

§2.B.00 | TIME LIMITS¹⁷

Another matter to consider before filing a motion in an appellate court is whether the motion will be timely. Although Rule 9.300 does not impose a general time limitation for filing appellate motions,¹⁸ a time limit may be set by a more specific rule governing the issue raised by the motion. Moreover, an unreasonable delay in filing a motion may be grounds to deny relief, even if the motion is not one that must be filed within a certain period of time.¹⁹

The class of motions that is controlled by specific time periods includes a motion for rehearing, which must be filed within fifteen days of the issuance of the order of the appellate court,²⁰ and a motion to tax costs, which must be served in the lower tribunal within thirty days of the date on which the appellate court issues the mandate.²¹ Specific time limitations also may control motions filed for the purpose of reviewing orders of the lower tribunal entered in the same appellate proceeding. For example, a motion for review of an order setting the amount of appellate attorneys' fees must be filed in the appellate court within thirty days of the lower tribunal's rendition of the order.²² In contrast, a motion to review an order granting or denying a stay pending review is not subject to a time limit.²³

Several other motions, although not governed by a time limitation expressed in a set number of days, are controlled by the appellate time limits for submitting other documents. For example, "[a] motion for attorneys' fees may be served not later than the time for service of the reply brief,"²⁴ and a request for oral argument must be served not later than the date on which a party would be entitled to file his or her last brief.²⁵

Some motions are affected by practical time limits imposed by the circumstances. For example, a motion for extension of time is not directly controlled by any time limitation set out in the Rules, but it is apparent that such a motion must be filed before the expiration of the time sought to be extended. To that extent, the time period in issue also serves as a practical limitation on the time for filing the motion for extension.

Even if a motion is not subject to a fixed time limit, a delay in filing the motion might serve as an independent ground to deny the requested relief.²⁶ This is because the appellate courts have the inherent power to conclude that a motion is untimely under the circumstances of a given case. The most important factors that a court should consider when determining whether an appellate motion

is untimely are: (1) the purpose and effect of the motion, (2) the length of the delay in filing, and (3) the effect of the delay, if any, on the opposing party.

Additional time is allowed for service of motions and other pleadings by mail. If a motion must be served within a period of time in relation to the service of a previous document, and if the previous document has been served by mail, then the time period for service of the motion will be extended five days.²⁷

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Footnotes

¹⁷. For the source of the material that is adopted in this Subsection, see Padovano, *supra* n. 1, at § 14.2.

¹⁸. Fla. R. App. P. 9.300.

¹⁹. *Id.* comm. nn. 1977 amend.

²⁰. *Id.* 9.330(a); *State Farm Mut. Auto. Ins. Co. v. Judges of the Dist. Ct. of App., Fifth Dist.*, 405 S.2d 980, 981 (Fla. 1981).

²¹. Fla. R. App. P. 9.400(a); *B & L Motors, Inc. v. Bignotti*, 427 S.2d 1070, 1073 (Fla. Dist. App. 2d 1983); *Kaelbel Wholesale, Inc. v. Soderstrom*, 210 S.2d 1065, 1065 (Fla. Dist. App. 4th 2002).

²². Fla. R. App. P. 9.400(c); *Browning v. New Hope S.*, 785 S.2d 732, 733 (Fla. Dist. App. 1st 2002); *Gen. Motors Acceptance Corp. v. Laesser*, 791 S.2d 517, 519 (Fla. Dist. App. 4th 2001).

²³. Fla. R. App. P. 9.310(f).

²⁴. *Id.* 9.400(b); see *Computer Task Group, Inc. v. Palm Beach County*, 809 S.2d 10, 11 (Fla. Dist. App. 4th 2002) (following Rule 9.400(b) and affirming an order awarding attorneys' fees).

²⁵. Fla. R. App. P. 9.320.

²⁶. The committee notes to Rule 9.300 contain the following warning: a “delay in presenting any motion may influence the relief granted or sanctions imposed under [R]ule 9.410.” *Id.* 9.300 comm. nn. 1977 amend. Although this statement was made in relation to the power of the appellate courts to reject untimely motions to dismiss, it is evident from the broad language employed that the appellate courts' general power to deny untimely motions is not limited to such motions.

²⁷. *Id.* 9.420(d).

