PRACTICE BEFORE THE SUPREME COURT OF OHIO

FREQUENTLY ASKED QUESTIONS

August 2013

The Clerk's Office has prepared this FAQ sheet to provide some general information about practice before the Supreme Court of Ohio. This information is not a replacement for the Rules of Practice of the Supreme Court of Ohio, and the requirements of those rules are controlling. Attorneys and unrepresented parties should always refer to the Rules of Practice for information that addresses their specific issues and circumstances.

Filing an Appeal

What documents must I file to appeal a court of appeals decision to the Supreme Court?

This answer depends on the type of appeal. To perfect a *jurisdictional appeal*, you must file a notice of appeal and a memorandum in support of jurisdiction. A copy of the court of appeals opinion and judgment entry being appealed must be attached to your memorandum.

To perfect an *appeal of right*, you must file a notice of appeal. A copy of the judgment entry being appealed must be attached to your notice of appeal, but a memorandum in support of jurisdiction is not required in an appeal of right.

Rule 7.01(A)

Jurisdictional appeals and appeals of right are defined in the Rules of Practice.

Rules 5.01-5.02

When must the documents be filed?

The documents required to file a jurisdictional appeal or an appeal of right are due no later than 45 days after the entry of the judgment being appealed.

Rule 7.01(A)

Is there a fee for filing an appeal?

Yes. A $100 filing fee is required by statute and court rule for filing an appeal. You may pay the fee with cash, check, or money order made payable to "Clerk, Supreme Court of Ohio." In addition, the Clerk's Office accepts MasterCard, Visa and American Express for payment of the filing fee.

The filing fee will be waived if you file an entry appointing counsel or an affidavit of indigency that complies with the Rules of Practice. The Clerk's Office cannot file an appeal, including a notice of cross-appeal or a notice of certified conflict, that is not accompanied by the required fee, entry, or affidavit.

Rules 3.04-3.06

May I get an extension of time to file my notice of appeal and memorandum in support of jurisdiction?

No. The time period for filing a notice of appeal and memorandum in support of jurisdiction is mandatory. The appellant's failure to file within this time period divests the Supreme Court of jurisdiction to hear the appeal.

The Rules of Practice provide one very limited exception to this general rule. If you are appealing from a felony decision after the time for filing a notice of appeal and memorandum in support of jurisdiction has passed, the Rules of Practice permit the filing of a motion for delayed appeal and notice of appeal. The provision for delayed appeal does not apply to appeals involving postconviction relief, or appeals of decisions on App. R. 26(B) motions.

Rule 7.01(A)(4)

When filing an appeal, how many copies of a notice of appeal are required?

One copy of the notice of appeal must be submitted along with the original. The Clerk of the Supreme Court will send that copy to the clerk of the court of appeals whose judgment is being appealed. The original must be in "scan-ready" form. To be scan-ready the original must be one-sided and neither stapled nor otherwise bound. It must not contain dividers or tabs.

Rule 3.09(A)(2) and Rule 3.10(A)

How many copies of a memorandum in support of jurisdiction are required?

Eight copies of a memorandum in support of jurisdiction must be filed along with the original. These copies are used by the Justices and Court staff. The original must be in "scan-ready" form. To be scan-ready the original must be one-sided and neither stapled nor otherwise bound. It must not contain dividers or tabs.

Rule 3.09(A)(2) and Rule 3.10(A)

Appellant's counsel has served me with a notice of appeal and a memorandum in support of jurisdiction that are not file-stamped. How can I find out the Supreme Court case number and when my memorandum in response is due?

To determine the Supreme Court case number assigned when a notice of appeal and memorandum in support are filed, you may access the Court's online docket via the Internet at: http://www.supremecourt.ohio.gov/Clerk/. After accessing the link for the online docket, use the case name or the court of appeals case number to search the docket and determine if the appeal has been filed. If so, search results will indicate the Supreme Court case number that has been assigned to the case. After you find out when the case was filed, you can calculate the date your memorandum in response is due.

To determine the filing date of *any* pleading or other document served on you, and thus calculate the due date for any responsive document, you may access the online docket. Note that the date a document is filed in the Supreme Court frequently is different from the date it is served and the date it is received by you. The only date used in calculating the time for your response, however, is the filing date as indicated by the Court's online docket.

If you do not have access to the Internet, a deputy clerk can access the docket system and provide case information to you. You may call the Clerk's Office at 614.387.9530 or 614.387.9531 and ask to speak with a deputy clerk.

After an appeal is filed, when will the Supreme Court reach a decision on whether to accept the appeal?

Generally, the Court announces whether it will accept an appeal for a full merit review approximately three to six months after the appellee's memorandum in response is filed. However, this time frame may vary.

If the appeal involves termination of parental rights or adoption of a minor child, or both, the Supreme Court will expedite its review and determination.

Merit Briefs and Oral Arguments in Appeals

What will happen if my appeal is accepted by the Court for a full merit review?

If your appeal is accepted for a full merit review, the Court will order the record of the case from the court of appeals. When the record is filed in the Supreme Court, the Clerk's Office will notify counsel or unrepresented parties in the case and refer them to the rules on filing merit briefs.

Rules 15.02 – 15.03

What is the time frame for filing merit briefs?

The appellant's merit brief is due 40 days from the date the record is filed in the Supreme Court. The appellee's brief is due within 30 days after the filing of the appellant's brief. The appellant may file the last brief, a reply brief, and it is due within 20 days after the filing of the appellee's brief.

In appeals involving termination of parental rights or adoption of a minor child or both, the briefing schedule is expedited. The appellant's merit brief is due 20 days from the date the court of appeals record is filed in the Supreme Court; the appellee's brief is due 20 days after the filing of the appellant's brief; and the appellant may file a reply brief within 15 days after the filing of the appellee's brief.

Rules 16.02 – 16.04

In every appeal of a civil case, the appellant should also prepare and file a "supplement" to the briefs. The supplement is a compilation of those portions of the record necessary to enable the Supreme Court to determine the questions presented on appeal. The supplement or the notice must be filed with the appellant's merit brief.

Rules 16.09 – 16.10

When are oral arguments held?

The Supreme Court hears oral arguments approximately every other week from early September through early June. The Supreme Court generally hears arguments only once a month in July and August.

Arguments are usually scheduled for Tuesday and Wednesday mornings beginning at 9 a.m. Attorneys scheduled to argue are required to sign in with a representative from the Clerk's Office, outside the courtroom, by 8:45 a.m.

When can I expect oral argument to be held in my case?

The oral argument will be held sometime after the merit briefs have been filed in the appeal. *Generally*, the Court will hear oral argument within two to four months after the time for filing appellant's reply brief has passed.

If the appeal involves termination of parental rights or adoption of a minor child, the Court will expedite the case and hear oral argument at the earliest practicable time.

How and when will I know that my case has been scheduled for oral argument?

After a case is scheduled, the Clerk's Office will send you a notice of oral argument. Generally, this occurs six weeks before the scheduled argument. The notice of oral argument will provide the argument date and other relevant information. Oral argument dates are also posted on the Clerk's Web page at the following link: http://www.supremecourt.ohio.gov/Clerk/.

May I waive oral argument?

A party may waive argument by filing a written waiver at least seven days before the argument date. Unless all parties waive argument, the oral argument will proceed with participation from those parties who have not waived argument.

Rule 17.03

Is there anything else I should know about oral argument before the Supreme Court?

Attorneys scheduled to participate in oral argument must arrive outside the courtroom for check-in by 8:45 a.m., regardless of when their case appears on the schedule of oral arguments for that day.

A party who fails to file a merit brief in a case is not entitled to participate in oral argument. That party is considered to have waived argument.

Rule 17.03

A party is not permitted to present oral argument if the party files a notice of adoption of another party's brief instead of filing its own brief.

An amicus curiae who has filed a brief in a case is not entitled to participate in oral argument without leave of the Court. Leave may be sought by motion to the Court. This

should be done well in advance of oral argument, but no later than seven days before the argument.

Rule 17.06

What if I have not yet entered an appearance as counsel?

The Rules of Practice prescribe that any attorney listed on the first document filed on behalf of a party is automatically listed on the docket as counsel for that party. If an attorney is not listed on the first document filed on behalf of a party, he or she must file a separate notice of appearance in order to be listed as counsel. An attorney who plans to argue a case on behalf of a party must be on record as representing that party in the case. If the attorney is not already on record, a notice of appearance should be filed in the case in advance of oral argument.

Rule 2.01

After oral argument, when will the Supreme Court reach a decision in the case?

It *generally* takes four to six months after oral argument for the Court to announce its decision on the merits of the case. The time frame for announcing the Court's decision is affected by a number of factors, including complexity of the case and how many justices have decided to write concurring or dissenting opinions in the case. If the appeal involves termination of parental rights or adoption of a minor child, or both, the Supreme Court will expedite its consideration of the merits.

How will I know when the Court takes action in a case in which I am involved?

If you are the designated attorney of record, the Clerk's Office will mail you a copy of each Court entry issued in the case after the entry is filed with the Clerk's Office. If the Court rules on the merits of your case, the Clerk's Office will mail you a copy of the Court's entry. In many cases, the Clerk's Office will also telephone the attorneys to notify them when the merit decision is announced.

If you are a party in the case and are not represented by counsel, the Clerk's Office will mail copies of the Court's entries directly to you.

General Filing Issues

How do I file documents with the Supreme Court?

Documents are filed with the Supreme Court by filing with the Clerk of the Supreme Court. Documents can be filed electronically through the Court's e-Filing Portal. You may file paper documents either by mail, delivery service, or in person, during regular business hours. Letters, motions, memoranda, briefs, and other documents relating to a case are not considered filed, and are not reviewed by the Court, if they are submitted directly to a Justice.

Rule 3.02

What are the business hours of the Clerk's Office?

The Clerk's Office is open for filing from 8 a.m. to 5 p.m., Monday through Friday. Documents must be received by 5 p.m. to be filed as of the date received. The Clerk's Office is closed on weekends, on the day after Thanksgiving, and on all state holidays except Columbus Day.

Rule 3.02

To access the Supreme Court floors, you are required to present valid photo identification and pass through the Ohio Judicial Center's security checkpoint. Please keep this in mind when calculating the time you will need to reach the Clerk's Office before the close of business.

What if my filing deadline falls on a Saturday, a Sunday or a holiday? When must I file to make sure my document is considered timely?

If the Clerk's Office is closed on the day your document is due, or closes early that day, your document is due on the next business day the office is open. For example, if your filing deadline falls on Saturday, your document would be due Monday. If Monday is a state holiday, your document would then be due Tuesday.

Rule 3.03(A)

Even though the Clerk's Office is open on Columbus Day, that day is considered a legal holiday for purposes of determining filing deadlines. Therefore, documents that are due on Columbus Day are considered on time if filed the following day. Similarly, filings that are due on the day after Thanksgiving, a day on which the Clerk's Office is closed, are considered timely if filed the following Monday.

If I submit a document for filing by mail, is it considered filed with the Supreme Court when it is mailed?

No. Documents, whether submitted by mail or other delivery service, are not considered filed until *received* for filing in the Clerk's Office. Therefore, if you are submitting

documents by mail, you should send them sufficiently in advance so they arrive by the due date.

Please note that a delivery confirmation indicating final delivery from the US Postal Service or any other delivery service does not necessarily mean the package has been received by the Clerk's Office, nor does it constitute notice that the document has been filed by the Clerk's Office. If you have a question as to whether the Clerk's Office has received your package, please call the Clerk's Office at 614.387.9530.

Rule 3.02(A)

Do I get three extra days to file if the document I am responding to was served on me by mail?

No. The Rules of Practice do not provide additional time to respond to documents served by mail.

Where do I mail my filings?

All documents tendered for filing should be addressed directly to the Clerk's Office:

Clerk's Office
Supreme Court of Ohio
65 South Front Street, 8th Floor
Columbus, Ohio 43215-3431

May I file by email?

Given the Court's need for multiple copies of most documents, email filings are limited to only certain documents. (See S.Ct.Prac.R. 3.02 for a list of those documents.) The email address for the Clerk's Office for permissible email filings is filing@sc.ohio.gov.

If an email transmission is not received by 5 p.m., the document being transmitted will be considered received in the Clerk's Office the following day.

Rule 3.02(C)

Are extensions of filing deadlines ever permitted?

The Rules of Practice allow for extensions of time only in connection with filing a merit brief, evidence in an original action, or a response to a complaint in an original action. An extension of up to 20 days may be obtained for filing one of these documents by agreement with the other side, provided a written stipulation to the extension is filed in compliance with the rules. Alternatively, an extension of up to 10 days may be obtained by filing a written request in compliance with the rules.

A stipulation or request for extension of time must be filed no later than the deadline for filing the document that is the subject of the extension of time. A party is permitted only one extension of time in a case.

Rule 3.03

What will happen if the document I want to file is not submitted by its due date?

The Rules of Practice *strictly prohibit* untimely filings. The Clerk is required to reject any document received after the filing deadline. Motions to file "instanter" or "out of rule" are also prohibited. In the event that you submit a document that is not accepted for filing by the Clerk, you must notify all parties you had served with the document that the document was not filed.

Rule 3.03 and Rule 3.11

How should documents be bound?

The original of any document that is being filed should not be bound. Any required copies must be firmly stapled or bound on the left margin, but the Rules of Practice do not require a specific binding method. While plastic cover pages are prohibited, you may use plastic spiral binding if staples will not penetrate your document completely. Any document that is thicker than two inches must be bound in two or more numbered volumes.

Rule 3.09

The Rules of Practice place page limitations on jurisdictional memoranda and merit briefs. Do these page limitations cover the table of contents and the appendix?

No. As to jurisdictional memoranda, the Rules of Practice specifically exclude the table of contents from the 15-page limitation and provide that a limited appendix be *attached* to the memorandum. (The appendix of a jurisdictional memorandum is restricted to the court of appeals opinion and judgment entry, which are required attachments, and other relevant judgment entries and opinions issued in the case.) Similarly, the Rules of Practice exclude the table of contents, the table of authorities, and the appendix from the 50-page limit imposed on a merit brief.

Rule 7.02 and Rules 16.02 – 16.03

May the page limits be exceeded?

No. Memoranda and briefs must comply with the Court's page limitations or they cannot be accepted for filing.

How many copies of a motion are required?

With the exception of requests for extension of time, an original and 10 copies are required of all motions submitted for filing. The original must be in "scan-ready" form. To be scan-ready the original must be one-sided and neither stapled nor otherwise bound. It must contain no dividers or tabs. Only the original of a request for extension of time is required.

Rule 3.10

How many copies of all other documents are required?

Notice of appeal -- original plus 1
Jurisdictional memorandum -- original plus 8
Brief on the merits -- original plus 16
Supplement to brief -- original plus 2
List of additional authorities -- original plus 16
Complaint in an original action -- original plus 10, plus additional 1 for each respondent
Application for dismissal – original plus 1
Any other pleading, memorandum or document -- original plus 10.

When filing any of the above documents, the original must be in "scan-ready" form. To be scan-ready the original must be one-sided and neither stapled nor otherwise bound. It must contain no dividers or tabs.

Rule 3.09(A)(2) and Rule 3.10

Will one of the required copies be stamped with the file date and returned to me?

The Clerk's Office does not automatically return a file-stamped copy of your document to you. If you wish to receive a file-stamped copy when you submit your filing to the Clerk's Office, you should include an extra copy. You should also include a self-addressed, postage-paid envelope large enough to accommodate the document.

Rule 3.10

Are there any forms available to assist attorneys and unrepresented parties in preparing their documents for filing?

The Clerk's Office has several sample documents to assist persons who have cases before the Court. These sample documents include:

- A notice of appeal from a court of appeals decision,
- A memorandum in support of jurisdiction,
- A merit brief, and
- A blank form for preparing an affidavit of indigency.

All of these sample documents are included with published versions of the Supreme Court Rules of Practice, are available on the Supreme Court's website at www.supremecourt.ohio.gov, or from the Clerk's Office upon request.

What are some common mistakes attorneys make when filing documents in the Supreme Court?

The deputy clerks frequently observe the following mistakes made by parties when filing with the Court:

- Failing to submit the docket fee with a notice of appeal, a notice of cross-appeal, or a notice of certified conflict
- Submitting documents for filing after the filing deadline
- Neglecting to submit the required number of copies of a document, including, in an original action, an extra copy of the complaint for each respondent named in the complaint
- Exceeding the page limitation on a jurisdictional memorandum or merit brief
- Failing to attach a copy of the decision being appealed to a memorandum in support of jurisdiction or an appellant's brief
- Attaching the notice of appeal to the front of a memorandum in support of jurisdiction
- Including prohibited materials in the appendix of a memorandum in support of jurisdiction – *i.e.*, anything other than the court of appeals opinion and judgment entry being appealed, and other opinions and judgment entries issued in the case that are relevant to the appeal.
- In an appeal of right, submitting a memorandum in support of jurisdiction with the notice of appeal
- Omitting the Supreme Court case number from a document's cover page
- Failing to bind documents securely
- Submitting documents with plastic or colored covers, tabs or inserts
- Using margins smaller than one inch, a font smaller than 12 points, or single-spaced or condensed type
- Failing to include a certificate of service on a document tendered for filing, or forgetting to sign or date the certificate of service
- Neglecting to sign a document
- Neglecting to designate counsel of record when two or more attorneys represent a party
- Submitting an affidavit with an insufficient notary's jurat
- Failing to put footnotes in 12-point font
- Using double-sided and/or condensed text attachments

- Omitting party information from a document's cover

If I have additional questions about filings or Supreme Court proceedings, whom should I contact?

Please call the Clerk's Office and ask to speak to a deputy clerk. The phone numbers for the Clerk's Office are:

614.387.9530
614.387.9531