



FCCC ADVISORY

UPDATE ON LEGAL RULING OF INTEREST TO CLERKS

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Category: Courts/Appellate

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The association regularly monitors court cases across the state that may be of interest to all Clerks and Comptrollers.

The association would like to notify all Clerks of a recent court decision in the Fourth District Court of Appeal, [Burns v. Burns, 4D19-0124](#). Below is a summary of the recent decision.

While this may not impact the operations of all Clerks, If a Clerk needs assistance on revising how fees for filing the Notice of Appeal are set up in the Florida Courts E-Filing Portal, please contact the FCCC Service Desk for any assistance needed, support@flclerks.com or 850-414-2210.

Introduction:

In brief, “Clerks of the circuit courts must accept notices of appeal with or without accompanying filing fee or application for determination of indigent status, whether filed in person, through the mail, or electronically through Florida Courts E-Filing Portal...” **(44 Fla. L. Weekly D1431a)**

Summary of Case:

“In *Jones v. Peninsula Motor Club, Inc.*, 558 So. 2d 517, 518 (Fla. 1st DCA 1990), the First District noted a “recurring problem” with county clerks rejecting notices of appeal filed without an accompanying fee:

A notice of appeal timely filed without simultaneous payment of the filing fee acts to vest jurisdiction in the appellate court. The timely filing of the notice of appeal is jurisdictional, the timely deposit of the required fee is not. The clerks of the circuit courts are directed to accept and file a notice of appeal, with or without the filing fee or verified affidavit of indigency, when it is tendered. The notice is not to

be returned to the appellant by the clerk if it is later discovered the fee has not been paid. The sanction for the refusal or inexcusable negligence of an appellant who fails to pay the required filing fee or obtain a certification of indigency lies within the discretion of the appellate court.

Id. at 518-19 (citing *Williams v. State*, 324 So. 2d 74, 77 (Fla. 1975)). See also *Hughes v. State*, 565 So. 2d 354, 356 (Fla. 1st DCA 1990) (“[I]t is the ministerial duty of a trial court clerk to accept and promptly file a notice of appeal when tendered.”).

Although *Jones* was issued before electronic filing existed, the underlying principle still applies. See 558 So. 2d at 518. Clerks of the circuit courts must accept notices of appeal with or without an accompanying filing fee or application for determination of indigent status, whether filed in-person, through the mail, or electronically through the portal. See *id.* In other words, we conclude that filers must be able to submit notices of appeal to the portal without any other prerequisites to successfully complete the filing.”

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