

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

MICHAEL and KATHERINE HENRY,
Appellants/Respondents,

CIRCUIT CASE NO: 2023-30711 CICI

vs

Lower Court CASE NOS: 22-112237

CITY OF ORMOND BEACH, FLORIDA
Appellees/Petitioners.

22-112246

22-112247

Henrys' Unopposed Motion for Extension of Time

This motion is submitted by MICHAEL AND KATHERINE HENRY in support of their request for an Extension of Time, pursuant to FRAP 9.300, 9.110(b) & (c), and 9.040(d).

1. FRAP 9.300(a) states that "a motion for an extension of time shall . . . contain a certificate that the movant's counsel has consulted opposing counsel and that the movant's counsel is authorized to represent that opposing counsel either has no objection or will promptly file an objection."
2. Pursuant to FRAP 9.300(a), Henrys emailed Ormond Beach [OB] to seek agreement with this request on 1/27/25. On 1/29/25, OB responded that they have no objection to this motion. *See Exhibit 1.*
3. On 3/3/23, OB Magistrate rendered 3 orders that both find a code violation *and* impose fines. Henrys appealed to the circuit court, and on 3/4/24, the circuit court signed an order affirming those Magistrate orders in part and reversing in part. On 4/7/24, Henrys invoked the jurisdiction of the 5DCA, which case is still pending. On 4/15/24, Henrys filed a Motion for Stay Pending 5DCA Review,

which OB did not object to. On 5/30/24, OB Magistrate issued 3 *additional* orders imposing fines - based on the same findings of violation and orders for fines rendered 3/3/23. On 6/8/24, this court granted Henrys' Motion for Stay.

4. On 6/10/24, Katherine Henrys' primary care physician confirmed a lump in her breast and ordered imaging to diagnose it, especially concerned since her mother was diagnosed with breast cancer in 2023 and her mother's sister in 2022, with her maternal grandfather dying from pancreatic cancer in 2019.
5. On 6/14/24, OB filed a Petition for Rehearing, with Henrys filing a response on 6/18/24.
6. On 6/20/24, Katherine had an ultrasound and mammogram which confirmed a concerning mass of 1.2cm, and she was referred to a cancer surgeon.
7. On 6/24/24, Henrys filed a Motion for Costs in the circuit court, as their Motion for Costs properly filed with the lower tribunal was denied a hearing.
8. On 6/30/24, Henrys filed a Notice of Administrative Appeal of the Magistrate orders rendered 5/30/24, with the OB Magistrate tribunal clerk, the circuit court clerk, and OB's counsel each receiving the pleading. On 6/30/24, Henrys also filed the Designation to Court Reporter, Complete Transcript, and Record on Appeal (although these were not due until 2 months later).
9. Per FRAP 9.110(b), jurisdiction of the circuit court is invoked by filing the Notice of Administrative Appeal within 30 days of rendition of the Magistrate's orders. The Magistrate's newest orders imposing fines were rendered 5/30/24, which means 30 days from that is 6/29/24. But as that is a Saturday, the Henrys timely filed their Notice before 7/1/24, the last day counted in the time period per FRGP

2.514(a)(1)(C). Thus, Henrys properly invoked the circuit court's jurisdiction for appealing the May 2024 Magistrate orders.

10. After the Notice of Administrative Appeal is filed, Henrys are only required to file 4 more documents: Designation to Court Reporter (within 10 days of Notice filing), Transcript (within 30 days of Designation filing), Record for Appeal (Index due 50 days after Notice filing, with full Record due 10 days later), and the Brief on Appeal (due 70 days after Notice filing). As seen in the docket, Henrys filed the first 3 of these on 6/30/24, simultaneously with filing the Notice of Administrative Appeal, leaving only the Brief on Appeal, which would have been due 9/9/24.

11. Meanwhile, Katherine's consult with the cancer surgeon was 7/9/24, with a lumpectomy taking place 8/9/24. On 8/14/24, Katherine received the pathology report confirming breast cancer. At a follow up appointment with the surgeon on 8/15/24, a double mastectomy was recommended, as the lumpectomy was unsuccessful at removing all the cancer. During July, August, and September, Katherine also had a series of tests, pre and post surgical appointments, and appointments with her medical oncologist.

12. The double mastectomy and reconstruction surgery was performed on 9/12/24. The tumor had been much more substantial in size than the surgeons anticipated, totaling 10 cm and leaving only 1 millimeter clear margins. Katherine experienced significant wound care issues, having to undergo daily HBOT treatments to heal the skin and save the reconstruction. The daily treatments

and continued wound care with the surgeon paid off, and Katherine was scheduled for a skin graft on 11/19/24 as the last stage in healing.

13. However, on 11/15/24, she developed an infection and on 11/17/24, the reconstruction became exposed through the wound, necessitating an emergency surgery to remove the reconstruction altogether on 11/18/24. That meant Katherine had to endure yet another large surgery under general anesthetic, and was again on pain medicine, anti-nausea medicine, and also put on anti-anxiety medicine to assist her in enduring the daily wound care treatments. These medications not only affected her ability to drive, but also to fully represent her (and her family's) interests in court. Moreover, Katherine was in wound care at Advent Hospital from 10am to 1pm every day, Monday through Friday, and had continued weekly wound care with her surgeon, and two to three times per week physical therapy, as well as follow-up oncology appointments. There was the possibility of another surgery needed for Katherine, but based on her last appointment with the surgeon, it will likely not be happening soon.

14. Henrys had no way of knowing when Katherine would be "out-of-the-woods" medically-speaking. Thus, it was hard to ask for a specific time extension. Although Katherine is still not feeling 100% yet, she is doing her best to not make OB nor the court wait indefinitely for her healing. Katherine is hopeful, now that she has started feeling a bit better in the last couple of weeks, that she could draft the Brief on Appeal if allowed to restart the 70 day timeframe.

15. Further, FRAP 9.040(d) states that "the court may disregard any procedural error or defect that does not adversely affect the substantial rights of the parties." The

issue of this extension of time is procedural, not jurisdictional, and Ormond Beach does not allege that granting this extension of time would affect their substantial rights.

In conclusion,

- All required documents for appealing the May 2024 Magistrate orders were timely filed, except the Brief on Appeal.
- Only the Notice of Administrative Appeal's deadline was *jurisdictional*.
- FRAP 9.040(d) allows the court to disregard this *procedural* error and allow this extension of time.
- OB has been kept informed of Katherine's health throughout these last several months, and it does *not* object to the court restarting the Henrys' 70-day timeframe to file the Brief on Appeal.

Thus, Henrys ask this court to take into account Henrys' efforts to consistently file documents within the required timeframes since the circuit court case began in April 2023, and that Katherine's extraordinary medical situation prohibited her from meeting the procedural deadline on the last of these required documents. Therefore, Henrys respectfully request this court to restart the 70-day timeframe to file the Brief on Appeal, beginning on the date such order is filed/served by the court.

Respectfully Submitted:
January 30, 2025

/s/ Katherine Henry /s/ Michael Henry
Petitioners, Pro Se
PO Box 333, Ormond Beach FL 32175
Katherine@RestoreFreedomKH.com
321-300-3037 Michigan Bar No P71954

Certificate of Service

I certify that the foregoing document has been furnished to Abraham C McKinnon (lynn@mckinnonandmckinnonpa.com, amckinnon@mckinnonandmckinnonpa.com), Noah McKinnon (nmckinnon@mckinnonandmckinnonpa.com), via the electronic filing portal on January 30, 2025.

Respectfully Submitted:
January 30, 2025

/s/ Katherine Henry /s/ Michael Henry
Petitioners, Pro Se
PO Box 333, Ormond Beach FL 32175
Katherine@RestoreFreedomKH.com
321-300-3037 Michigan Bar No P71954

Motion & hearing

2 messages

Katherine Henry <Katherine@restorefreedomkh.com>
To: Lynn Fahnestock <lynn@mckinnonandmckinnonpa.com>

Mon, Jan 27, 2025 at 1:47 PM

Good afternoon. Having 3 extensive cancer surgeries back to back really took the wind out of my sails. However, I am hopeful that I will not need anymore surgeries in the near future. I am still not feeling my best, but things are at least going in the right direction now. Given that, I am going to ask the circuit court to allow me to restart the 70 days to submit my brief on the appeal from the *new* magistrate orders that were issued in May. The Notice, Transcript and Record were all timely filed, so it's just the brief. Does your office have objection to me asking the court to start the 70 day timeframe now for that brief? I also anticipate I will be well enough by then (70 days) to finally hold our hearing, as well.

Thank you for your time,

Restore Freedom
with
Katherine Henry

Katherine Henry
Constitutional Attorney, Educator & Advocate
More Freedom; Less Government
RestoreFreedomKH.com

Restoring our government of the people, by the people, and for the people

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Lynn Fahnestock <lynn@mckinnonandmckinnonpa.com>
To: Katherine Henry <Katherine@restorefreedomkh.com>

Wed, Jan 29, 2025 at 12:22 PM

Ms. Henry:

We are glad you are feeling better. Mr. McKinnon has no objection.

Thank you.

Lynn Fahnestock, Legal Assistant to
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Noah C. McKinnon, Jr., Esquire
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