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Pro Se Packet for Memorandum in Support of Jurisdiction (MISJ) to the Ohio Supreme Court

What should I do if I lost my appeal and want to continue pursuing my case?

You need to read the Supreme Court of Ohio Rules provided with this packet. This is only a guide to those rules, not a substitute for reading the rules.

Should I file?

You should file if you want to continue pursuing your appeal and think your case presents a substantial constitutional question or an issue of public or great general interest. You must include references to U.S. Supreme Court cases and the U.S. Constitution in your argument if you want to be able to continue arguing your issues in federal court. If the Ohio Supreme Court does not accept your case, that will not reflect poorly on you in federal court or be considered a “decision on the merits.”

You **must** file with the Ohio Supreme Court if you want to pursue your claims in federal court. Federal habeas actions are limited to the federal constitutional claims that were presented in your direct appeal and appeal to the Ohio Supreme Court.

When should I file?

Under the rules, you have 45 days from the date when the court of appeals' judgment entry is filed with the court of appeals to file with the Clerk of Ohio Supreme Court. If either a timely application for reconsideration or a timely application for en banc consideration is filed in the court of appeals under App.R. 26(A), the time for filing your appeal in the Ohio Supreme Court is tolled while that application is pending in the court of appeals. If the court of appeals denies the application, you will have 45 days from the date on which the court of appeals files its decision denying the application for reconsideration or application for en banc consideration. See Rule 2.2 of the Ohio Supreme Court's Rules of Practice, a copy of which is attached at the end of this packet.

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.

What information do I need?

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

Where should I file?

You need to file with the Clerk of Ohio Supreme Court. The address is:

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

You also need to send the prosecuting attorney a copy of all pleadings filed. You can find the name and address of the prosecuting attorney in your prison orientation packet.

What documents should I include?

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

1. The Memorandum in Support of Jurisdiction, with a date-stamped copy of the court of appeals' opinion (signed by the judges) and a date-stamped copy of the judgment entry affirming your conviction;
2. The Notice of Appeal;
3. \$100 filing fee or Affidavit of Indigency.

You must mail all three of these documents together to have your documents filed by the clerk. These documents must reach the Ohio Supreme Court Clerk's office within the 45-day deadline. If they do not, the clerk will not accept your case and your documents will be returned without filing. Since the deadline is so strict, it is good practice to make sure you get a receipt when you put the documents in the mail, so that if they do not arrive in time, you can provide proof to the Ohio Supreme Court that you tried to get them in on time. If your documents are not accepted because the clerk does not receive them in time, you need to file a motion for a delayed appeal.

What should I include in the Memorandum in Support of Jurisdiction?

Your memorandum can only be 15 pages. The page limit does not include the Cover Page, the Table of Contents, or the Certificate of Service.

(1) Explanation of why this is a case of public or great general interest and involves a substantial constitutional question: This section is very important. The court wants to know why it should grant review in your case. You must explain to the court why the issues in your case are so important that review should be granted. For example, does the issue in your case affect a lot of other defendants? Explain how the issues in your case will affect other cases. This section frequently is more than one page.

(2) Statement of the Case and Facts: The statement of the facts is basically a summary of the facts that support your legal issues. All of those facts must appear in the records of the trial and appellate courts. The statement of the case is the procedural history of the proceedings in the trial court and the appellate court. These sections can be combined.

(3) Proposition(s) of Law: Assignments of error in the court of appeals are presented in the supreme court as propositions of law. The proposition of law is the legal conclusion the Supreme Court of Ohio must make in order to rule in your favor.

You can only argue the issues that were raised in your original appeal. If you have a copy of the merit brief your appellate attorney filed on your behalf, that should show you the issues you can raise.

If you want to raise issues that were not raised in your original appeal, you must raise them as claims of “ineffective assistance of appellate counsel” for failing to raise them in your appeal.

(4) Argument in Support of Proposition of Law: The argument must explain why the court should rule in your favor. You can rewrite the reasons raised in your appellate brief. You must cite to statutes, court rules, court decisions, law review articles, or other legal authorities to explain why the court should rule in your favor. You need to convince the Court that the lower court was wrong.

What are my chances of success?

The Ohio Supreme Court rarely accepts criminal cases. According the Ohio Supreme Court’s Annual Report, of the 1927 memoranda in support of jurisdiction filed in 2007, only 176 were accepted. Of those, only 61 were felony criminal cases. That means there is probably around a 3% chance your case will be accepted.

But even if your case is not accepted, that doesn’t mean the Ohio Supreme Court disagrees with you or you are wrong. It only means that your case didn’t present the kind of issue the Court wanted to hear. A denial of jurisdiction by the Ohio Supreme Court is not a merits decision and has no meaning in federal court, should you decide to continue pursuing your case in federal court. The federal courts simply require that you gave the Ohio Supreme Court the opportunity to hear your case.

When should I expect a decision?

The Ohio Supreme Court usually decides whether to accept cases within 2-3 months. They will send you notice either way as soon as they decide.

What should I do if the Supreme Court accepts my case?

If the Ohio Supreme Court agrees to hear your case, they will send a notice saying review has been granted. The Court will appoint you counsel to file the merit brief in your case. If your case is accepted and you do not get a notice of counsel being appointed, contact the Office of the Ohio Public Defender.

What should I do if the Supreme Court denies my case?

If the Supreme Court denies your case, they will send you a one-page denial entry. If you want to continue pursuing your case in federal court, you can then proceed to federal court.

Good luck!

INSTRUCTIONS

Please note that these instructions are just suggestions as to how you could present your argument to the Ohio Supreme Court. The Ohio Supreme Court has not approved the enclosed forms. They have been prepared so you can better comply with the rules.

Following this page is a sample of what should be included with sections explaining what needs to be included. After these samples are blank pages for you to fill out using the forms as a guide and to file with Ohio Supreme Court.

1. If you don't have access to a computer or typewriter, please make sure to print as legibly as possible so the court can read your writing. You may write on only one side of the page.
2. In order to prepare the cover page of your memorandum and notice of appeal, you will need to get certain information. Most of the information can be found on your appeal brief or the court of appeals' opinion.
3. When you are finished preparing the documents, make sure you sign all of the documents (you need to sign a total of 5 times). See sample form.
4. Send it to the clerk's office with 1 copy of the Notice of Appeal, 8 copies of the Memorandum and 1 copy of the Affidavit of Indigency. If you want to get proof from the clerk that it was filed, you must provide the clerk with an extra copy of the documents and a self-addressed, postage-paid envelope.
 - The supreme court's pro se guide, which is available on the court's website, includes the following "NOTE," in its discussion of the filing of a Memorandum in Support of Jurisdiction:

If your affidavit of indigency is accepted by the Supreme Court Office of the Clerk, you can file the original memorandum only. You do not have to file the copies required by Rule 8.5.

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

**MEMORANDUM IN SUPPORT OF JURISDICTION
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.

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Page No.

AFTER YOU HAVE COMPLETED FILLING IN THE MEMORANDUM, YOU WILL NEED TO NUMBER THE PAGES. TO DO THIS, WRITE THE NUMBER 1 ON THE FIRST PAGE AT THE BOTTOM (WHICH SHOULD BE THE FIRST PAGE OF YOUR EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT INTEREST), THE NUMBER TWO ON THE SECOND PAGE, ETC.

AFTER YOU HAVE DONE THIS, COME BACK TO THIS PAGE AND WRITE THE NUMBER OF THE PAGE THAT EACH SECTION STARTS ON AT THE END OF THE DOTTED LINE. SO IF YOUR TOOK TWO PAGES TO EXPLAIN WHY THE COURT SHOULD ACCEPT YOUR CASE, YOU WOULD WRITE 1 UNDER "PAGE NO." AFTER THE DOTTED LINE FOLLOWING "EXPLANATION", AND THEN 3 UNDER "PAGE NO." AFTER THE DOTTED LINE FOLLOWING "STATEMENT OF FACTS."

EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.....

STATEMENT OF THE CASE AND FACTS.....

PROPOSITION OF LAW:

CONCLUSION.....

CERTIFICATE OF SERVICE

APPENDIX

Judgment Entry and Opinion, Court of Appeals, FILL IN THE NAME OF THE COUNTY WHERE YOU WERE CONVICTED, (WRITE THE DATE (MONTH, DAY AND YEAR) THAT YOUR APPEAL WAS DENIED. THIS DATE CAN BE FOUND ON THE COURT OF APPEALS' JUDGMENT ENTRY EITHER STAMPED ON THE FRONT PAGE OR ON THE BACK PAGE)

EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTION QUESTION.

THIS SECTION IS VERY IMPORTANT. THE COURT WANTS TO KNOW WHY IT SHOULD GRANT REVIEW IN YOUR CASE. YOU MUST EXPLAIN TO THE COURT WHY YOUR CASE SHOULD BE GRANTED. EXPLAIN HOW THE ISSUES IN YOUR CASE ARE GOING TO AFFECT OTHER CASES. THIS SECTION CAN BE MORE THAN ONE PAGE.

SAMPLE

STATEMENT OF THE CASE AND THE FACTS

THE STATEMENT OF THE FACTS IS BASICALLY A SUMMARY OF THE ON-THE-RECORD FACTS THAT SUPPORT YOUR PROPOSITIONS OF LAW. THOSE FACTS MUST BE RELEVANT TO YOUR PROPOSITIONS OF LAW. THE STATEMENT OF THE CASE IS THE PROCEDURAL HISTORY OF THE COURT PROCEEDING IN THE TRIAL COURT AND THE APPELLATE COURT. THESE SECTIONS CAN BE COMBINED. USUALLY, THERE IS A STATEMENT OF THE CASE AND FACTS IN THE BEGINNING OF YOUR APPEAL BRIEF THAT YOU CAN USE TO STATE THE FACTS AND PROCEDURE.

SAMPLE

PROPOSITION OF LAW

ASSIGNMENTS OF ERROR IN THE COURT OF APPEALS ARE PRESENTED IN THE SUPREME COURT AS PROPOSITIONS OF LAW. THE PROPOSITION OF LAW IS THE FINDING OF LAW THE SUPREME COURT OF OHIO MUST MAKE IN ORDER TO RULE IN YOUR FAVOR.

IF YOU HAVE MORE THAN ONE ISSUE, MAKE SURE TO SEPARATE EACH "PROPOSITION OF LAW" AND NUMBER THEM. EACH PROPOSITION OF LAW SHOULD HAVE ITS OWN LEGAL SUPPORT AND ARGUMENT.

YOU CAN ONLY ARGUE THE ISSUES THAT WERE RAISED IN YOUR ORIGINAL APPEAL. IF YOU HAVE A COPY OF THE MERIT BRIEF THAT YOUR APPELLATE ATTORNEY FILED ON YOUR BEHALF, THAT SHOULD SHOW YOU WHICH ISSUES YOU CAN RAISE.

IF YOU WANT TO RAISE ISSUES THAT WERE NOT RAISED IN YOUR ORIGINAL APPEAL YOU MUST RAISE THEM AS CLAIMS OF "INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL" FOR FAILING TO RAISE THEM IN YOUR APPEAL.

THE ARGUMENT MUST EXPLAIN WHY THE COURT SHOULD RULE IN YOUR FAVOR. YOU CAN REWRITE THE REASONS RAISED IN YOUR APPELLATE BRIEF. YOU MUST CITE TO STATUTES, COURT RULES, COURT DECISIONS, LAW REVIEW ARTICLES, OR OTHER LEGAL AUTHORITIES TO EXPLAIN WHY THE COURT SHOULD RULE IN YOUR FAVOR. YOU NEED TO CONVINCING THE COURT THAT THE LOWER COURT WAS WRONG.

CONCLUSION

For the above stated reasons, this Court should accept jurisdiction.

Respectfully submitted,

SIGN YOUR NAME

SIGNATURE

YOUR NAME AND INMATE NUMBER

NAME AND NUMBER

NAME OF YOUR INSTITUTION

INSTITUTION

ADDRESS OF THE INSTITUTION

ADDRESS

CITY, STATE & ZIP

PHONE

DEFENDANT-APPELLANT, PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction 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

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 :
 vs. :
 :
 YOUR NAME, :
 :
 Defendant-Appellant. :
 :

Case No. LEAVE THIS SPACE BLANK

On Appeal from the NAME OF THE COUNTY WHERE YOU WERE CONVICTED
County Court of Appeals
APPELLATE COURT NAME (IT WILL BE FIRST, SECOND, ETC.)
Appellate District

C.A. Case No. CASE NUMBER OF 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.

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 CAN USUALLY BE FOUND ON THE COURT OF APPEALS' JUDGMENT ENTRY, 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

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

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

_____,

Defendant-Appellant.

:
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:
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:
:
:

Case No. _____

On Appeal from the _____
County Court of Appeals
_____ Appellate District

C.A. Case No.

**MEMORANDUM IN SUPPORT OF JURISDICTION
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

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GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION.....

STATEMENT OF THE CASE AND FACTS.....

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW.....

PROPOSITION OF LAW:

CONCLUSION.....

CERTIFICATE OF SERVICE

APPENDIX

Judgment Entry and Opinion, Court of Appeals, _____ County,
(DATE)..... A-1

**EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL
INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTION QUESTION.**

STATEMENT OF THE CASE AND THE FACTS

PROPOSITION OF LAW

CONCLUSION

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 Memorandum in Support of Jurisdiction was forwarded by regular U.S. Mail to _____, Prosecuting Attorney, _____ County, _____, Ohio _____, this _____ day of _____, 20__.

SIGNATURE

NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

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.	:	

APPENDIX TO

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT _____

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

_____,

Defendant-Appellant.

:
:
:
:
:
:
:
:
:
:
:

Case No.

On Appeal from the _____
County Court of Appeals
_____ Appellate District

C.A. Case No.

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 U.S. Mail to _____, Prosecuting Attorney, _____ County, _____, _____, Ohio _____, this _____ day of _____, 20__.

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.

AFFIANT

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

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.