

Hints for District Attorneys

Practicing in the

Court of Appeals of Georgia

On the rare occasion you find yourself the appellee in the Court of Appeals, please remember to include the \$80.00 filing fee when you file your brief. Without the \$80.00 filing fee, or a sufficient pauper's affidavit, the clerk is prohibited from receiving the Appellant's Brief. See OCGA §5-6-4.

On the rare occasion you find yourself filing an application, failure to include the filing fee may prove fatal. Again, OCGA §5-6-4 provides that the clerk is prohibited from receiving the application without the \$80.00 filing fee or a sufficient pauper's affidavit.

If a brief is filed late, the appeal is subject to being dismissed and the appellant is subject to contempt. See Court of Appeals Rules 13 and 26(a). If an application is filed

late, it is jurisdictional and deprives the Court of jurisdiction to review that application, and in most cases the application will be dismissed. See OCGA §5-6-34(b) and 35.

Also, the application must contain a stamped filed copy of the order or judgment you are appealing, and in the case of an interlocutory application, must contain a stamped filed copy of the order being appealed and a stamped filed copy of the Certificate of Immediate Review. Without a copy of the stamped filed order and/or stamped filed copy of the Certificate of Immediate Review, the Court of Appeals cannot determine if the application was timely filed.

Under OCGA §5-6-35(j), if an application is filed when a direct appeal should have been filed, the application will be granted with an order permitting the applicant to file a direct appeal within ten days of the date of the order granting. This subsection (j) saving clause does not work the other way. For example, if you file a direct appeal in an action which is required to come up as an application under 5-6-35, the Court does not

have jurisdiction and there is no saving statute to convert the direct appeal into an application.

Please see OCGA §42-12-1. This is the Prisoner Litigation Reform Act of 1996.

This provides that whenever a prisoner files any civil lawsuit, the prisoner must comply with the terms of the statute, which in most cases requires the inmate to initiate the appeal by filing a discretionary application.

Court of Appeals Rule 26 sets out the time frames for filing briefs in the Court of Appeals. These time frames are also set out in the Docketing Notice. The time for filing the Brief of Appellant is 20 days after the date of docketing, not 20 days after the receipt of the Docketing Notice. The appellee has 40 days after docketing to file Appellee's Brief, or 20 days after the appellant files, whichever is later. The appellant has the right to file a Reply Brief, but it is not required. The Reply Brief must be filed within

20 days of the date of the filing of Appellee's Brief. The Reply Brief is limited to 15 pages.

Under Court of Appeals Rule 3, when the expiration date falls on a Saturday, Sunday or an Official State or National Holiday, the time for filing is extended to the next business day. Also, the Court of Appeals has a drop box outside of the Clerk's Office (Room 334) in the Judicial Building, located at 40 Mitchell Street. Any filings placed in the drop box after 4:30 p.m., when the Clerk's Office closes, will be retrieved by the clerk's office staff the following business day, but the filing date will be the previous business date. The Judicial Building remains open until 5:30 p.m. on each day.

Court of Appeals Rule 4 also permits filing by certified or registered mail. This rule is applicable to all filings except a Motion for Reconsideration or any filings which the Court orders to be filed physically by a certain date.

To comply with Rule 4, the document must be filed by certified or registered mail with the official United States Postal Service cancellation postmark date on the envelope or the container. In other words, your office meter date is not sufficient.

Always have your certified mail receipt hand stamped by the Post Office. That way, if your pleading arrives in the Court of Appeals without the official United States Postal Service cancellation postmark date, you may provide the Court with your stamped receipt, or a copy thereof, and receive the benefit of the certified mail date.

If you need to file an extension of time to file your brief, you must request extension by motion, not by letter, and you must demonstrate in your motion a valid reason why the extension is required.

OCGA §5-6-43(c) requires the appellate courts to expedite criminal appeals in which the defendant is incarcerated. In order to comply with that statute, it is difficult for the Court to grant extensions, particularly to the State.

If you do request an extension of time to file your brief, do so by filing a motion (an original and two copies, with service to opposing counsel), setting out a valid reason or reasons and state if the defendant is incarcerated. Pursuant to Court of Appeals Rule 16(a), extensions of time to file briefs must be requested by written motion and the request must be filed prior to the date the brief is due.

If the Court denies your extension, it does not mean that the appeal has been dismissed (in the case of an appellant,) or that the appellee will be held in contempt, although either of those options is possible. If your motion for an extension is denied, you should file your brief as soon as possible.

Many District Attorney Offices have problems with pro se appeals, particularly with service of the pro se appellant's brief to the District Attorney's Office. The Court of Appeals wants your brief. This is particularly true with pro se appeals, many of which are filed with varying degrees of competency and expertise.

When you receive a service copy of the pro se defendant's Notice of Appeal, open an appellate file on that case in your office. When you receive a Docketing Notice from the Court of Appeals on that case, tickle your calendar for 30 days from the date of the Docketing Notice.

If you have not received your service copy of the Appellant's Brief, or an order from this Court granting an extension, call the Clerk, Bill Martin, at (404) 657-8352 and ascertain if the appellant has filed a brief. If the pro se appellant has filed a brief and has failed to serve you, the clerk will send a copy of the brief to you. At that time, you may want to request an extension of time to file your brief with the valid reason that the defendant failed to serve you with a copy. If no brief has been filed by that time, you may wish to file your own Motion to Dismiss the Appeal for the failure of defendant to comply with the Court's rules.

Please remember that the Rules of the Court of Appeals of Georgia are not designed to make life complicated for you. They are a culmination of what works best to help the Court of Appeals meet its burden of disposing of cases fairly and efficiently and giving to each appeal the proper consideration to which it is due. The Court of Appeals of Georgia is probably the busiest appellate court in the country, particular in terms of the number of opinions per judge which are issued each year. In addition to a very high caseload, the Court of Appeals has a constitutional mandate to dispose of every case at the term for which it is entered on the Court's docket for hearing or at the next term. See Georgia Constitution 1983, Article VI, Section IX, Paragraph II.