

Appellate Practice: The Clerk's Perspective

An unweighted top ten

Presented by:

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The Court of Special Appeals of Maryland

1. Prepare for your appeal at the time you note your appeal.

- a. Review the record at the circuit court before it is transmitted to the appellate court – that is the simplest way to ensure that it is complete.
- b. Order the relevant transcript and follow up to ensure it is in the record before it is transmitted.
- c. Ensure all trial exhibits are in fact in the record
- d. Compile a list of documents you believe should be in the record extract – confer with opposing counsel and get his or her concurrence on the content. (Rule 8-501(d)). Note, if opposing counsel is not being cooperative you still need to file the record extract.
- e. Anticipate the appellate timeline (see #2 below).

2. Know the appellate timeline.

- a. The notice of appeal must be filed within 30 days after the entry (not service) of the appealable judgment on the circuit court's docket. There is no mechanism to extend the filing deadline unless the appellant has filed a motion for new trial, a motion for JNOV, or a motion to alter or amend within 10 days of the entry of the judgment. (Rule 8-202(c)).
- b. In most civil cases, a Civil Appeal Information Report (Rule 8-205) must be filed in the COURT OF SPECIAL APPEALS within 10 days of noting an appeal (the report must include a copy of the notice of appeal, the judgment appealed from and a copy of the circuit court docket entries).
- c. Within 30 days of the filing of the information report, you will either get an Order directing the preparation of the transcript (we call it an Order to Proceed) or you will be involved in a prehearing conference or ADR.
- d. Within 10 days (5 days in child access cases (Rule 8-207)) of the Order to Proceed, you must order any transcripts and file a copy of the transcript order with the Clerk.

- e. 60 days after the Order to Proceed, the circuit court clerk will send us the record.
- f. Upon receipt of the record COSA will send you a notice of the receipt of the record, the date Appellant's brief is due, and the projected dates of argument (we colloquially call this a Session Brief Notice). Note: when you receive this notice, check your calendar and inform us immediately (and update us as necessary) of any schedule conflicts for arguments.
- g. The Court of Appeals' Revised Administrative Order for Continuances of Conflicting Case Assignments or Legislative Duties (May 15, 1995) is still extant. Please find it at www.mdcourts.gov/adminorders/.
- h. Appellee's brief is due 30 days after appellant's brief is filed.
- i. Appellant's reply brief is due 20 days after Appellee's brief is filed, but in any event no later than 10 days prior to argument.
- j. Approximately, 4-5 weeks prior to argument, you will receive notice of the date of your argument.
- k. Following argument, the opinion will be filed.
- l. Within 30 days of the filing of the opinion, either party may file a motion for reconsideration. **NO RESPONSE IS PERMITTED UNLESS REQUESTED BY THE COURT.** The court will not grant a reconsideration without a response from the opposing party. Rule 8-605.
- m. You have up until 15 days following issuance of the mandate to file a petition for writ of certiorari.
- n. At the Court's current capacity, arguments are scheduled approximately 9 – 10 months after the receipt of the record. Recall, no arguments are scheduled in July and August (except child access cases).
- o. Arguments:
 - i. Held in one of two courtrooms at the Courts of Appeals building although occasionally the Court will sit at the University of Maryland or University of Baltimore law schools.
 - ii. Each side is afforded 20 minutes per side. Rule 8-522(a) – **THIS IS A RECENT RULE CHANGE.**
 - iii. Up to two attorneys can argue each side and may divide the argument time between them.
 - iv. Appellant may reserve as much of their 20 minutes as they choose for rebuttal.

- v. Please check in with the clerk between 8:30 and 9:00 – Arguments begin promptly at 9:30.
- vi. If you are running late to argument please call us at 410.260.1450 and let us know your status before 9:00 a.m.
- vii. With a few exceptions, no arguments are held in July and August.
- p. Opinions:
 - i. Once the panel has reported out its opinion it is promptly filed and posted on the Courts webpage.
 - ii. If the opinion is to be reported, that decision will be made at the Court's monthly conference.

3. *Your appearance:*

- a. If your appearance is stricken in the circuit court, it should not transmit to this Court.
- b. If your appearance has not been stricken in the circuit court and you do not want your appearance to be entered in the Court of Special Appeals, you may send us a letter asking that your appearance not be entered. This works so long as we have not docketed the record. (Rule 8-402(a)(2) and 8-402(e)).
- c. After the record has been filed, you can request that your appearance be stricken pursuant to Rule 8-402(f) and Rule 2-132.
- d. If the Public Defender enters their appearance, yours is automatically terminated.
- e. Stating that "the Public Defender will enter their appearance" or "Please refer this case to the Public Defender" will not remove your appearance.
- f. Be mindful of filing deadlines for briefs when you are striking your appearance.

4. *Stipulations and Extensions of Time.*

- a. Counsel are permitted to stipulate to the extension of time (Rule 8-502(b)) so long as the stipulation is filed prior to the date the brief is due and does not alter the argument schedule or require that Appellee's brief be filed less than 30 days prior to argument. This is not an invitation to stipulate to the last possible moment, however, given the time between the filing of the record and the argument dates, counsel have ample time to control their schedule.
- b. Extensions of time to file a brief. If a stipulation is not possible, counsel may file a motion to extend time to file a brief (Rule 8-

8. *Be proactive.*

- a. Do not assume that the court is going to sua sponte take action on non-compliant briefs, untimely appeals, untimely briefs, moot appeals, failures to transmit the complete record, transmission of transcripts etc.
- b. If the appellant has failed in these respects (and others), please file the appropriate motion.
- c. File motions to extend, postpone etc. as early as possible.

9. *In general know the rules and statutes.*

- a. Almost every title of the Rules has some impact on the appellate process.
- b. Especially Title 20 (MDEC).
- c. Courts and Judicial Proceedings Article, §§ 12-301, 12-302, 12-303 (permitted interlocutory appeals), etc.
- d. There are no secret rules or practices.

10. *Our records, access to them, and MDEC.*

- a. While we have a “database” that we use for case management, it is not of the modern world.
- b. It is not available remotely or on case search. You can request copies of the docket entries and you can review the record and our files in our offices.
- c. Generally we will not email or fax these to you.
- d. MDEC is coming and will allow you greater remote access to our files.

Recent and Upcoming Changes

- 1. Initial filing fees for noting an appeal now include an \$11.00 surcharge (included with the \$50.00 filing fee payable to the Court of Special Appeals).
- 2. Page limits have given way to word counts.
- 3. The Court of Special Appeals, from May 1, 2015 onward, posts its unreported opinions on its webpage.
- 4. MDEC has been in Anne Arundel County for the past year and it is on its way to the Upper and Lower Eastern Shore soon.

5. The fee waiver rules have changed. See Rule 1-325.1 for details on appellate fee waivers in civil cases.

A Final Word

What has been said in these pages is simply a guide or “best practices” tip sheet for appellate litigants. I have endeavored to keep my comments in line with the rules. To the extent that I have erred off the straight path, please use the Rules as your guide rather than my comments. Also I have focused my comments primarily on civil cases filed in the Court of Special Appeals.