

Fine Points of Ohio Supreme Court Practice

Akron Bar Association

March 31 2017

John T. Martin

Materials

Supreme Court of Ohio: Cheat Sheet for Litigating Typical Appeals from the District Courts of Appeals (N.B. Does Not Include Capital, Custody or Adoption Cases)

(originally prepared in conjunction with CLE presentation in Cleveland by Irene Keyes-Walker and John Martin).

**Supreme Court Contact: 65 South Front Street
Columbus, Ohio 43215
supremecourt.ohio.gov**

**614-387-9530 (Clerk's Direct Line)
800-826-9010 (main number)
614-387-9539 (Clerk's FAX)**

Rules of Practice of the Supreme Court of Ohio

<http://supremecourt.ohio.gov/LegalResources/Rules/practice/rulesofpractice.pdf>

Rules of Thumb

- 1. All dates specified in the Rules are dates of filing by OSC Clerk. E-filing is not enough if the Clerk does not actually file it that day because of compliance errors (make sure it's docketed by accessing Docket at supremecourt.ohio.gov).**
- 2. Supreme Court day ends at 5 p.m. -- not midnight**

Getting Started: Documents Related to Initiating a Case (Rule 7.01 et seq.)

Notice of Appeal (NOA) and Memorandum in Support of Jurisdiction (MSJ): Non-Capital

No later than 45 days after decision, *timely--filed* reconsideration denial or *timely-filed* en banc denial, whichever is later. **Motions to Certify Conflict Do Not Toll Time Limit for Filing Appeal.**

MSJ pleadings must include file stamped copy of decision below and file stamped copy of denial of en banc – in order to establish timeliness

If waiving filing fee, affidavit (not more than 6 months old) or prior journal entry in any lower court that considered the case (regardless of date) establishing indigency. **Journal entries only** – no postcards.

Waiver of Jurisdictional Memorandum: 20 days after filing of MSJ.

Memorandum Opposing Jurisdiction

Not later than 30 days after filing of MSJ

Initiating a Cross-Appeal (Rule 7.05)

Notice of Cross-Appeal

Latter of time to file NOA or ten days after opposing party's filing of its NOA.

Jurisdictional Memorandum of Appellee/Cross-Appellant

30 days from **date that Appellant's MSJ was filed (S.Ct. Prac. R. 3.4)**

Jurisdictional Memorandum in Response to Cross-Appeal (filed by Appellant/Cross-Appellee)

30 days from filing of Jurisdictional Memorandum of Appellee/Cross-Appellant

Notification of OSC of Certified Conflict Proceedings

Notice to OSC of District Court of Appeals' Pending Consideration of Conflict

Time limit not specified but S.Ct. Prac. R. 7.07 appears to contemplate that **notice will be filed at same time as NOA**

Decision on Motion to Certify Conflict

If court certifies conflict, must be filed with the OSC Clerk within 30 days of certification. (Rule 8.01)

If court does not certify, notice of non-certification must be given "immediately." (Rule 7.01)

Reconsideration of Denial of Jurisdiction (Rule 18.02)

Motion for Reconsideration of Denial of Jurisdiction

Within 10 days of ruling

Response to Motion for Reconsideration of Denial of Jurisdiction

Within 7 days of Reconsideration Motion.

Briefing and Other Pleadings Regarding Accepted Cases (Section 16)

Merit Brief of Appellant

40 days after record is transmitted; one extension of either 10 days (unilateral) or 20 days (by stipulation of opposing counsel).

Merit Brief of Appellee

30 days after Appellant's Brief filed. Same extension rules as stated above for Appellant

Reply Brief of Appellant

20 days. Same extension rules but only if no extension was sought previously.

Briefing, cont'd

Cross-Appeals: First Brief (of Appellant/Cross-Appellee, sets forth merits of appeal)

40 days after record is transmitted; one extension of either 10 days (unilateral) or 20 days (by stipulation of opposing counsel).

Cross-Appeals: Second Brief (of Appellee/Cross-Appellant, addresses merits of appeal and merits of cross-appeal)

30 days after Appellant/Cross-Appellee's Brief filed. Same extension rules as stated above.

Cross-Appeals: Third Brief (of Appellant/Cross-Appellee, replies to Appellee arguments regarding appeal, and addresses merits of cross-appeal)

30 days after Appellee/Cross-Appellant's Brief filed. Same extension rules as stated above.

Cross-Appeals: Fourth Brief (of Appellee/Cross-Appellant, replies to Appellant's arguments regarding cross-appeal).

20 days after Appellant/Cross-Appellee's Brief filed. Same extension rules as stated above.

Supplemental Authority for or after Oral Argument (Rule 17.08 - 17.09)

Not less than 7 days prior to argument date. If authority promulgated after that time but before argument, can still be filed before argument. If authority promulgated after argument, can be filed post-argument.

**Pleadings After Decision on Merits or
After Dismissal of Case as Improvidently Allowed (Rules 18.02 - 18.03)**

Motion for Reconsideration of Judgment of OSC

10 days after decision.

Memorandum Opposing Motion for Reconsideration of Judgment:

10 days after Motion for Reconsideration

Sample Pleadings

The following cases have pleadings that provide good examples for practitioners in the Ohio Supreme Court.

State v. Lalain, Ohio S.Ct. No. 2012-0302 (cert. conflict case) and 2012-0408, consolidated

Notice of certified conflict: http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=702631.pdf

MSJ: http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=703432.pdf

Reconsideration: http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=708575.pdf

Appellant's Brief: http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=714356.pdf

Appellant's Reply Brief: http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=718178.pdf

State v. Chambliss, Ohio S.Ct. No. 2008-2251

MSJ: http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=633998.pdf

State v. Ferguson, Ohio S.Ct. No. 2007-1427

MSJ: http://supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=601871.pdf