



# Office of the Ohio Public Defender

*Timothy Young, State Public Defender*

## **Pro Se Packet Delayed Appeal to the Ohio Supreme Court**

What should I do if I did not  
appeal to the Ohio Supreme  
Court on time?

A timely appeal to the Ohio Supreme Court must be filed no later than 45 days from the date on which the court of appeals files its judgment entry. S.Ct. Prac. R. 7.01(A)(1). If you have missed your deadline you must obtain leave to file a delayed appeal. S.Ct. Prac. R 7.01(A)(4). You can only file a delayed appeal if you are trying to appeal your direct appeal (an appeal of your conviction). If you are trying to appeal the denial of a postconviction petition or the denial of an application to reopen your appeal under Ohio Appellate Rule 26(B), and you missed the 45-day deadline for filing an appeal in the Ohio Supreme Court, you cannot file a delayed appeal. The Ohio Supreme Court clerk will refuse to file your documents and return them to you.

A memorandum in support of jurisdiction is not filed at the time a motion for delayed appeal is filed. You cannot file the memorandum in support of jurisdiction until the Court first grants leave to appeal. S.Ct. Prac. R. 7.01(A)(4)(b).

You should also review the Supreme Court's guide to filing available online on the court's website. <http://www.supremecourt.ohio.gov/Publications/filingGuide.pdf>

### **What should I do?**

Since you did not file within the time limit you must ask the Ohio Supreme Court to permit you to file late. To do that, you must file a Motion for Leave to File a Delayed Appeal explaining why you did not file within the 45 days. It is difficult to obtain leave. But the Court will grant leave if you can demonstrate sufficient cause. This packet contains forms that show you how to file your own motion for a delayed appeal. If you are filling this out by hand, make sure you write neatly.

### **What should I include?**

All of the items listed below have sample forms at the back of this packet:

- ✓ The Notice of Appeal;
- ✓ The Motion for Delayed Appeal, with a date stamped copy of the court of appeals' opinion and judgment entry attached;
- ✓ A notarized affidavit of facts which explain your reasons for the delay;
- ✓ \$100 filing fee or Affidavit of Indigence.

You must mail all three of these documents together, in order to have your motion filed by the Court. Do not submit a memorandum in support of jurisdiction when you submit the motion for delayed appeal. If the court grants the motion for delayed appeal, it will issue an order that requires you to submit your memorandum in support of jurisdiction within 30 days.

### **What information do I need?**

Most of your case information that you need can be found on your copy of your appeal brief and the court of appeals' opinion.

### **Where should I file?**

You need to file this Motion with the Clerk of the Ohio Supreme Court. The clerk's address is:

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

### **When should I file?**

You should file this motion as soon as possible. If you file as soon as you can, the Court may be more inclined to grant it. The Ohio Supreme Court is more likely to grant a motion if it is filed soon after the missed deadline.

Please note that your documents are not considered filed until the clerk actually receives them. The mailbox rule does not apply. Leave plenty of time for your documents to be processed through the mail and received by the clerk.

### **How can I improve my chances of success?**

Explain in the required notarized affidavit of facts the your reasons for the delay. Did counsel timely notify you of the lower court decision? Did you have access to mail? If factors outside your control delayed your appeal explain to the court. Demonstrate this to the Supreme Court, perhaps thru mail logs. The Supreme Court may be more likely to grant your motion if your affidavit explains the delay or you attach documents proving it was not your fault that you missed the filing deadline. Pro-se litigants have obtained leave where they sufficiently support their reasons for delay. *State v. Cochran*, 135 Ohio St.3d 1469, 2013-Ohio-1622, 989 N.E.2d 69; *State v. Connin*, 134 Ohio St.3d 1483, 2013-Ohio-902, 984 N.E.2d 27; *State v. Rodgers*, 129 Ohio St.3d 1487, 2011-Ohio-5129, 954 N.E.2d 661; *State v. Coleman*, 129 Ohio St.3d 1473, 2011-Ohio-4751, 953 N.E.2d 840. Please note that if you attach any letters from your appellate counsel, they will become public and will no longer be protected by the attorney-client privilege.

### **When should I expect a decision?**

The Ohio Supreme Court usually decides whether to grant motions for leave to file a delayed appeal within 2-3 months. The Court will send you a notice as soon as it decides the motion.

### **What should I do if the Supreme Court grants my motion?**

If the Court grants your motion, you will have 30 days to file a Memorandum in Support of Jurisdiction explaining why the court should hear your case. You can ask the Ohio Public Defender's Office for a packet explaining how to file a Memorandum in Support of Jurisdiction. Generally, you can only argue the issues that were raised in your first appeal. The merit brief that your appellate attorney filed on your behalf is a good place to start. If you want to raise issues that were not raised in your original appeal, you must present them as claims of "ineffective assistance of appellate counsel" for failing to raise them in your appeal. Remember that claims of ineffective assistance of appellate counsel can also be raised in the court of appeals in an Application to Reopen the Appeal under Appellate Rule 26(B).

Good luck!

#468307

Rev. 8-10-16

## **INSTRUCTIONS**

Following this page are sample copies of a (1) Motion for Leave to Appeal, (2) Affidavit containing facts that support Motion for Delayed Appeal, (3) Notice of Appeal, and (4) Affidavit of Indigence. Following these are blank copies of the same you can file in and file with the court.

1. In order to prepare the cover page of your motion and notice of appeal, you need certain information. Most of the information can be found on your appeal brief or the court of appeals' opinion. When the form asks for "case number," it is referring to the case number of your appeal, not your trial court case number.

2. When you are preparing the part of the motion that explains why you did not file on time, be as specific as possible. Facts that support your motion and explain your reasons for the delay must be in your affidavit that is attached to your motion. The language that is in the sample motion is just an example of language you could use.

3. When you are finished preparing the motion, sign all of the documents (you need to sign a total of 6 times). See sample form. You need to send the court the original and 10 copies of all your documents, unless you are indigent and you submit an affidavit of indigence that is accepted by the Supreme Court's office of the Clerk. If the clerk accepts your affidavit of indigence, you can file the original motion, only and you do not have to file the additional copies.

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

Your name

\_\_\_\_\_

Defendant-Appellant.

:  
:  
:  
:  
:  
:  
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:  
:  
:

Case No.

Leave blank

On discretionary appeal from the  
: \_\_\_\_\_ County Court of Appeals,  
: \_\_\_\_\_ Appellate District,  
: Case No. \_\_\_\_\_

Put court of  
appeals case  
number and  
District number

MOTION FOR LEAVE TO FILE DELAYED APPEAL OF  
APPELLANT Your Name PURSUANT TO OHIO S. CT. PRAC. R 7.01(A)(4)(a)

Fill in  
prosecutor's  
name and  
address.

Fill in your  
name,  
number and  
address

PROSECUTOR NAME AND COUNTY NAME

ADDRESS

CITY, STATE & ZIP

PHONE

NAME AND NUMBER

INSTITUTION

ADDRESS

CITY, STATE & ZIP

COUNSEL FOR APPELLEE, STATE OF  
OHIO

DEFENDANT-APPELLANT, PRO SE

**MOTION FOR LEAVE TO FILE DELAYED APPEAL OF  
APPELLANT YOUR NAME**

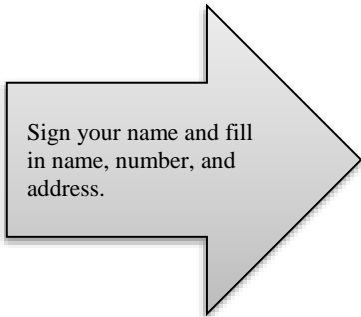
YOUR NAME respectfully moves this Court for leave to file a delayed appeal.

S.Ct.Prac.Rule 7.01(A)(4)(a).

Here tell the court why you did not file within the 45-day time limit. For example, if you were transferred to another institution, tell the court. If your attorney never informed you of the appellate court's decision or was late in doing so, explain to the Supreme Court how and when you found out of the decision. If you wrote to the Ohio Public Defender's office to determine the status of your appeal and were told you lost your appeal, tell the Supreme Court the date you wrote to the office and the date you heard back from the office.

An affidavit supporting these allegations is attached. Because the Appellant did not unduly delay the filing of this appeal, this Court should permit the Appellant to file a delayed appeal.

Respectfully submitted,



\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Delayed Appeal was forwarded by regular U.S. Mail to \_\_\_\_\_ Prosecuting Attorney, \_\_\_\_\_ County at the address of \_\_\_\_\_ on the date \_\_\_\_\_.

You must certify that you sent a copy to the prosecutor.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

**AFFIDAVIT**

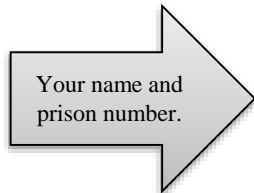
STATE OF OHIO            )  
  )  
COUNTY OF \_\_\_\_\_)        ss:

I, YOUR NAME, swear that the following is true:

- 1.
- 2.
- 3.
- 4.

TELL THE COURT WHEN YOU FOUND OUT YOU LOST YOUR APPEAL. RESTATE THE REASONS YOU GAVE IN THE MOTION EXPLAINING WHY YOU DID NOT FILE WITHIN THE 45-DAY LIMIT. BE AS SPECIFIC AS POSSIBLE AND INCLUDE ALL RELEVANT DATES.

Etc.



\_\_\_\_\_  
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

Sworn to and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_,  
20 \_\_\_\_.



\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO,

Plaintiff-Appellee,

v.

Your name

\_\_\_\_\_ ,

Defendant-Appellant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Case No.

Leave blank

On discretionary appeal from the  
\_\_\_\_\_ County Court of Appeals,  
\_\_\_\_\_ Appellate District,  
Case No. \_\_\_\_\_

Put court of appeals case number and district number.

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**NOTICE OF APPEAL OF APPELLANT**

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Your name

Fill in prosecutor's name and address.

PROSECUTOR NAME AND COUNTY NAME  
\_\_\_\_\_  
ADDRESS  
\_\_\_\_\_  
CITY, STATE & ZIP  
\_\_\_\_\_  
PHONE  
\_\_\_\_\_

**COUNSEL FOR APPELLEE, STATE OF OHIO**

Fill in your name, number and address.

NAME AND NUMBER  
\_\_\_\_\_  
INSTITUTION  
\_\_\_\_\_  
ADDRESS  
\_\_\_\_\_  
CITY, STATE & ZIP  
\_\_\_\_\_

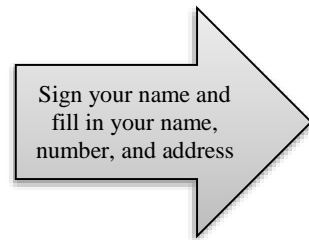
**DEFENDANT-APPELLANT, PRO SE**

**NOTICE OF APPEAL OF APPELLANT YOUR NAME**

Appellant YOUR NAME hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the FILL IN THE NAME OF THE COUNTY WHERE YOU WERE CONVICTED County Court of Appeals, FILL IN THE NAME OF THE APPELLATE COURT (IT WILL BE FIRST, SECOND, ETC.) Appellate District, entered in Court of Appeals Case No. FILL IN THE CASE NUMBER OF YOUR COURT OF APPEALS CASE on FILL IN THE DAY, MONTH AND YEAR THAT YOUR APPEAL WAS DENIED. THIS DATE USUALLY CAN BE FOUND ON THE COURT OF APPEALS' OPINION, EITHER STAMPED ON THE FRONT PAGE OR ON THE BACK PAGE.

This case raises a substantial constitutional question, involves a felony, and is of public or great general interest.

Respectfully submitted,



\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE & ZIP

DEFENDANT-APPELLANT, PRO SE

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Appeal was forwarded by regular U.S. Mail to \_\_\_\_\_, Prosecuting Attorney, \_\_\_\_\_ County at the address of \_\_\_\_\_ on the date \_\_\_\_\_.

You must certify that you sent a copy to the prosecutor

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER  
DEFENDANT-APPELLANT, PRO SE

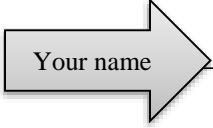
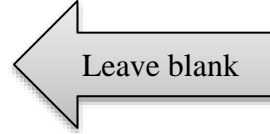
**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO, :

Plaintiff-Appellee, :

v. :

Case No.:



Defendant-Appellant. :

**AFFIDAVIT OF INDIGENCE**

I, YOUR NAME, do hereby state that I am without the necessary funds to pay the costs of this action for the following reasons:

I am currently incarcerated at the NAME OF THE INSTITUTION WHERE YOU ARE INCARCERATED and I have been incarcerated since THE DATE YOU WERE SENT TO PRISON. I work at the prison but receive only PUT HOW MUCH MONEY YOU MAKE A MONTH IF YOU WORK dollars per month.

Pursuant to Rule 3.06(A), of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fee and security deposit, if applicable, be waived.

\_\_\_\_\_  
SIGN YOUR NAME

Sworn to and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.



\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires on

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO,	:	
	:	Case No.
Plaintiff-Appellee,	:	
	:	On Discretionary Appeal from the
vs.	:	_____ County Court of Appeals
	:	_____ Appellate District
_____,	:	
	:	C.A. Case No.
Defendant-Appellant.	:	

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**MOTION FOR LEAVE TO FILE DELAYED APPEAL OF  
APPELLANT \_\_\_\_\_ PURSUANT TO OHIO S. CT. PRAC. R 7.01(A)(4)(a)**

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\_\_\_\_\_  
PROSECUTOR NAME AND COUNTY NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE & ZIP

\_\_\_\_\_  
PHONE

\_\_\_\_\_  
NAME AND NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE & ZIP

COUNSEL FOR APPELLEE, STATE OF OHIO

DEFENDANT-APPELLANT, PRO SE





**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Leave to File Delayed Appeal was forwarded by regular U.S. Mail to \_\_\_\_\_, Prosecuting Attorney, \_\_\_\_\_ County at the address of \_\_\_\_\_ on the date \_\_\_\_\_.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE



**AFFIDAVIT**

State of Ohio            )  
                                  ) ss:  
County of                )

I, \_\_\_\_\_, swear that the following is true:

- 1. \_\_\_\_\_  
\_\_\_\_\_
- 2. \_\_\_\_\_  
\_\_\_\_\_
- 3. \_\_\_\_\_  
\_\_\_\_\_
- 4. \_\_\_\_\_  
\_\_\_\_\_
- 5. \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

Sworn to and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_,  
20 \_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 :  
 vs. : Case No.  
 :  
 : On Discretionary Appeal from the  
 : \_\_\_\_\_ County Court of Appeals  
 : \_\_\_\_\_ Appellate District  
 :  
 \_\_\_\_\_, :  
 : C.A. Case No.  
 Defendant-Appellant. :

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**NOTICE OF APPEAL OF APPELLANT \_\_\_\_\_**

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\_\_\_\_\_  
PROSECUTOR NAME AND COUNTY NAME  
\_\_\_\_\_  
ADDRESS  
\_\_\_\_\_  
CITY, STATE & ZIP  
\_\_\_\_\_  
PHONE

\_\_\_\_\_  
NAME AND NUMBER  
\_\_\_\_\_  
INSTITUTION  
\_\_\_\_\_  
ADDRESS  
\_\_\_\_\_  
CITY, STATE & ZIP

COUNSEL FOR APPELLEE, STATE OF OHIO

DEFENDANT-APPELLANT, PRO SE

**NOTICE OF APPEAL OF APPELLANT \_\_\_\_\_**

Appellant \_\_\_\_\_ hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the \_\_\_\_\_ County Court of Appeals, \_\_\_\_\_ Appellate District, entered in Court of Appeals Case No. \_\_\_\_\_ on \_\_\_\_\_, 20\_\_.

This case raises a substantial constitutional question, involves a felony, and is of public or great general interest.

Respectfully submitted,

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE & ZIP

**DEFENDANT-APPELLANT, PRO SE**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Appeal was forwarded by regular U.S. Mail to \_\_\_\_\_, Prosecuting Attorney, \_\_\_\_\_ County at the address of \_\_\_\_\_ on the date \_\_\_\_\_.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 :  
 vs. : Case No. \_\_\_\_\_  
 :  
 \_\_\_\_\_, :  
 :  
 Defendant-Appellant. :

**AFFIDAVIT OF INDIGENCE**

I, \_\_\_\_\_, do hereby state that I am without the necessary funds to pay the costs of this action for the following reasons:

I am currently incarcerated at the \_\_\_\_\_ and I have been incarcerated since \_\_\_\_\_. I work at the prison but receive only \_\_\_\_\_ dollars per month.

Pursuant to Rule 3.06 of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fee and security deposit, if applicable, be waived.

\_\_\_\_\_  
Affiant

Sworn to and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_,  
20 \_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**[Note: This affidavit must be executed not more than six months prior to being filed in the Supreme Court in order to comply with S.Ct. Prac. R. 3.06. Affidavits not in compliance with that section will be rejected for filing by the Clerk.]**

## **S.Ct.Prac.R. 7.01. Institution of Jurisdictional Appeal.**

### (A) Perfection of appeal

#### (1) Time to file and documents required

(a) (i) To perfect a jurisdictional appeal from a court of appeals to the Supreme Court as defined by S.Ct.Prac.R. 5.02(A), the appellant shall file a notice of appeal in the Supreme Court within forty-five days from the entry of the judgment being appealed. The date the court of appeals filed its judgment entry for journalization with its clerk, in accordance with App.R. 22, shall be considered the date of entry of the judgment being appealed.

(ii) Except as provided by S.Ct.Prac.R. 7.01(A)(3), the appellant shall also file a memorandum in support of jurisdiction, in accordance with S.Ct.Prac.R. 7.02, at the time the notice of appeal is filed.

(b) Except as provided in divisions (A)(2), (3), (4), (5), and (6) of this rule, the time period designated in this rule for filing a notice of appeal and memorandum in support of jurisdiction is mandatory, and the appellant's failure to file within this time period shall divest the Supreme Court of jurisdiction to hear the appeal. The Clerk of the Supreme Court shall refuse to file a notice of appeal or a memorandum in support of jurisdiction that is received for filing after this time period has passed.

#### (2) Subsequent notices of appeal and cross-appeal

(a) If a party timely files a notice of appeal in the Supreme Court, any other party may file a notice of appeal or cross-appeal in the Supreme Court within the time prescribed by division (A)(1) of this rule or ten days after the first notice of appeal was filed, whichever is later.

(b) A notice of appeal shall be designated and treated as a notice of cross-appeal if both of the following requirements are met:

(i) It is filed after the original notice of appeal was filed in the case;

(ii) It is filed by a party against whom the original notice of appeal was filed.

(c) If a notice of cross-appeal is filed, a combined memorandum both in response to appellant/cross-appellee's memorandum and in support of jurisdiction for the cross-appeal shall be filed by the deadline imposed in S.Ct.Prac.R. 7.05.

#### (3) Motion for stay in advance of filing a memorandum in support of jurisdiction

(a) In a jurisdictional appeal, if the appellant seeks from the Supreme Court an immediate stay of the court of appeals' judgment that is being appealed, the appellant may file a notice of appeal in the Supreme Court without an accompanying memorandum in support of jurisdiction, provided both of the following conditions are satisfied:

- (i) A motion for stay of the court of appeals' judgment is filed with the notice of appeal;
  - (ii) A copy of the court of appeals' opinion and judgment entry being appealed is attached to the motion for stay.
- (b) If pursuant to S.Ct.Prac.R. 7.01(A)(3)(a) a memorandum in support of jurisdiction is not filed with the notice of appeal, then a memorandum in support of jurisdiction shall be filed no later than forty-five days from the date of the entry of the court of appeals' judgment being appealed. The Supreme Court will dismiss the appeal if the memorandum in support of jurisdiction is not timely filed pursuant to this provision.
- (4) Motion for a delayed appeal in felony cases
- (a) In a felony case, when the time has expired for filing a notice of appeal in the Supreme Court, the appellant may file a delayed appeal by filing a notice of appeal and a motion for delayed appeal that complies with the following requirements:
    - (i) The motion shall state the date of entry of the judgment being appealed and the reasons for the delay;
    - (ii) Facts supporting the motion shall be set forth in an affidavit;
    - (iii) A copy of the court of appeals' opinion and the judgment entry being appealed shall be attached to the motion.
  - (b) A memorandum in support of jurisdiction shall not be filed at the time a motion for delayed appeal is filed. If the Supreme Court grants a motion for delayed appeal, the appellant shall file a memorandum in support of jurisdiction within thirty days after the motion for delayed appeal is granted. If a memorandum in support of jurisdiction is not timely filed after a motion for delayed appeal has been granted, the Supreme Court will dismiss the appeal.
  - (c) The provision for delayed appeal does not apply to appeals involving postconviction relief or appeals brought pursuant to App.R. 26(B). The Clerk shall refuse to file motions for delayed appeal involving postconviction relief or App.R. 26(B).
- (5) Effect of a timely filed application for reconsideration with court of appeals
- (a) When a party timely files an application for reconsideration in the court of appeals pursuant to App.R. 26(A)(1), the time for filing a notice of appeal from the court of appeals' entry of judgment shall be tolled.
  - (b) If a timely application for reconsideration is filed in the court of appeals, and the appellant seeks to appeal from the court of appeals' entry of judgment, the appellant shall file a notice of appeal within forty-five days of the court of appeals' decision denying the application for reconsideration, or if reconsideration is granted, from the subsequent entry of judgment.

(c) To file an appeal from the court of appeals' opinion and judgment entry after the court of appeals has ruled on an application for reconsideration, the appellant shall comply with the time frame imposed by S.Ct.Prac.R. 7.01(A)(5)(b) and shall include both of the following:

(i) A notice of appeal that complies with the requirements of S.Ct.Prac.R. 7.01(B) and that indicates the date of the filing of the application for reconsideration, the date of the court of appeals' decision on the application for reconsideration, and the date of the court of appeals' opinion and judgment entry that is being appealed;

(ii) A memorandum in support of jurisdiction that complies with the requirements of S.Ct.Prac.R. 7.02 and that also has attached a date-stamped copy of the court of appeals' decision denying the application for reconsideration, or if reconsideration is granted, the subsequent entry of judgment.

(6) Effect of en banc consideration by the court of appeals

(a) When a party timely files an application for en banc consideration in the court of appeals pursuant to App.R. 26(A)(2), the time for filing a notice of appeal from the court of appeals' entry of judgment shall be tolled.

(b) If a timely application for en banc consideration is filed in the court of appeals and the appellant seeks to appeal from the court of appeals' entry of judgment, the appellant shall file a notice of appeal within forty-five days of the court of appeals' decision denying the application for en banc consideration, or if en banc consideration is granted, the subsequent entry of judgment.

(c) To file an appeal from the court of appeals' opinion and judgment entry after the court of appeals has ruled on an application for en banc consideration, the appellant shall comply with the time frame imposed by S.Ct.Prac.R. 7.01(A)(6)(b) and shall include both of the following:

(i) A notice of appeal that complies with the requirements of S.Ct.Prac.R. 7.01(B), and that indicates the date of the filing of the application for en banc consideration, the date of the court of appeals' decision on the application for en banc consideration, and the date of the court of appeals' opinion and judgment entry that is being appealed;

(ii) A memorandum in support of jurisdiction that complies with the requirements of S.Ct.Prac.R. 7.02, and that also has attached a date-stamped copy of the court of appeals' decision denying the application for en banc consideration, or if en banc consideration is granted, the subsequent entry of judgment.

(d) If a timely sua sponte en banc consideration is initiated by the court of appeals but an appeal to the Supreme Court has not been perfected, the appellant may file a notice of appeal within forty-five days of the court of appeals' final en banc decision.



(e) To file an appeal from the court of appeals' opinion and judgment entry after the court of appeals completes the sua sponte en banc consideration process, the appellant shall comply with the time frame imposed by S.Ct.Prac.R. 7.01(A)(6)(d) and shall include both of the following:

(i) A notice of appeal that complies with the requirements of S.Ct.Prac.R. 7.01(B) and that indicates the date of the decision of the court of appeals initiating the sua sponte en banc consideration, the date of the court of appeals' final decision on the sua sponte en banc consideration, and the date of the court of appeals' opinion and judgment entry that is being appealed;

(ii) A memorandum in support of jurisdiction that complies with the requirements of S.Ct.Prac.R. 7.02 and that also has attached a date-stamped copy of the court of appeals' decision initiating the sua sponte en banc consideration process and a date stamped copy of the court of appeals' final en banc consideration decision.

(f) If a party perfected a jurisdictional appeal with the Supreme Court in accordance with S.Ct.Prac.R. 7.01(A), and the court of appeals subsequently initiates timely sua sponte en banc consideration, the party shall file a notice with the Supreme Court that an en banc decision is forthcoming from the court of appeals. The Supreme Court will stay consideration of the jurisdictional memoranda until after the court of appeals' en banc decision.

(B) Contents of notice of appeal

[See Appendix C for a sample notice of appeal from a court of appeals.]

(1) The notice of appeal for a jurisdictional appeal shall contain all of the following:

(a) The name of the court of appeals whose judgment is being appealed;

(b) The case name and number assigned to the case by the court of appeals;

(c) The date of the entry of the judgment being appealed;

(d) A statement that one or more of the following are applicable:

(i) The case raises a substantial constitutional question;

(ii) The case involves a felony;

(iii) The case is one of public or great general interest;

(iv) The case involves termination of parental rights or adoption of a minor child, or both;

(v) The case is an appeal of a court of appeals' determination under App.R. 26(B);

(vi) The case involves death-penalty postconviction proceedings.

(2) In a jurisdictional appeal, if a party has timely moved the court of appeals to certify a conflict under App.R. 25, the notice of appeal shall be accompanied by a notice of pending motion to certify a conflict, in accordance with S.Ct.Prac.R. 7.07(A), stating that a motion to certify a conflict is pending with the court of appeals.

(C) Notice to the court of appeals

The Clerk of the Supreme Court shall send a copy of any notice of appeal or cross-appeal to the clerk of the court of appeals whose judgment is being appealed.

(D) Jurisdiction of court of appeals after appeal to Supreme Court is perfected

(1) After an appeal is perfected from a court of appeals to the Supreme Court, the court of appeals is divested of jurisdiction, except to take action in aid of the appeal, to rule on an application timely filed with the court of appeals pursuant to App.R. 26, or to rule on a motion to certify a conflict pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution.

(2) In all appeals from a court of appeals, the court of appeals retains jurisdiction to appoint counsel to represent indigent parties before the Supreme Court when a judgment of the court of appeals is being defended by a defendant or when the Supreme Court has ordered that counsel be appointed in a particular case.

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