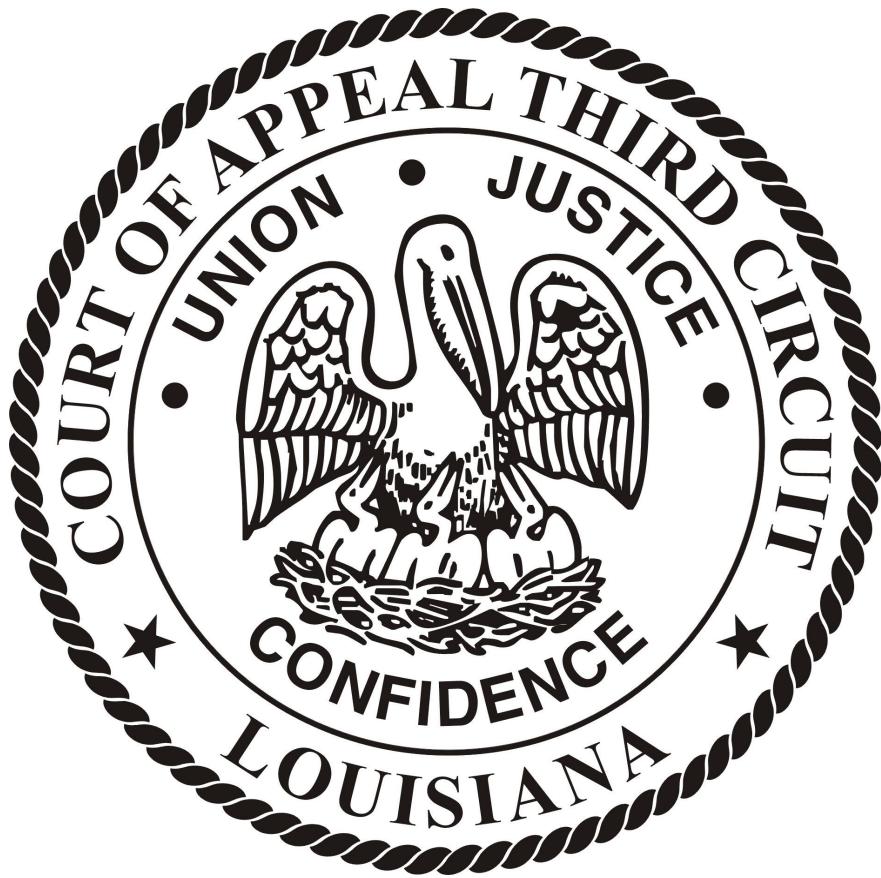


COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA



PRO SE MANUAL

Introduction

This pamphlet is intended primarily to assist non-attorneys with the basic procedural steps which must be followed when filing an appeal or a supervisory writ application with the Third Circuit Court of Appeal. ***This pamphlet is not legal advice and should not be cited as legal authority.*** The information in this pamphlet is not intended to replace the Uniform Rules . Courts of Appeal, or the internal rules of the Third Circuit Court of Appeal, but should be used in conjunction with the rules.

This pamphlet reflects the Uniform Rules . Courts of Appeal in effect as of January 1, 2001. The rules are always subject to change without notice. Therefore, you should consult the rules for any changes. You or your lawyer, if you are represented by one, may call the Third Circuit Clerk's Office if you have a specific procedural question about how to file your papers with the Court. Although our staff will try to help answer your procedural questions, you must remember ***employees of the Court of Appeal are not permitted to give legal advice or make specific recommendations to you on how you should pursue your claims on appeal, or by writ application.***

Glossary of Terms

Appeal. A review by this court of what happened in the court below to determine whether any mistakes occurred, and, if so, whether the party who filed the appeal is entitled to have the decision of the court below reversed or modified.

Appellant. A party who appeals from the court below's decision.

Appellee. A party against whom an appeal is taken and who responds to the appeal.

Brief. A written statement that explains the facts of the case and arguments of a party to an appeal.

Interlocutory order. An order that addresses preliminary or intermediate matters and is issued before the lower court's final decision.

Jurisdiction. Authority of the Court to hear a matter or case.

appellate jurisdiction refers to this Court's authority to review and revise the lower court's final decision.

supervisory jurisdiction refers to this Court's authority to hear and decide an interlocutory matter prior to the lower court's final decision.

original jurisdiction refers to this Court's authority to hear and decide an interlocutory matter before any other court has reviewed it.

Motion. A written application requesting the court to make a specific ruling or order.

Pro se. A person who does not retain a lawyer and appears on their own behalf before the Court.

Writ. Although there are several different types of writs, they are issued to prohibit a trial court from exceeding its jurisdiction or to compel a trial court to perform a mandatory duty. A supervisory writ application, if timely filed, can be reviewed by this Court to correct or modify a lower court's ruling on an intermediate or interlocutory matter.

What is the Louisiana Third Circuit Court of Appeal?

The Third Circuit Court of Appeal consists of twelve Judges, including a Chief Judge. The Court sits in panels of three Judges to decide most appeals and writ applications.

An appeal is not a new trial. The parties before the Court of Appeal will not be permitted to conduct discovery, call witnesses, or offer any evidence that was not presented first to the court below. The Court decides appeals and writ applications strictly on the basis of the record that existed in the court and the written briefs that are filed by the parties. On appeal, the parties may request oral argument.

The Third Circuit has appellate jurisdiction and supervisory jurisdiction over the lower courts within its circuit. A party has the right to an appeal from a final appealable judgment or an interlocutory judgment which causes irreparable injury. A party has the right to seek supervisory relief from an interlocutory ruling of the lower court which

causes irreparable injury. A writ application is not a substitute for a timely filed appeal.

Where is the Third Circuit Court of Appeal located?

The Third Circuit Court of Appeal is located in Lake Charles, Louisiana. The Court's regular business hours for accepting filings are Monday through Friday, 8:30 a.m. to 4:30 p.m. If you have a question about your appeal, you should direct your letter or telephone calls to the Clerk's Office in Lake Charles, Louisiana:

Clerk of Court
Third Circuit Court of Appeal
P.O. Box 16577
Lake Charles, LA 70616
(337) 433-9403

No party is permitted to initiate contact directly with any individual judge of this Court regarding any case.

What orders may be appealed to the Louisiana Third Circuit?

In civil cases the Third Circuit has appellate jurisdiction from final appealable orders issued by a trial judge or a worker's compensation judge. An order is final if it resolves all the issues including the issue of attorney's fees. A partial final judgment may also be appealed if the trial court has designated it as final appealable. A party may also appeal from an interlocutory ruling only if it causes irreparable injury. Appeals from interlocutory rulings are limited to only several instances, and generally a party would seek supervisory relief by way of a writ application.

In a criminal case, a defendant may appeal to this Court from a judgment (imposition of sentence) in a case triable by jury, except where the death penalty has been imposed. The state has the right to appeal in limited circumstances.

What rulings may be reviewed by supervisory writ applications?

Interlocutory rulings which cause irreparable injury may be reviewed by this Court by supervisory writ applications. An order is interlocutory if it decides a preliminary matter before the final ruling on the merits of the issues or claims before the Court.

Do you need a lawyer?

Individuals may appear before the Third Circuit Court of Appeal without a lawyer. Although an individual is not required to have a lawyer, most people find that having a lawyer on appeal is helpful to them. If you pursue your appeal without the assistance of a lawyer, you are still required to comply with the rules of the Court. You may find it helpful to refer to several legal resources in drafting the issues you want to present in your brief on appeal. These resources include Uniform Rules Courts of Appeal, the Louisiana Civil Code, Louisiana Codes of Civil and Criminal Procedure, Louisiana Revised Statutes, and West's Louisiana Cases.

APPEALS

Where do I file my motion for appeal?

An appellant must file his motion and order for appeal timely with the lower court which rendered the ruling. It is important for the appellant to know the time delay for filing his request for an appeal. Once the trial court grants your order of appeal, the Clerk's Office will prepare the record and send it to the Court of Appeal. Once an appellate record is lodged with this court, our office will send you a Notice of Lodging of the appeal record. The Notice of Lodging will state the time to file your brief and the time period to request oral argument.

What is the appellate record?

The record is a compilation of all the original papers and exhibits filed with the court below in your case. The record is transmitted automatically by the court below to this court after the motion and order for appeal is signed.

The record will include the transcript if available and applicable. It will also include the petition and other pleadings; pretrial orders; motions; any written orders, opinions or judgments of the court below, among other things. It includes all documents and exhibits admitted into evidence by the court below. Material that you obtained after the ruling of the trial court, or that was not presented to the trial court and admitted into evidence, is not considered part of the record.

Remember, it is your responsibility to make sure that the record contains all of the relevant material that is necessary to decide your appeal. You should review the record to insure that there are no documents or pleadings missing from the record.

How do I file an appellate brief with the Third Circuit Court of Appeal?

Uniform Rules - Courts of Appeals, Rules 2-12.2, 2-12.3, and 2-12.4 2-12.5, and 2-12.7, as well as Internal Rule 17 for the Court of Appeal Third Circuit explain the form, contents, and time for filing briefs on appeal. The Court is strict about enforcing these rules if a brief is filed by a lawyer on behalf of a party. If you do not have a lawyer, however, the court will relax certain rules regarding the form and content of your brief with the following exceptions:

- Provide the required number of copies to the Court. Usually the court requires an original plus three copies of a brief.
- Your brief must contain a certificate of mailing listing all parties and all counsel, indicating the parties each represent and showing how and when such service of the brief was accomplished. Legible copies of all briefs must be delivered or mailed by the party to all other parties' counsel of record. Additionally, in a criminal appeal, a copy of the brief must be delivered or mailed to the judge who presided over the trial.
- If typed, all briefs must be typed in 14 point or larger. Briefs on 8 ½" by 14" paper shall not exceed 28 pages and briefs on 8 ½ " by 11" paper shall not exceed 39 pages. You must file your brief on or before the deadline that is set forth in your Notice of Lodging that you will receive from this Clerk's Office. If you fail to file a timely brief, you will automatically waive your right to oral argument and lose your right to file reply brief. Delay may also result in the appeal being deemed abandoned and dismissed. You must file a motion for extension of page limitation with this court if you wish to file a brief in excess of these page limits. A

motion to exceed the page limitation will be granted by this Court only if you show a good reason.

- Whether your brief is typed or handwritten, it must be clearly legible, each page consecutively numbered, and exhibits (if any) clearly marked.

The appellant's brief.

An appellant's brief is a written document explaining why you are appealing and what you think is wrong with the decision of the court below. The Notice of Lodging informs the parties of the dates the brief will be due. If it is necessary you may request an extension of the briefing schedule by filing a motion for extension of time with this Court. The motion for an extension must be filed prior to your brief being due with this Court. Generally a maximum of ten days will be given if the motion for extension is granted.

Although the Court is flexible about the contents of your brief if you are pro se, it still would be to your benefit to present your brief in as organized a fashion as you possibly can. It would be helpful to the Court in understanding your issues on appeal if you divide your opening brief in the following sections:

- A table of citations, which alphabetically list all legal authorities cited in your brief.
- A concise statement of the case, which describes the nature of the lower court proceedings to be reviewed. This section should include facts which were presented to the court below and are supported by the record.

- The issues presented for determination by the court (this is a summary of your arguments which states in numbered paragraphs the issues you are raising on appeal - generally, this summary is one or two sentences in length).
- An argument section, which subdivides each of your issues you want to raise into separate subsections (in this section you will provide the reasons, facts, and law supporting why you think the trial court erred in its decision).
- A conclusion, which briefly tells the Court what remedy you are seeking.
- You must attach to your brief a copy of the decision being appealed.

How do I file an appellee's brief with the Court?

The appellee's brief is the opponent's opportunity to tell the Court why the decision of the court below was the correct decision and should be affirmed. It should include all the same sections discussed above for the appellant's brief, however, instead of raising issues the appellee is replying to issues raised by the appellant.

When will the Court of Appeal decide my case?

Generally, you will receive a copy of the docket which will inform you that your case has been scheduled for a decision by a panel of this Court. Generally a decision by the Court will be reached within three months following receipt of your docket. However, some cases may take longer.

What can I do if I lose my appeal?

If the Court affirms the judgment of the lower court, you may file with this Court a motion for rehearing within 14 days of the date the decision was rendered. If you do not choose to file a rehearing, or if a rehearing is denied, then you have 30 days in which to seek writs of certiorari to the Louisiana Supreme Court. The Louisiana Supreme Court's address is:

Supreme Court
State of Louisiana
400 Royal Street, Suite 4200
New Orleans, LA 70130-2104

SUPERVISORY WRITS

Where do I file my supervisory writ application?

A supervisory writ application must be filed with the Clerk of the Court of Appeal. An original and three duplicate copies should be sent to the Third Circuit Court of Appeal, P.O. Box **16577**, Lake Charles, LA 70616.

When do I file my writ application?

A party wishing to file a writ application shall have the trial court fix a reasonable time within which to file the application with this court. The time for filing shall not exceed thirty (30) days from the date the ruling was rendered. However, the trial court may extend the time for filing an application upon the filing of a timely motion for an extension of the return date.

What should my application include?

- 1) The original writ application shall contain the trial court parish name, all trial court docket numbers applicable, and be signed, in original, by the party filing the writ application.
- 2) The filing party shall certify the correctness of the allegations of the writ application.
- 3) The filing party shall certify that a copy of the writ application has been delivered or mailed to the trial judge and to all opposing counsel. The affidavit shall list all parties and all counsel indicating the parties each represents.
- 4) The original and duplicate writ application shall have the pages of the writ application and attached documents and exhibits consecutively numbered.
- 5) An index of all items contained in the writ application.
- 6) A concise statement of the grounds upon which the jurisdiction of the court is invoked.
- 7) A statement of the facts concerning the case.
- 8) The issues and questions of law presented for determination of the court.
- 9) Assignments or specifications of error and a memorandum in support of the application.
- 10) A copy of each pleading in which the judgment, order or ruling is based, including the petition(s) in civil cases and the indictment or the bill of information in criminal cases.

- 11) A copy of the pertinent court minutes (if available).
- 12) A copy of the judgment or ruling complained of.
- 13) A copy of the judge's reasons for ruling (if written).
- 14) A copy of Notice of Intent to seek writs and order setting return dates and any extensions.
- 15) In a criminal case, the application should also include a complete record of all evidence upon which the judgment is based (such as the transcript of the hearing or trial at issue in the writ application) or an affidavit setting forth that the defendant intelligently waives the right to cause all or any portion of the record to accompany the application.
- 16) In civil cases, a check for \$80.50 or a pauper order signed by the district court must also be included.

Is there a right to a rehearing once the court acts on my writ application?

If the writ application is granted, a party can seek a rehearing from the Court of Appeal. However, there is no right to a rehearing from a writ denial.

If the writ application or the rehearing is denied, you have the right to file a writ of certiorari to the Louisiana Supreme Court within 30 days. Their address is as follows:

Supreme Court
State of Louisiana
400 Royal Street, Suite 4200
New Orleans, LA 70130-2104