

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

**NO. 2025-088-AP-01
L.T. NO. 2025-I593264**

ADRI MARC S.A. TRS.,

Appellant,

vs.

**DEPARTMENT OF ENVIRONMENTAL
RESOURCES MANAGEMENT,**

Appellee.

**APPELLEE DEPARTMENT OF ENVIRONMENTAL RESOURCES
MANAGEMENT'S RESPONSE IN OPPOSITION TO APPELLANT'S
MOTION FOR REHEARING, RECONSIDERATION, AND
REINSTATEMENT OF APPEAL [DE 9]**

Pursuant to Florida Rule of Appellate Procedure 9.330(a)(3), Appellee Department of Environmental Resources Management ("Appellee DERM") files this response in opposition to Appellant's Motion for Rehearing, Reconsideration, and Reinstatement of Appeal [DE 9] ("Motion") and moves the Court to deny the Motion because Appellant: (i) failed to establish excusable neglect for not timely filing its Initial Brief by its self-imposed deadline of January 26, 2026; (ii) failed to comply with the Rules of Appellate Procedure when writing

its Motion and when crafting its untimely 4-page proposed Initial Brief; and (iii) failed to provide the transcript and record on appeal thereby prejudicing Appellee DERM and making it unable to properly respond to the proposed and untimely Initial Brief.

1. This case is an appeal of a decision of a Hearing Officer finding that Appellant violated Chapter 24 of the Miami-Dade County Code by impacting wetlands without a permit.¹

2. Appellant's Initial Brief was due on December 26, 2025, but Appellant did not file by the deadline or seek an extension. Due to Appellant's failure, on January 16, 2026, the Court ordered Appellant to show cause why the appeal should not be dismissed [DE 6]. That same day, Appellant filed its Response to Order to Show Cause Why Appeal Should Not be Dismissed for Failure to File Initial Brief [DE 7] ("Response"). In that Response, Appellant claimed excusable neglect and blamed its failure to file on a firm staffing change which caused the due date not to be calendared. Further, the Response sought an additional ten (10) days to file the initial brief. Therefore, Appellant's self-imposed due date was January 26, 2026.

¹ Appellant, who proceeded *pro se* before the lower tribunal, retained counsel for this appeal.

3. Appellant did not file its Initial Brief within its own created deadline. Because of this failing, the Court properly dismissed the appeal on May 16, 2026 [DE 8].

4. Florida Rule of Appellate Procedure 9.410(a) states that “[a]fter 10 days’ notice, on its own motion, the court may impose sanctions for any violation of these rules” and such sanctions may include “dismissal of proceedings.” Here, Appellant had 120-days-notice before the Court dismissed the appeal.

5. Shockingly, two (2) days after the dismissal—and nearly 4-months after its self-imposed deadline—Appellant filed the Motion seeking to revive the dead appeal and to file its proposed Initial Brief.

6. To that end, Appellant for a second time cries excusable neglect for its failure to calendar its self-imposed due date of January 26, 2026. But the Motion fails to meet the excusable neglect standard.² In Florida "excusable neglect must be proven by sworn statements or affidavits" and "unsworn assertions of excusable neglect are insufficient" *DiSarrio v. Mills*, 711 So.2d 1355, 1356

² Appellee DERM would note that Appellant also failed to establish excusable neglect when it filed its Response to the Order to Show Cause as no sworn statements or affidavits were attached.

(1998). When a party responds to an appellate rule to show cause by asserting excusable neglect, the same evidentiary standards apply. A motion alleging excusable neglect that is "not sworn to or verified, and no affidavit accompanied it" is "legally insufficient." *Nguyen v. Williams*, 429 So.3d 1105, 1110 (2026). Because the Motion was not supported by a sworn statement or affidavit, it failed to establish excusable neglect. As such, the Motion should be denied.

7. Further, the Court should deny the Motion because it and the 4-page proposed Initial Brief do not comply with the Florida Rules of Appellate Procedure. For example, the Motion violates Florida Rule of Appellate Procedure 9.330(2)(A) because it alleges a second act of excusable neglect; however, the Rule states "[t]he motion shall not present issues not previously raised in the proceeding." *Id.* Although Appellant raised excusable neglect in its Response to the Order to Show Cause, it now attempts to raise a second and distinct negligent act that was not previously raised in the proceeding, thereby warranting denial of the Motion.

8. Further, the Motion and Initial Brief fail to comply with the formatting requirements in Rule 9.045(b).³ See Rule 9.045(b), Fla. R. App. P. (requiring, among other things, that text size be 14-point font, and either Arial or Bookman Old Style font). This too subjects the Motion to denial. See *Physicians Care Centers of Fla., LLC v. PNC Nat'l Ass'n*, No. 4D21-3228, 2022 WL 703784, at *1 (Fla. 4th DCA Mar. 8, 2022) (striking an answer brief that did not comply with Rule 9.045).

9. Formatting issues aside—and in addition to Appellant's failure to timely serve the Initial Brief as required by Rule 9.110(f) of the Florida Rules of Appellate Procedure—the proposed Initial Brief violates Rule 9.210 by failing to include a coversheet, a table of contents, a table of citations, or a certificate of compliance, and has an incomplete certificate of service. See Rule 9.210, Fla. R. App. P. Failure to comply with Rule 9.210 is grounds for striking an initial brief. See *Greenfield v. Westmoreland*, 156 So. 3d 1, 2 (Fla. 3d DCA 2007) (striking pro se appellant's brief for not complying with Rule 9.210 and for, among other things, not containing pinpoint citations to the record). In addition, the proposed 4-page Initial Brief is devoid

³Appellee DERM would note that Appellant also failed to comply with Rule 9.045(b) when it filed its Response to the Order to Show Cause.

of any caselaw and any references to the record or transcripts of the lower tribunal. These failures make filing of the proposed Initial Brief futile as the failure to comply with the Rules would subject it to being stricken.

10. Additionally, the Appellant has failed to file the record on appeal and hearing transcript as required by Florida Rule of Appellate Procedure 9.200; hence, Appellant's failure to cite to any specific piece of evidence or portion of the hearing transcript. The burden to ensure the record is prepared or transmitted is on the Appellant. See Rule 9.200(e), Fla. R. App. P. As the Florida Supreme Court explained, decisions on appeal are presumed to be correct, and it is the burden of the appealing party to demonstrate otherwise. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979).

11. Because Appellant has failed to ensure that the record on appeal was prepared or transmitted, clearly Appellee DERM would be prejudiced if this appeal was reinstated because the record and transcript are necessary for Appellee DERM to adequately prepare its Answer Brief.

12. Based on the foregoing continued failures of the Appellant, the Motion should be denied.

WHEREFORE, the Appellee DERM respectfully requests that this Court dismiss this appeal.

Dated: May 19, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERIFY that this response was filed and served on all parties of record via the E-Portal System on this 19th day of May 2026.

By: /s/ Chris Angell
Christopher A. Angell, Esq.
Assistant County Attorney