

**IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT, STATE OF FLORIDA**

Case No. 5D21-0233

Lower Case No. 2016-CA-007634-O

DAVID W. FOLEY, JR., and JENNIFER T. FOLEY,

Appellants,

v.

ORANGE COUNTY,

a political subdivision of the State of Florida, and,
ASIMA AZAM, TIM BOLDIG, FRED BRUMMER,
RICHARD CROTTY, FRANK DETOMA, MILDRED
FERNANDEZ, MITCH GORDON,
TARA GOULD, CAROL HOSSFELD, TERESA
JACOBS, RODERICK LOVE, ROCCO RELVINI,
SCOTT RICHMAN, JOE ROBERTS,
MARCUS ROBINSON, TIFFANY RUSSELL, BILL
SEGAL, PHIL SMITH, *and* LINDA STEWART,
*individually and together, in their personal
capacities,*

Appellees.

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**MOTION FOR JUDICIAL NOTICE
OF PAST AND PRESENT RULES OF THE
FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION**

APPELLANTS DAVID AND JENNIFER FOLEY, pursuant Rule 9.300,
Florida Rules of Appellate Procedure, and Sections 90.202 (9) and 90.203,
Florida Statutes, move the Court to take judicial notice of the following
fourteen past and present rules of the Florida Fish and Wildlife
Conservation Commission:

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1. 68-1.001 Adoption of Uniform Rules of Procedure; Subject Matter Index; Official Reporter (2008), *Appendix page 3*, also <https://www.flrules.org/gateway/ruleNo.asp?id=68-1.001>
2. 68-1.010 General Regulations Relating to Licenses, Permits and Other Authorizations (2013), *Appendix page 4*.
3. 68-1.010 General Regulations Relating to Licenses, Permits and Other Authorizations (2019), *Appendix pages 5-6*, also <https://www.flrules.org/gateway/ruleNo.asp?id=68-1.010>
4. 68A-1.002 Regulation of Wild Animal Life and Freshwater Aquatic Life in the State (1998), *Appendix page 7*, also <https://www.flrules.org/gateway/ruleNo.asp?id=68A-1.002>
5. 68A-1.004 Definitions (2010), *Appendix pages 8-12*.
6. 68A-1.004 Definitions (2021), *Appendix pages 13-17*, also <https://www.flrules.org/gateway/ruleNo.asp?id=68A-1.004>
7. 68A-6.003 Permit Requirements and Exceptions (2019), *Appendix pages 18-19*, also <https://www.flrules.org/gateway/ruleNo.asp?id=68A-6.003>
8. 68A-6.004 Possession of Class I, II, and III Wildlife: Permit Application Criteria (2019), *Appendix pages 20-22*, also <https://www.flrules.org/gateway/ruleNo.asp?id=68A-6.004>

9. 68A-6.005 Commercialization of Wildlife; Bonding or Financial Responsibility Guarantee (2019), *Appendix pages 23-24*, <https://www.flrules.org/gateway/ruleNo.asp?id=68A-6.005>
10. 68A-6.006 Dealing in Exotic or Pet Birds: Records (1982), *Appendix page 25*.
11. 68A-6.009 General Regulations Governing Possession of Captive Wildlife (2019), *Appendix pages 26-27*, also <https://www.flrules.org/gateway/ruleNo.asp?id=68A-6.009>
12. 68A-6.0022 Possession of Class I, II, or III Wildlife in Captivity: Permit Requirements (2010), *Appendix pages 28-30*.
13. 68A-6.0023 General Regulations Governing Possession of Captive Wildlife; Public Contact; Transfer of Wildlife and Record Keeping Requirements (2009), *Appendix pages 31-33*.
14. 68A-6.0024 Commercialization of Wildlife; Bonding or Financial Responsibility Guarantee (2010), *Appendix pages 34-35*.

BACKGROUND

The Foleys cite eight of the above fourteen rules on pages five and six of their Amended Initial Brief. The Foleys did not date the respective rules, but all predate amendments made in 2019. In 2019 several of the cited rules were repealed. The provisions of all the repealed rules were

retained in new renumbered rules. The following chart identifies where the provisions cited in the Amended Initial Brief can be found in the most current rules.

Cited Rule	App.	Current Rule	App.
68-1.001	3	unchanged	-
68-1.010(3)(c)	4	68-1.010(6)(c)	5
68A-1.002	7	unchanged	-
68A-1.004(13)&(92)(<i>sic</i>)	8	68A-1.004(13)&(91)	13
68A-6.006	25	68A-6.003(6)	18
68A-6.0022(1)	28	68A-6.004(1)	20
Rule 68A-6.0022(2)(r)	28	68A-6.003(11)(t)	19
Rule 68A-6.0022(4)	28	68A-6.004(3)	21
68A-6.0023	31-33	68A-6.009	26-27
68A-6.0024	34-35	68A-6.005	23-24

All fourteen past and present rules appear in the appendix. They have been hi-lighted to make it easy to identify the cited and the relocated provisions of the cited and current rules. Rules that were not relocated, or were simply renumbered, are not hi-lighted. The appendix does not include current rules that contain entirely new, unrelated provisions (i.e., current

Rule 68A-6.006), or retain only their original rule number, title, and legislative history (i.e., current Rule 68A-6.0022, Rule 68A-6.0023, Rule 68A-6.0024).

Judicial notice of these rules will resolve any confusion that may result from the Foleys failure to cite the current rules or to correctly date the cited rules in their Amended Initial Brief.

ARGUMENT

Section 90.202(9), Florida Statutes, grants the Court discretion to take judicial notice of “[r]ules promulgated by governmental agencies of this state which are published in the Florida Administrative Code or in bound written copies.” The Florida Fish and Wildlife Conservation Commission is a constitutional executive agency of this state which publishes its rules in the Florida Administrative Code.

Section 90.203, Florida Statutes, makes judicial notice of administrative rules compulsory when the movant provides (1) the adverse party with “timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request,” and (2) the court “with sufficient information to enable it to take judicial notice of the matter.”

The Foleys, by this motion, its appendix, and their service, have met the above statutory requisites of compulsory judicial notice of Rule 68-1.001 (2008), Rule 68-1.010 (2013), Rule 68-1.010 (2019), Rule 68A-1.002 (1998), Rule 68A-1.004 (2010), Rule 68A-1.004 (2021), Rule 68A-6.003 (2019), Rule 68A-6.004 (2019), Rule 68A-6.005 (2019), Rule 68A-6.006 (1982), Rule 68A-6.009 (2019), Rule 68A-6.0022 (2010), Rule 68A-6.0023 (2009), Rule 68A-6.0024 (2010).

CONCLUSION

WHEREFORE DAVID AND JENNIFER FOLEY MOVE THE COURT to take judicial notice of the following fourteen past and present rules of the Florida Fish and Wildlife Conservation Commission: 68-1.001 (2008), 68-1.010 (2013), 68-1.010 (2019), 68A-1.002 (1998), 68A-1.004 (2010), 68A-1.004 (2021), 68A-6.003 (2019), 68A-6.004 (2019), 68A-6.005 (2019), 68A-6.006 (1982), 68A-6.009 (2019), 68A-6.0022 (2010), 68A-6.0023 (2009), 68A-6.0024 (2010).

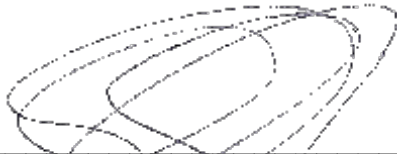
CERTIFICATE OF SERVICE

Appellants certify that on November 2, 2021, the foregoing was electronically filed with the Clerk of the Court using the e-Filing Portal, and electronically served to the following:

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