

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

Case No. 5D21-0233
L.T. 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, ASIMA AZAM, TIM BOLDIG,
FRED BRUMMER, RICHARD CROTTY, FRANK DETOMA,
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,

Appellees.

**APPELLEE, ORANGE COUNTY, FLORIDA'S RESPONSE TO
APPELLANTS' MOTION FOR JUDICIAL NOTICE OF
REPEALED AND CURRENT RULES CONTAINED
WITHIN THE FLORIDA ADMINISTRATIVE CODE**

Appellee, Orange County, Florida, pursuant to Rules 9.110(f),
9.200, 9.210(g), and 9.300 of the Florida Rules of Appellate
Procedure, responds to the Motion for Judicial Notice of Past and
Present Rules of the Florida Fish and Wildlife Conservation
Commission ("FWC") filed by Appellants, David W. Foley, Jr., and

RECEIVED, 11/08/2021 02:32:21 PM, Clerk, Fifth District Court of Appeal

Jennifer T. Foley (“the Foleys”) on or about November 2, 2021, and states:

1. Orange County objects to the Foleys’ Motion for Judicial Notice (“Motion”) for the following reasons.

2. Motions for judicial notice should not be used as a means to raise additional, last-minute arguments on appeal after all of the briefs have been filed. The Foleys’ Initial Brief, Amended Initial Brief, and Reply Brief were filed on June 16, 2021, June 25, 2021, and August 30, 2021, respectively. Orange County’s Answer Brief was filed on or about August 9, 2021.

3. Now, through the filing of a Motion for Judicial Notice, filed about one month prior to the oral argument, the Foleys attempt to address their concern that pages 5 and 6 of their Initial Brief cited to repealed provisions of the Florida Administrative Code.

4. In an effort to correct their Initial Brief and to “resolve any confusion from the Foleys’ failure to cite the current rules,” the Foleys’ Motion attempts to cross-reference portions of text in repealed Rules with portions of text in more current Rules. Motion, p. 4.

5. Since the purpose of the Foleys’ Motion is to compare and analyze portions of the text in repealed Rules with portions of text in

more current Rules, the Foleys' Motion is not simply the judicial notice of all of the existing provisions in Titles 68 and 68A of the Florida Administrative Code pertaining to the "Fish and Wildlife Conservation Commission" or "Freshwater Fish and Wildlife," respectively. Instead, the Foleys' Motion is an attempt to clarify their Initial Brief and to raise a new argument addressing their concern that the cited provisions in the Florida Administrative Code have been repealed.

6. The Foleys' Motion acknowledges that their Appendix does not include all of the current Rules codified in Title 68 of the Florida Administrative Code, entitled "Fish and Wildlife Conservation Commission" or Title 68A entitled, "Freshwater Fish and Wildlife." Motion, p. 4.

7. The Foleys' Motion does not include tracking of all of the changes to the Rules from 2010, through subsequent amendments to the Rules, prior to the adoption of the current Rules.¹ In other

¹ For example, the Foleys' Motion cites to the 2010 amendment of Rule 68A-6.0022, F.A.C. The history of Rule 68A-6.0022 shows that there was a 2018 amendment prior to its repeal in 2019, to-wit: "New 7-1-90, Amended 7-1-90, 7-1-91, 2-1-98, Formerly 39-6.0022, Amended 4-30-00, 1-1-08, 8-27-09, 7-8-10, 4-5-18, Repealed 9-30-19."

words, the highlighted portions of the repealed and more current Rules in the Foleys' Appendix to their Motion have not been presented in the context of the entire Chapter as it may have existed at the time.

8. Thus, for the foregoing reasons, this Court should deny the Foleys' Motion for Judicial Notice.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 8th, 2021, the foregoing was filed through the eDCA system and served via electronic mail to David W. Foley, Jr. at david@pocketprogram.org; Jennifer T. Foley at jtfoley60@hotmail.com; Ronald Harrop, Esquire, RHarrop@oconlaw.com, eservice@oconlaw.com, NDeeb@oconlaw.com; Jessica O'Conner, Esq., Jessica.Conner@drml-law.com; DianaW@drml-law.com; and Gail C. Bradford, Esq., at GBradford@drml-law.com; Suzanne@drml-law.com.

/s/ Linda S. Brehmer Lanosa
LINDA S. BREHMER LANOSA
Assistant County Attorney
Florida Bar No. 901296
Linda.Lanosa@ocfl.net
Judith.Catt@ocfl.net
JEFFREY J. NEWTON
County Attorney
ORANGE COUNTY ATTORNEY'S OFFICE
Orange County Administration Center
201 S. Rosalind Avenue, Third Floor

P.O. Box 1393
Orlando, Florida 32802-1393
Telephone: (407) 836-7320
Counsel for Orange County, Florida