

A Guide to the Timeliness Rules of the Louisiana Supreme Court

by Mel Dugas



In a typical year, approximately eight percent of all writ applications filed in the Louisiana Supreme Court are not considered because the applications were not timely filed. The purpose of this article is to discuss the various timeliness requirements in the court's rules and to provide some tips for avoiding procedural pitfalls.

Applications from Judgments of the Courts of Appeal

The timeliness requirements for applications seeking review of a judgment of the court of appeal, either from an appeal or from an action on supervisory review, are set forth in La. Sup. Ct. Rule X, §5(a)(1), which mandates that the application "shall be made within thirty days of the mailing of the notice of the original judgment of the court of appeal." This rule is consistent with La. C.C.P. art. 2166(A), which provides, "[w]ithin thirty days of the transmission of the notice of the judgment of the court of appeal, a party may apply to the supreme court for a writ of certiorari." The rule further mandates that no extension of the filing delay will be granted.

The rule sets forth a specific exception in cases where a "timely application for rehearing has been filed in the court of appeal **in those instances where a rehearing is allowed.** . . ." [emphasis added]. In such cases, the application must be filed within thirty days of the mailing of the notice of denial of rehearing or the judgment on rehearing.

It is important to understand this exception is limited to situations where the court of appeal's judgment was subject to rehearing. In making this determination, the supreme court looks to the requirements for rehearing in the Uniform Rules of the Courts of Appeal, particularly URCA Rule 2-18.7. URCA Rule 2-18.7 permits a rehearing in only three instances, where the court has (1) granted a writ application on the merits; (2) dismissed an appeal; or (3) ruled on the merits of an appeal. This rule does not permit a rehearing when the court of appeal denies an application for supervisory writs. Therefore, a rehearing application from a writ denial will not extend the thirty-day delay in La. Sup. Ct. Rule X, §5(a).

Expedited Applications

In 2022, the supreme court promulgated special provisions in La. Sup. Ct. Rule X, §5(a)(2) for applications seeking expedited review of a judgment of the court of appeal. This rule mandates that applications seeking expedited review must be filed "as soon as possible after the court of appeal's disposition and in no event more than ten days after the mailing of notice of judgment by the court of appeal."

The rule allows an applicant who does not file within ten days of the mailing of notice of judgment to make a showing of good cause for the failure to comply. If the applicant fails to make a proper showing of good cause, the rule provides the court may deny expedited review and/or impose sanctions against the party seeking expedited review.

Notably, the rule does not mandate dismissal of the application if it otherwise complies with the thirty-day deadline set forth in La. Sup. Ct. Rule X, §5(a)(1), but permits review of the merits in "regular course." The official comment to the rule explains "[a]lthough this rule does not change the general thirty-day filing period set forth in La. Code Civ. P. art. 2166, it makes it clear that any request for expedited review must be made promptly."

Direct Applications

Pursuant to La. Const. Art. V, §5(A), the supreme court has "general supervisory jurisdiction over all other courts." The timeliness requirements for direct applications from the trial courts are set forth in La. Sup. Ct. Rule X, §5(b).

The rule references two categories of direct applications. The first category consists of cases in which the court of appeal lacks supervisory jurisdiction, such as a criminal case in which a death sentence has been imposed or in which a conviction and sentence were imposed before July 1, 1982. The second category consists of cases in which the court of appeal has supervisory jurisdiction but the applicant seeks to file an application directly or simultaneously in the supreme court. The rule cautions that applications falling within this second category will ordinarily not be considered by the supreme court absent extraordinary circumstances.

When an applicant seeks to file a direct

application, the rule authorizes the trial court to fix a "reasonable time" for the filing of the application in the supreme court. The rule further grants the trial court the authority to stay further proceedings pending review by the supreme court. The time period may be extended upon a "proper showing" by the trial court or the supreme court. If the application is not filed by the required deadline, the supreme court will not consider the application unless the applicant establishes that the delay in filing was not due to the applicant's fault.

Election Cases

Special timeliness provisions are set forth in La. Sup. Ct. Rule X, §5(c) for applications seeking review of a decision of the court of appeal on an objection to a candidacy or on an election contest. This rule mirrors the requirements set forth in La. R.S. 18:1409 and La. R.S. 18:1413 for such cases.

Pursuant to La. Sup. Ct. Rule X, §5(c) and La. R.S. 18:1409(G), the application to the supreme court must be filed within forty-eight hours of the rendition of the court of appeal's opinion. Both the rule and La. R.S. 18:1413 mandate that the forty-eight hour period includes Sundays and other legal holidays. However, if the time interval ends on a Sunday or other legal holiday, then noon of the next legal day shall be deemed to be the end of the time interval. To facilitate determination of timeliness, La. R.S. 18:1409(F) requires the court of appeal to "indicate the date and time rendered on the judgment."

Calculating Timeliness

Pursuant to La. C.C.P. art. 5059, the thirty-day period commences on the day after the mailing of notice of judgment by the court of appeal. If the thirtieth day falls on a weekend or legal holiday, the deadline expires on the first legal day thereafter. By special order, the supreme court may extend filing deadlines due to unanticipated circumstances such as severe weather events. These orders are published on the supreme court's website at www.lasc.org.

The provisions for calculating the timeliness of applications filed by mail are set forth in La. Sup. Ct. Rule X, §5(d). In general, an application will be deemed timely filed if mailed on or before the last day of the delay for filing. However, the rule

provides a rebuttable presumption of timeliness for applications filed on the first legal day following the expiration of the delay.

In cases where the presumption of timeliness does not apply, timeliness may only be established by (1) an official United States postmark or cancellation stamp or (2) an official receipt or certificate from the United States Postal Service, or bonafide commercial mail services such as Federal Express or United Parcel Service, made at the time of mailing which indicates the date thereof. Significantly, meter marks generated by private services or Automated Postal Center self-service kiosks, as well as sales receipts for purchase of postage, cannot be used to establish timeliness. Finally, applications which are filed by private delivery or courier services are treated as “by hand” filings and are deemed timely filed only if received by the clerk on or before the last day of the delay for filing.

The rules for determining the timeliness of electronic filings are set forth in La. Sup. Ct. Rule XLII, §6. In general, La. Sup. Ct. Rule XLII, §6(a) provides electronically-filed documents may be filed at any time and are deemed filed on the date and time of the electronic filing. For purposes of determining timeliness, La. Sup. Ct. Rule XLII, §6(e) provides “an electronically filed document will be considered timely filed if electronic filing is completed at any time before 12:00 Midnight Central Time on or before the date on which the document is due unless another specific time is mandated by order, rule or statute.”

Because of the possibility of problems inherent in electronic transmission, La. Sup. Ct. Rule XLII, §6(f) provides that an applicant whose “electronic filing is untimely due to technical failure may seek relief from the Louisiana Supreme Court.” The rule does not define the term “technical problems,” but the court provided some jurisprudential guidance in *Wieber v. Acme Truck Line, Inc.*, 2024-00741 (La. 10/8/24), 394 So. 3d 256. In that case, the application was filed one day after the June 10, 2024 deadline expired. Counsel for applicant argued she attempted to electronically file the writ application on the evening of June 10, 2024 but experienced technical difficulties as she attempted to reset her password, unlock her account, and register a new account. In rejecting this argument, the court explained “[r]

egardless of counsel's intent, the court's records establish no electronic filing was completed prior to midnight on June 10, 2024.” *Wieber* therefore suggests that technical problems which are not beyond the applicant's control are not excusable.

Another common mistake is submitting a draft filing prior to the deadline but not completing the filing until after the deadline. The draft submission has no effect on timeliness; rather, timeliness is calculated based on the date and time of the final official submission. See, e.g., *Girod Titling Trust v. Pittman Assets, L.L.C.*, 2025-00192 (La. 4/15/25), 406 So. 3d 414 (finding an application untimely where the applicant began the draft submission at 11:52:19 p.m. on the night of the deadline but did not officially submit the application until 12:14:00 a.m.).

Special Rules for Cases Involving the Protection of Children

Special rules for applications arising from certain classes of cases involving children are set forth in La. Sup. Ct. Rule XXXIV. The rule contains a timeliness component in La. Sup. Ct. Rule XXXIV, Part III, §1, which provides, “[w]rit applications **should** be filed within 14 days of the mailing of the notice of judgment or denial of rehearing, unless a shorter period is specified by law.” [emphasis added]. The official comment explains this fourteen-day time period is “aspirational” in nature in keeping with the goal of minimizing delays in cases that adversely affect children. In terms of timeliness, however, these applications are governed by the ordinary thirty-day provisions of La. Sup. Ct. Rule X, §5, unless the law expressly mandates a shorter period for filing.

Oppositions and Replies

Oppositions to writ applications are governed by La. Sup. Ct. Rule X, §6. This rule was amended in 2024 to increase the opposition delay from fifteen days to thirty days following the date of the letter acknowledging filing of the writ application. In conjunction with increasing the delay, the 2024 amendment to the rule restricted extensions by providing “[n]o extensions of this deadline shall be granted unless the party can demonstrate through clear and convincing evidence that the delay was the result of circumstances beyond its control.”

On occasion, the court will request the filing of an opposition even though the normal opposition delays have expired. In such case, the court will specify a time for the filing of the opposition.

The filing of a reply memorandum is addressed in La. Sup. Ct. Rule X, §7. The rule indicates such filings are not encouraged, but where appropriate, they must be filed within ten days of the filing of the opposition. The rule expressly prohibits the filing of a response to a reply.

Rehearings

The filing of rehearing applications is governed by La. C.C.P. art. 2167 and La. Sup. Ct. Rule IX, both of which specify an application for rehearing must be filed within fourteen days of the mailing of notice of judgment. As in La. Sup. Ct. Rule X, the rule provides for a presumption of timeliness for applications received by mail on the first legal day following the expiration of the delay.

The rule prohibits any extensions of the fourteen-day deadline. However, if the rehearing application is filed timely, the applicant may request additional time to file a brief in support of the application. The court retains discretion to grant or deny this request.

Conclusion

As shown by this brief overview, it is important to review the relevant sections of the court's rules prior to filing to ensure the application is timely filed. By doing so, the applicant will ensure the court has an opportunity to review the merits of the application and will avoid the dreaded “not considered, not timely filed” disposition.

Mel Dugas received his JD degree in 1988 from Tulane Law School, where he was a managing editor of the Tulane Law Review. Since 1997, he has served as Director of Civil Staff for the Supreme



Court of Louisiana. The views expressed in this article are the author's personal opinions and do not reflect the office position of the Supreme Court of Louisiana. (mdugas@lasc.org, New Orleans)