other appropriate data into the collateral relief log. The coded categories, and rule number where applicable, are as follows:

Motion for Relief from Judgment–Withdraw Plea	MWP	3.850
Motion for Relief from Judgment–New Trial	MNT	3.850
Motion to Correct Illegal Sentence	CIS	3.800(a)
Motion to Correct Sentencing Error	CSE	3.800(b)
Motion to Reduce/Modify Sentence/Order of Probation	MRM	3.800(c)
Motion to Correct Credit Time Served	CTS	3.800(a)
Motion for DNA Testing	DNA	3.853
Petition for Belated Appeal	PBA	9.141(c)
Motion for Clarification	MCL	
Motion for Rehearing/Reconsideration	MRH	

The Clerk shall add an informational docket code entry using the specified code.

7. As collateral proceedings, belated appeal hearings shall be conducted by the Division VI judge. Upon receipt of an order of appointment as commissioner, the Division VI judge shall notify the Criminal Staff Attorney of the proceeding for coding, after which the Division VI judge shall handle the matter to conclusion.

8. All collateral relief proceedings other than belated appeal hearings shall be managed by the Criminal Staff Attorney, who shall assign each case to a staff attorney or intern for handling.

9. If the Criminal Staff Attorney determines that a collateral relief pleading should be denied without an evidentiary hearing, he or she shall prepare and submit a proposed order to the Division VI judge.

10. If the Criminal Staff Attorney determines that a collateral relief pleading should be resolved with a resentencing, he or she shall prepare and submit a proposed order to the appropriate judge as follows:

(a) *Resentencing after trial.*

All proposed orders granting a collateral relief pleading resulting in resentencing after a trial shall be forwarded to the judge who initially presided at trial if that judge is still actively serving, regardless of that judge's assignment. Fla.R.Crim.P. 3.700(c)(1). See Clemons v. State, 816 So.2d 1180 (Fla. 2nd DCA 2002). That judge, upon approval of the proposed order, shall conduct the resentencing unless there is a showing that it is necessary for another judge to resentence. See Snyder v. State, 870 So.2d 140 (Fla. 2nd DCA 2004). If the judge who presided at trial is no longer actively serving, or if there is a showing that it is necessary for another judge to resentence, the proposed order shall be submitted to the Division VI judge for handling and resentencing.

(b) *Resentencing after plea.*

All proposed orders granting a collateral relief pleading resulting in resentencing after a plea shall be submitted to the Division VI judge. That judge shall conduct the resentencing unless the defendant objects to sentencing by a judge other than the judge who took the

plea. In that event, the resentencing shall be conducted by the judge who took the plea if that judge is still actively serving, regardless of that judge's assignment.

11. In order to comply with Rule 3.850(d), all proposed orders which grant relief under that rule shall be served on the Office of the State Attorney, together with an order signed by the Division VI judge, directing the State to respond to the proposed order within 30 days unless the State concurs with the proposed order.

12. (a) Except as provided in paragraph (b) below, the Criminal Staff Attorney, after considering any State response, shall submit all proposed orders which grant a hearing under Rule 3.850 to the judge to whom a case would be alphabetically assigned. That judge will have the option to enter the proposed order and conduct the hearing, or to return the proposed order to the Criminal Staff Attorney for submission to the Division VI judge for handling.

(b) Collateral relief cases which had complex pre-trial and trial issues shall be handled in the following manner. "Complex" for purposes of this paragraph means cases which required extraordinary and exceptional resources and judicial time in resolving pre-trial and trial issues. If the judge who handled the case is still assigned to a criminal division, the Criminal Staff Attorney shall confer with that judge immediately upon receipt of the collateral relief pleading. That judge will have the option to assume responsibility for handling the matter or to refer it back to the Criminal Staff Attorney for handling by the Division VI judge.

Procedure for Evidentiary Hearings and Resentencing

13. In addition to findings of fact and conclusions of law, proposed orders resulting in an evidentiary hearing or a resentencing shall provide for the date, time, duration, and location of the hearing or resentencing. The order shall also appoint counsel for defendant in the collateral relief proceeding when appropriate. In that event, if the attorney alleged to have been ineffective was an assistant public defender, the order shall provide for the appointment of appropriate conflict counsel. If an incarcerated defendant's presence is required, a separate order shall be entered

providing for his or her transport to the appropriate county jail at least 5 days prior to the hearing or resentencing date, and shall provide for return of the defendant immediately thereafter unless otherwise ordered.

14. Upon conclusion of the evidentiary hearing, the presiding judge may reduce to writing his or her findings of fact and conclusions of law to be forwarded to the Criminal Staff Attorney for inclusion in a proposed final order. All final orders shall contain a notice to the litigant of the time within which to appeal.

15. In addition to all parties and other appropriate persons, copies of all orders, including final orders, shall be distributed to the Criminal Staff Attorney. Upon receipt of the copy of the final order, the Criminal Staff Attorney shall enter the closing data into the collateral relief log and return the file to the Clerk of Court for closing.

This order renumbers and reformats prior Administrative Order No. 4.954 entitled "Collateral Relief After Judgment and Sentence (Formerly Post-Conviction Proceedings)."

ORDERED ON this 5th day of October, 2012 *nunc pro tunc* July 12, 2006



Robert E. Roundtree, Jr., Chief Judge