

M E M O R A N D U M

TO: ATTORNEYS AND PRO SE LITIGANTS INVOLVED IN APPELLATE PROCESS

FROM: SHIRLEY A. JAMESON-FERGEL

RE: CRIMINAL APPEALS

DATE: SEPTEMBER 2020

This memorandum is intended only as a point of reference to Criminal Appellate Procedure. It is not a comprehensive summary and should not be used in place of the rules, which are set out at SDCL 23A-32.

CRIMINAL APPEALS (SDCL 23A-32)

Time Within Which an Appeal Must be Taken:

23A-32-15. Time of taking appeal. Except as provided in § 23A-32-4, 23A-32-5 or 23A-32-6, any appeal other than from a judgment must be taken within thirty days after written notice of the filing of the order shall have been given to the party appealing. An appeal from the judgment must be taken within thirty days after the judgment is signed, attested and filed.

Filing an Appeal:

When a notice of appeal is presented for filing, the notice should specify the party or parties taking the appeal, it should designate the judgment, order, or part thereof from which appeal is sought, and it should be signed by the appellant or appellant's attorney. (SDCL 23A-32-16) The notice of appeal must be accompanied by:

(1) Proof of service of the notice of appeal. When the appeal is taken by the defendant, service must be made upon the Attorney General and upon the prosecuting attorney of the county where the judgment was entered. When the appeal is taken by the state, service must be made upon defendant's attorney or upon defendant if defendant is not represented by counsel (SDCL 23A-32-16), and

(2) Statutory filing fees: One check in the amount of \$150 should be submitted with appeal documents made payable to the circuit court clerk in which the appeal is being filed (\$50 to the Clerk of the Supreme Court; \$50 court automation surcharge); (the circuit court clerk will issue a check totaling \$100 to the Supreme Court), (SDCL 16-2-29.1(1)); \$50 to the Clerk of the trial court (SDCL 16-2-29(2)), **unless**

- (a) the appeal is taken by the State of South Dakota, in which case neither the trial court fee nor the Supreme Court fee is required (last paragraphs of SDCL 16-2-29 and 16-2-29.1), or
- (b) the appeal is taken by a defendant appointed counsel pursuant to SDCL 23A-40-6, in which case neither the trial court fee nor the Supreme Court fee need is required. (SDCL 23A-32-16)

Note: No Docketing Statement is required in a criminal appeal.

Undertaking on Appeal:

No undertaking/cost bond is required in a criminal appeal.

Costs on Appeal:

No costs for brief reproduction, transcript, oral argument, etc., are recoverable in criminal actions.