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State Public Defender
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Pro Se Packet
Delayed Appeal to the Ohio Supreme Court

What should I do if I didn't appeal to the Ohio Supreme Court on time

How do I know if this applies to me?

Under the rules, you have 45 days from the date on which the court of appeals files its judgment entry to file with the Ohio Supreme Court. See Rule 2.2(A)(1)(a) and Rule 2.2(A)(5) and (6) of the Supreme Court's Rules of Practice. If you have missed your deadline, or are in danger of missing it, you should use this packet.

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.

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. 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:

1. The Motion, with a copy of the court of appeals' opinion and judgment entry attached; and an affidavit of facts which explain your reasons for the delay;
2. The Notice of Appeal;
3. $100 filing fee or Affidavit of Indigency.

You must mail all three of these documents together, in order to have your motion filed by the Court.

What information do I need?

Most of the information that you need can be found on your copy of your appeal brief and the court of appeals' opinion. You must also explain why you did not file within the 45-day time limit.

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 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 within 30 days of the missed deadline. If you file your motion more than 90 days after your original deadline, the Supreme Court is not likely to grant it without an extremely good reason.

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?

The Supreme Court may be more likely to grant your motion if you attach documents proving it was not your fault that you missed the filing deadline. ***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.

Good luck!

INSTRUCTIONS

Please note that these are just suggestions how to explain to the Ohio Supreme Court why you were unable to file your appeal on time. You should tell the court in your own words why you did not file within the 45-day time limit.

Following this page is a sample copy of the form motion, explaining what needs to be included.

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. You can save paper by making your motion double-sided. Both sides of the paper may be used as long as the document is clearly legible. But if the supreme court grants your delayed appeal, and you are allowed to file a Memorandum in Support of Jurisdiction, that Memorandum must be single-sided. See Rule 8.5(C).

4. **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 indigency that is accepted by the Supreme Court's office of the Clerk. If the clerk accepts your affidavit of indigency, you can file the original motion, only. You do not have to file the additional copies.**

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. **LEAVE THIS SPACE BLANK**
Plaintiff-Appellee,	:	
	:	On Appeal from the NAME OF THE
	:	COUNTY WHERE YOU WERE
	:	CONVICTED
vs.	:	County Court of Appeals
	:	APPELLATE COURT NAME (IT WILL
	:	BE FIRST, SECOND, ETC.)
	:	Appellate District
YOUR NAME,	:	
	:	C.A. Case No. CASE NUMBER OF
Defendant-Appellant.	:	YOUR COURT OF APPEALS CASE

MOTION FOR LEAVE TO FILE DELAYED APPEAL OF
APPELLANT YOUR NAME

YOUR NAME AND PRISON NUMBER
NAME AND NUMBER

NAME OF THE INSTITUTION WHERE YOU ARE INCARCERATED
INSTITUTION

ADDRESS OF THE INSTITUTION WHERE YOU ARE INCARCERATED
ADDRESS

CITY, STATE & ZIP

PHONE

DEFENDANT-APPELLANT, PRO SE

THE PROSECUTOR FOR THE COUNTY WHERE YOU WERE CONVICTED
PROSECUTOR NAME

ADDRESS OF THE PROSECUTOR
ADDRESS

CITY, STATE & ZIP

PHONE

COUNSEL FOR APPELLEE, STATE OF OHIO

This information can be found on the front cover of your appeal brief, or in your prison intake packet.

SAMPLE

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. **LEAVE THIS SPACE BLANK**
Plaintiff-Appellee,	:	
	:	On Appeal from the NAME OF THE
	:	COUNTY WHERE YOU WERE
	:	CONVICTED
vs.	:	County Court of Appeals
	:	APPELLATE COURT NAME (IT WILL
	:	BE FIRST, SECOND, ETC.)
	:	Appellate District
YOUR NAME,	:	
	:	C.A. Case No. CASE NUMBER OF
	:	YOUR COURT OF APPEALS CASE
Defendant-Appellant.	:	

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 2.2(A)(4)(a). TELL THE COURT WHY YOU DID NOT FILE WITHIN THE 45-DAY TIME LIMIT. FOR EXAMPLE, IF YOUR ATTORNEY DID NOT INFORM YOU THAT YOUR APPEAL WAS DENIED, TELL THE COURT THE MONTH, DAY AND YEAR THAT YOU FOUND OUT YOUR APPEAL WAS DENIED AND THAT YOUR APPELLATE ATTORNEY DID NOT NOTIFY YOU IN TIME FOR YOU TO FILE AN APPEAL TO THE OHIO SUPREME COURT. THEN TELL THE COURT HOW YOU LEARNED YOUR APPEAL WAS DENIED. FOR EXAMPLE, IF YOU WROTE TO THE OHIO PUBLIC DEFENDER'S OFFICE AND WERE TOLD

SAMPLE

YOU LOST YOUR APPEAL, TELL THE 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,

SIGN YOUR NAME
SIGNATURE

YOUR NAME AND YOUR PRISON NUMBER
NAME AND NUMBER

NAME OF YOUR INSTITUTION
INSTITUTION

ADDRESS OF THE INSTITUTION
ADDRESS

CITY, STATE & ZIP

PHONE

DEFENDANT-APPELLANT, PRO SE

SAMPLE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion For Delayed Appeal was forwarded by regular U.S. Mail to FILL IN THE NAME OF THE PROSECUTING ATTORNEY, Prosecuting Attorney FILL IN THE ADDRESS OF THE PROSECUTING ATTORNEY on FILL IN THE DATE THAT YOU ARE MAILING THIS MOTION.

SIGN YOUR NAME
SIGNATURE

YOUR NAME AND INMATE NUMBER
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

SAMPLE

AFFIDAVIT

State of Ohio)
) ss:
County of _____)

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

1. TELL THE COURT WHEN YOU FOUND OUT YOU LOST YOUR APPEAL.

2. 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.

Have this signed by a notary public

YOUR NAME AND PRISON NUMBER
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

Sworn to and subscribed in my presence this _____ day of _____, 20 ____.

_____
NOTARY PUBLIC

SAMPLE

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. **LEAVE THIS SPACE BLANK**
Plaintiff-Appellee,	:	
	:	On Appeal from the NAME OF THE
	:	COUNTY WHERE YOU WERE
	:	CONVICTED
vs.	:	County Court of Appeals
	:	APPELLATE COURT NAME (IT WILL
	:	BE FIRST, SECOND, ETC.)
	:	Appellate District
YOUR NAME,	:	
	:	C.A. Case No. CASE NUMBER OF
Defendant-Appellant.	:	YOUR COURT OF APPEALS CASE

NOTICE OF APPEAL OF APPELLANT YOUR NAME

YOUR NAME AND PRISON NUMBER
NAME AND NUMBER

NAME OF THE INSTITUTION WHERE YOU ARE INCARCERATED
INSTITUTION

ADDRESS OF THE INSTITUTION WHERE YOU ARE INCARCERATED
ADDRESS

CITY, STATE & ZIP

PHONE

DEFENDANT-APPELLANT, PRO SE

THE PROSECUTOR FOR THE COUNTY WHERE YOU WERE CONVICTED
PROSECUTOR NAME

ADDRESS OF THE PROSECUTOR
ADDRESS

CITY, STATE & ZIP

PHONE

COUNSEL FOR APPELLEE, STATE OF OHIO

This information can be found on the front cover of your appeal brief, or in your prison intake packet.

SAMPLE

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,

SIGN YOUR NAME
SIGNATURE

YOUR NAME AND YOUR PRISON NUMBER
NAME AND NUMBER

NAME OF YOUR INSTITUTION
INSTITUTION

ADDRESS OF THE INSTITUTION
ADDRESS

CITY, STATE & ZIP

PHONE

DEFENDANT-APPELLANT, PRO SE

SAMPLE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was forwarded by regular U.S. Mail to FILL IN THE NAME OF THE PROSECUTING ATTORNEY, Prosecuting Attorney FILL IN THE ADDRESS OF THE PROSECUTING ATTORNEY on FILL IN THE DATE THAT YOU ARE MAILING THIS MOTION.

SIGN YOUR NAME
SIGNATURE

YOUR NAME AND INMATE NUMBER
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

SAMPLE

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
Plaintiff-Respondent,	:	
v.	:	Case No.: LEAVE THIS BLANK
YOUR NAME,	:	
Defendant-Petitioner.	:	

AFFIDAVIT OF INDIGENCY

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 15.3(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.

Have this signed by a notary public.

_____

SIGN YOUR NAME

Sworn to and subscribed in my presence this _____ day of _____, 20 ____.

Your affidavit of indigency cannot be older than six months.

_____

NOTARY PUBLIC

SAMPLE

IN THE SUPREME COURT OF OHIO

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

MOTION FOR LEAVE TO FILE DELAYED APPEAL OF APPELLANT_____

_____
NAME AND NUMBER

_____
INSTITUTION

_____
ADDRESS

_____
CITY, STATE & ZIP

_____
PHONE

DEFENDANT-APPELLANT, **PRO SE**

_____
PROSECUTOR NAME

_____
ADDRESS

_____
CITY, STATE & ZIP

_____
PHONE

COUNSEL FOR APPELLEE, STATE OF OHIO

IN THE SUPREME COURT OF OHIO

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

MOTION FOR LEAVE TO FILE DELAYED APPEAL OF APPELLANT_____

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

S.Ct.Prac.Rule 2.2(A)(4)(a).

_____

_____

_____

_____

An affidavit supporting the Appellant's allegations is attached hereto. 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 Leave to File Delayed Appeal was forwarded by regular U.S. Mail to _____, Prosecuting Attorney _____, _____, on _____.

_____
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. _____

_____

_____

_____

_____

_____
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

Sworn to and subscribed in my presence this _____ day of _____,

20 ____.

_____
NOTARY PUBLIC

IN THE SUPREME COURT OF OHIO

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

NOTICE OF APPEAL OF APPELLANT _____

_____
NAME AND NUMBER

_____
INSTITUTION

_____
ADDRESS

_____
CITY, STATE & ZIP

_____
PHONE

DEFENDANT-APPELLANT, **PRO SE**

_____
PROSECUTOR NAME

_____
ADDRESS

_____
CITY, STATE & ZIP

_____
PHONE

COUNSEL FOR APPELLEE, STATE OF OHIO

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 _____, ____.

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

_____
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 by regular U.S. Mail to _____, Prosecuting Attorney _____, _____, on _____.

_____
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 INDIGENCY

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 15.3 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.

_____

Sworn to, or affirmed, 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. 15.3. Affidavits not in compliance with that section will be rejected for filing by the Clerk.]

S.Ct. Prac. R. 2.2. Institution of Appeal from Court of Appeals.

(A) Perfection of appeal

(1) (a) To perfect an appeal from a court of appeals to the Supreme Court, other than in a certified conflict case, which is addressed in S.Ct. Prac. R. 4.1, 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. If the appeal is a claimed appeal of right or a discretionary appeal, the appellant shall also file a memorandum in support of jurisdiction, in accordance with S.Ct. Prac. R. 3.1, 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) (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 later of the time prescribed by division (A)(1) of this rule or ten days after the first notice of appeal was filed.

(b) A notice of appeal shall be designated and treated as a notice of cross-appeal if it is filed both:

(i) After the original notice of appeal was filed in the case;

(ii) 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/crossappellee's memorandum and in support of jurisdiction for the cross-appeal shall be filed by the deadline imposed in S.Ct. Prac. R. 3.4.

(3) (a) In a claimed appeal of right or a discretionary appeal, if the appellant intends to seek 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 shall accompany the notice of appeal.

(ii) A copy of the court of appeals' opinion and judgment entry being appealed shall be attached to the motion for stay.

(b) A memorandum in support of jurisdiction shall be filed no later than forty-five days from 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) (a) In a felony case, when the time has expired for filing a notice of appeal in the Supreme Court, the appellant may seek to file a delayed appeal by filing a motion for delayed appeal and a notice of appeal. The motion shall state the date of entry of the judgment being appealed and the reasons for the delay. Facts supporting the motion shall be set forth in an affidavit. 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) (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 timeframe imposed by S.Ct. Prac. R. 2.2(A)(5)(b) and shall include the following:

(i) A notice of appeal that complies with the requirements of S.Ct. Prac. R. 2.2(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. 3.1, 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, from the subsequent entry of judgment.

(6) (a) When, pursuant to App. R. 26(A)(2), a party timely files an application for en banc consideration in the court of appeals, 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, 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 en banc consideration, the appellant shall comply with the timeframe imposed by S.Ct. Prac. R. 2.2(A)(6)(b) and shall include the following:

(i) A notice of appeal that complies with the requirements of S.Ct. Prac. R. 2.2(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. 3.1, 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, from 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 consideration 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 timeframe imposed by S.Ct. Prac. R. 2.2(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. 2.2(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. 3.1, 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 discretionary appeal or a claimed appeal of right with the Supreme Court in accordance with S.Ct. Prac. R. 2.2(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 filed in the discretionary appeal or claimed appeal of right until after the court of appeals' en banc decision.

(B) Contents of notice of appeal

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

(1) The notice of appeal shall state 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) That one or more of the following are applicable:

(i) The case involves affirmance of the death penalty;

(ii) The case originated in the court of appeals;

(iii) The case raises a substantial constitutional question;

(iv) The case involves a felony;

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

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

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

(2) In an appeal of right under S.Ct. Prac. R. 2.1(A)(1), a date-stamped copy of the court of appeals' judgment entry that is being appealed shall be attached to the notice of appeal. For purposes of this rule, a date-stamped copy of the court of appeals' judgment entry shall mean a copy bearing the file stamp of the clerk of the court of appeals and reflecting the date the court of appeals filed its judgment entry for journalization with its clerk under App. R. 22. If the opinion of the court of appeals serves as its judgment entry, a date-stamped copy of the opinion shall be attached.

(3) In a discretionary appeal or claimed appeal of right, 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. 4.4(A), 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 under 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 where a judgment of the court of appeals is being defended by a defendant or upon order of the Supreme Court that counsel be appointed in a particular case.

Effective Date: June 1, 1994
Amended Effective: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; August 1, 2004; January 1, 2008; January 1, 2010; July 1, 2010; October 1, 2011.

Commentary
Division (A)(6) was amended to address an amendment to the Rules of Appellate Procedure that permits the court of appeals to initiate en banc consideration sua sponte.