

**ATTORNEYS RESPONSIBILITIES
FOR
APPEAL RECORDS
DOCKETED
IN THE
COURT OF APPEALS**

Not a week goes by that I do not receive calls from attorneys regarding omissions in records transmitted to the Court of Appeals for docketing, and in turn, receive a request for extension to file briefs or motions to supplement the record so that attorneys can file meaningful briefs with the Court.

There are steps attorneys can take to minimize the problems caused by omissions in the appellate record which is received by the Court of Appeals.

The following is a list of practice tips that will make life easier for you once the appeal is docketed with the Court of Appeals.

1. **DEPOSITIONS**

If depositions are to be sent with the record, the attorney should so state in the Notice of Appeal and make sure the lower court clerk's office has the depositions on hand before the record is sent to the Court of Appeals. It is your responsibility to file depositions with the trial court and to make certain they are part of the record in the trial court. If depositions have not been opened or viewed by the trial court, the attorney should obtain an order from the trial court judge to permit the depositions to be unsealed, copied and transmitted with the record on appeal. If the trial court declines to issue such an order, you may request the clerk at the trial court to send the original depositions, which will be accepted by the Court of Appeals. If the trial court clerk declines to send the original depositions and the trial court judge declines to unseal the depositions, you may file a Motion to Supplement the Record in the Court of Appeals being specific as to which depositions you want the trial court clerk to send the Court of Appeals.

2. **AUDIO/VIDEOTAPES**

If audio or videotapes are to be transmitted with the record on appeal, the attorney should so specify in the Notice of Appeal and be sure the items are turned over to the trial court clerk for inclusion in the record on appeal. Often times, the court reporter will maintain custody of such tapes. It may not be sufficient to state in the Notice of Appeal that the clerk shall omit nothing from the record on appeal. You should check with the trial court clerk to see what that office's policy is about transmitting audio and videotapes. It is your responsibility to contact the court reporter and make sure such tapes are filed with the clerk. The Court of Appeals prefers copies of the audio/videotapes, however, the Court will accept originals. Any tapes sent to the Court must come up as certified by the trial court clerk as part of the record.

3. **MOTIONS/ORDERS**

All motions for out-of-time appeal, motions for new trial and the like should be reduced to writing by the lower court judge and entered in the trial court, that is, filed with the clerk of the trial court, before the Notice of Appeal is filed. Attorneys should not file an out-of-time appeal without an order from the trial court approving such. If the trial court denies the motion for out-of-time appeal, that may be appealed. No Notice of Appeal should be filed unless the trial court has entered an order denying the motion for new trial, and that order has been reduced to writing and filed with the trial court clerk. The trial court's oral recitation in the transcript that the motion for new trial is denied is not sufficient to permit the Court of Appeals to docket an appeal.

4. **EXHIBITS**

If exhibits are to be a part of the record on appeal, the attorney should so state in the Notice of Appeal and make sure the trial court clerk has the items and documents available before the record is sent to the Court of Appeals. Generally photostatic copies of documents and photographs will be sufficient for the appellate record. If the Court of Appeals finds that the photostatic copy of a particular document is not sufficient, the Court, on its own motion, can direct the trial court to send up the original, as a supplemental record.

5. **TRANSCRIPTS**

The Notice of Appeal should state exactly which transcripts should be included in the record on appeal. If the Notice of Appeal says a transcript of evidence shall be filed for inclusion with the record on appeal, and the transcript of the trial comes up, the clerk's office will docket the appeal. However, if a transcript on a Motion to Suppress, Motion for Summary Judgment or Motion for New Trial is imperative for the Court's review of the trial court's action, and that transcript is not included with the record on appeal, it may require that the appeal be remanded to the trial court for the completion and filing of such other transcript before the Court of Appeals can address the issues involved in the appeal. This will cause delay, added expense to the parties and extra work for the lawyers and the Court. Once a case is docketed with the Court of Appeals, the constitutional requirement that the Court dispose of a case within two terms kicks in. Any delay in the appropriate record coming to the Court simply reduces the available time for the Court to address the issues raised in the appeal.

6. **NAME, ADDRESS AND BAR NUMBER**

Attorneys should always type their name, current address and bar number on the Notice of Appeal. If the attorney's name is not typed and the signature is illegible, then the Court must refer to the bar number in order to docket the appeal. Any change of address by the attorney after the Notice of Appeal is filed with the trial court and before the case is docketed with the Court of Appeals should be communicated to the trial court and made a part of the record on appeal. The Court of Appeals uses the address in the Notice of Appeal to send out the Docketing Notices. Any change of address

after the case has been docketed in the Court of Appeals must be communicated to the Court of Appeals in order for attorneys to receive the orders and opinions of the Court.

7. **CERTIFICATE OF SERVICE**

Attorneys filing a Notice of Appeal are responsible for providing in the Certificate of Service on the Notice of Appeal the full name and complete address of opposing counsel. Again, this is necessary in order for the Court of Appeals to be able to send a Docketing Notice to opposing counsel.

8. **MOTIONS TO SUPPLEMENT THE RECORD**

Any party wishing to supplement the record on appeal may file such motion in the trial court pursuant to OCGA §5-6-41(f) or file such motion in the Court of Appeals, after the appeal has been docketed with the Court of Appeals. Any Motion to Supplement the Record should be specific as to what documents or items are to be included in the supplemental record and the reasons such items should be included.

9. **RECORD CERTIFIED BY THE CLERK**

It is the responsibility of counsel to have before the Court of Appeals the record, transcripts, exhibits and other matters which parties wish the Court to consider on appeal. All transcripts, exhibits and portions of the record must come to the Court of Appeals as certified by the trial court clerk. The Court of Appeals cannot receive any such documents, transcripts or exhibits from attorneys or parties.

10. **FILING THE TRANSCRIPT**

If you begin preparation of your brief prior to receiving your Docketing Notice, many times you will realize that certain necessary portions of the record are not on file with the clerk of the trial court. The party having the responsibility of filing the transcript should cause it to be filed within 30 days after filing the Notice of Appeal or designation by appellee, as the case may be, unless the time is extended as provided in OCGA §5-6-39. In all cases, it should be the duty of the trial court judge to grant such extensions of time as may be necessary to enable the court reporter to complete the transcript of evidence and proceedings. OCGA §5-6-42.