



# Office of the Ohio Public Defender

Timothy Young, State Public Defender

## Pro Se Packet

### *Filing an Appeal in the First District Court of Appeals Hamilton County, Ohio*

To properly file a timely appeal to the Hamilton County Court of Appeals, First Appellate District, you must file certain documents in the court of common pleas of the county where you were convicted, within **30 DAYS** of the date that your sentencing entry was time-stamped. This means **the court must receive the documents within thirty days**. Those documents are listed below.

If you have passed the 30-day deadline, you must file a Motion for Leave to File a Delayed Appeal in the First District Court of Appeals, at the same time that you file the documents listed below in the Court of Common Pleas.

Each of these documents is included in this packet. You should fill in the forms neatly, and in pen. Each appellate court also has its own rules called Local Rules. Parts of the local appellate rules for the First District are also included at the end of the packet.

#### **What is an appeal?**

An appeal is a request for review made to a higher court. Appeals are filed by a party that lost in the trial court on one or more issues. To make such a request is "to appeal" or "to take an appeal." The person who requests the appeal is called the "appellant;" the person responding to the appeal is the "appellee." Both the prosecutor and the defendant can appeal, although the prosecutor's ability to appeal is limited to specific circumstances. Appeals can be made for a variety of reasons including the use of improper procedure or a court incorrectly interpreting the law. An "appellate attorney" is an attorney who works entirely, or almost entirely, on appeals.

Appeals are handled by a completely different court from the trial court that originally heard your case. While you file the paperwork to start an appeal in the trial court, this is only because the Clerk of Courts for the trial court acts as the Clerk for the appellate court as well. Your appeal will be heard by a different judge in a different court – NOT your trial judge.

#### **Can I appeal my conviction?**

If you are within thirty (30) days of the date stamped on your sentencing entry, then you may appeal "as of right." This means that the appellate court must accept your appeal, review your issues, and write out a decision in your case. If you are past the thirty-day mark, you may still be able to appeal your conviction. However, you will need to file all the necessary documents for a regular appeal *in addition to* extra documents needed to file a "delayed appeal." A delayed appeal is more difficult than a regular, or "timely," appeal because the appellate court is not required to accept your appeal. This means your issues might not get reviewed on appeal.

### **How do I file an appeal?**

Below you will find a list of documents. You must complete each and every one of these documents and send all of them in one package to the Clerk of Courts for the Court of Common Pleas in the county where you were convicted. Your filing package should include the original and four copies. If you cannot make the required number of copies, *send in what you have*. The 30-day deadline is more important than the number of copies requested by the appellate court. If you are able to include a postage-paid envelope addressed to you, the clerk will send a time-stamped copy of your Notice of Appeal back to you.

### **What is a Certificate of Service?**

There is a “Certificate of Service” page for almost all of the included documents. These certificates are proof to the court that you sent a copy of your documents to the prosecutor. You should send a copy of every document in your completed appeal packet to the Office of the Prosecuting Attorney in the county where you were convicted. If you cannot afford the copies and postage to send the prosecutor a copy of your notice of appeal, DO NOT fill out the certificates of service.

The Clerk of Courts’ and the Prosecuting Attorney’s addresses are both located in your legal orientation handouts. Or you can contact the library or prison legal services for the addresses.

**The NOTICE OF APPEAL is the most important document to file within your 30-day deadline. If you are unable to obtain the required number of copies, or complete some of the documents, file the notice of appeal and what you have. It may be possible to correct those problems later.**

**On all the forms, you must write NEATLY and IN PEN.**

**If you can’t fill in some of the blanks on the forms, fill out as much as you are able.**

- **Notice of appeal**

- In Hamilton County your sentencing entry does not need to be attached to your notice of appeal. *However, if you have it – attach it.* This may prevent any potential problems later. You may write to the clerk of courts, enclose a self-addressed, postage-paid envelope, and ask that the clerk send you a copy, or you may contact a family member or friend to obtain a copy from the clerk’s office in your county.
- If you are close to your 30-day deadline, do not have the entry, and are still at a reception center, contact the institution’s public defender office. We may be able to call the county and request that the entry be faxed to the public defender office. However, this is not always possible. Also, only reception centers contain a public defender office. Away from a reception center, you will need to contact our main office in Columbus.
- Fill in the blanks on the forms. Write neatly in pen.
- Fill in the “C.P. Case No. \_\_\_\_\_” with your trial court number. Leave the Appeal Case No. blank. The trial court number is located on the bottom of the second page of the legal packet that you received at orientation. If you have more than one case number, include each, but only if the cases are from the same county. If you have cases in different counties, you must file an appeal in each county.

- **Affidavit of Indigency**
  - You must fill in the blanks on the affidavit, and sign it in the presence of a notary public. Legal services can provide notary service. If legal services staff is unavailable, ask your unit staff how to access a notary.
  
- **Motion for Appointment of Counsel**
  - Fill in the blanks with as much information as you know. Write neatly in pen. Fill out the top part only of the Journal Entry (everything above the heading that reads “Journal Entry”). Do not sign. This is only for the Judge to sign.
  
- **Motion for Transcript at State Expense**
  - Fill in the blanks with as much information as you know. Write neatly in pen. Fill out the top part only of the Journal Entry (everything above the heading that reads “Journal Entry”). Do not sign. This is only for the Judge to sign.
  
- **Statement, Praecipe, and Notice to the Court Reporter**
  - Fill in the blanks with as much information as you know.
  
- **Criminal Docket Statement or Civil Docket Statement**
  - Depending on your case, you will need to use either the Criminal or the Civil Docket Statement. Do not use both. Fill in the blanks with as much information as you know.

Once each of these documents and its corresponding certificates of service is completed and signed, your unit staff will make copies for you. You must send the original document, plus four copies, to:

Clerk of Courts  
 1000 Main Street, Room 315  
 Cincinnati, OH 45202  
 Phone: (513) 946-5648

After the appellate case has begun, all filings should be addressed as follows:

Clerk of Courts  
 230 East 9th Street, 12th Floor  
 Cincinnati, OH 45202

Include a postage-paid envelope addressed to you, and the clerk will send a time-stamped copy to you. You *must* send a copy of every document to the Hamilton County Prosecuting Attorney. There is a “Certificate of Service” page after each document, which confirms that you sent a copy of the document to the prosecutor. On the Certificate of Service page, fill in the date that you mail the document.

**Below is a list of frequently asked questions, as provided by the Hamilton County Clerk of Courts website at <http://www.hamilton-co.org>**

**1. How do I file an appeal?**

A Notice of Appeal should be filed within 30 days of the date of the judgment being appealed. A civil or criminal Docket Statement should be filed with the Notice of Appeal.

**2. If there is a holiday or weekend during the 30-day time period, does it count?**

Yes. Count all days unless the final day on which the document is due falls on a holiday or weekend-then the due date falls on the next business day. [App.R. 14(A)]

**3. Where do I file an appeal?**

The Notice of Appeal is filed in the trial court. This means that the heading (the words at the very top) of the Notice of Appeal should read “In the Court of Common Pleas, Domestic Relations Court, Juvenile Court, Probate Court, or Municipal Court.”

The Appellate Division of the Clerk’s Office located on the 12th floor of 230 East Ninth Street will accept Notices of Appeal from:

- Common Pleas: Criminal or Civil
- Domestic Relations
- Domestic Violence
- Miscellaneous

The Appellate Division of the Clerk’s Office will not accept Notices of Appeal from:

- Municipal-Civil or Criminal
- Probate
- Juvenile

You must go to the clerk for those courts.

**4. How long do I have to file a Docket Statement after I have filed the Notice of Appeal?**

The Appellate and Local Rules [App. R. 3(G) and Loc. R. 3.1] require that the Docket Statement be filed when the Notice of Appeal is filed. Usually, however, you have about a week before an Order to Show Cause (giving you 7 days to file the Docket Statement) is sent out.

**5. What is an Order to Show Cause?**

If the appellant does not file a Docket Statement with the Notice of Appeal the Court will issue an Order to Show Cause warning the appellant that unless a Docket Statement is filed within 7 days, the appeal will be dismissed. [Loc.R. 3.1(A)(2)(c)]

**6. What is a Scheduling Order, when is one sent out?**

A Scheduling Order is a document that sets the dates that the record and briefs are due to be filed with the Court. It is generally sent to the parties within 2 weeks of the Notice of Appeal and Docket Statement being filed by the appellant. (Loc.R. 3.3)

## **7. What does an appellate brief look like?**

See the forms section of our website ([www.hamilton-co.org/appealscourt](http://www.hamilton-co.org/appealscourt)) for a sample copy.

## **8. How many pages can my brief have?**

If your case is on the Accelerated Calendar-20 pages and the Appellant can file up to 10 pages in a reply brief. [Loc.R. 11.1 and 19(B)(1)(b)]

If your case is on the Regular Calendar-40 Pages and the Appellant can file up to 20 pages in a reply brief. [App. R. 19 and Loc. R. 19.1(B)(1)(a)]

## **9. What is the font size required for briefs?**

14 point. [Loc. R. 19(C)(2)]

## **10. How should a brief be bound?**

The Local Rules call for a brief to be bound securely along the left margin. The Court does not care how it's bound. Usually, people use a staple in the upper left corner or a spiral binding. If you use staples, you must tape the back of the staples to ensure they do not protrude from the back of the brief. If you do not cover the staples, the brief will probably be stricken. [Local Rule 18(B)]

## **11. Is there a special cover required for a brief?**

No. No special colors are required. See App. R. 19(A) for what's required to be on the cover.

## **12. What should I do if I can't get my brief filed by 4:00 PM?**

The Appellate Division of the Clerk's Office is open from 8:00AM to 4:00PM but there is a 24-hour Clerk's Office located in the Justice Center to accept filings after 4:00PM.

## **13. Can I file by fax?**

Only certain documents can be filed by fax. Notices of Appeal, Notices of Cross Appeal, or Original Actions are not accepted by fax. Briefs and records are also not accepted. Any other motion or document cannot exceed 10 pages. The fax number of the Appellate Division of the Clerk's office is 513-946-3744. Be sure to use a cover page with the information required by Loc. R. 13.1.

## **14. What if I forgot to put something in my brief, tape the staples of the brief, or append the final order?**

You need to either: 1) Let us strike the brief and extend time for you to file a new brief or: 2) File a motion to file an amended brief. Once the brief is filed, it cannot be changed.

## **15. Can I file a reply brief?**

If you are the appellant and your case is on the Regular Calendar, you can file a reply brief of up to 20 pages within 10 days after service of the appellee's brief. [App R. 18(A)] If the case is on the accelerated calendar, the appellant can file a reply brief of up to 10 pages within 10 days after service of the appellee's brief. [Loc.R. 19(A)(2)]

## **16. How do I get an extension of time?**

File a motion to extend time to file brief (or transcript). [App. R. 14(B) and App.R. 15(B)] We need an original and one copy of the motion. We also need an entry granting the motion with a specific date when the brief (or transcript) can be filed. [Loc. R. 14]

**17. What if I file my motion to extend time to file my brief the day before it's due?**

Once it is filed, a motion to extend time to file a brief (or transcript) stops the time from running. It usually takes 3 days for a procedural motion to be ruled upon.

**18. If the appellant receives an extension of time to file their transcript or brief, is the appellee automatically granted an extension of time to file their brief?**

Yes. Without further order of the Court, appellee shall file and serve the appellee's brief within 20 days after the appellant's brief is served. [Loc.R. 18(A)] This provision does not apply to an expedited appeal under App.R. 11.2.

**19. How long does it take between the filing of the Notice of Appeal and oral argument?**

Civil cases take about 9 months. Criminal cases take about 7 months.

**20. How long should my oral argument be?**

Each side gets 15 minutes no matter how many parties are on each side. [Loc. Rule 21(F)]

**21. What if I want to submit a case on the briefs alone and not attend oral argument?**

If a party wishes to waive its right to oral argument when filing its brief, it shall note on the cover page of its brief: "[Party] Hereby Waives Its Right to Oral Argument and Submits Its Case." [App.R. 21(A)(1)]

**22. After argument, how long does it take to get a decision?**

Once a case is submitted, it takes an average of 30-60 days for a decision to be released.

**23. Where can I find a copy of a decision of the Court?**

- 1) Court of Appeals website at [www.hamilton-co.org/appealscourt](http://www.hamilton-co.org/appealscourt) contains opinions, decisions, and judgment entries for the previous three months.
- 2) Clerk of Courts website at [www.courtclerk.org](http://www.courtclerk.org)
- 3) Ohio Supreme Court website at [www.sconet.state.oh.us](http://www.sconet.state.oh.us) contains only opinions and decisions since 2002 and some from 2001.

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : C.P. Case No. \_\_\_\_\_  
 :  
 vs. :  
 :  
 \_\_\_\_\_, : JUDGE \_\_\_\_\_  
 :  
 Defendant-Appellant. :

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**NOTICE OF APPEAL**

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\_\_\_\_\_ hereby gives notice of an appeal to the First District Court  
of Appeals, \_\_\_\_\_ County, Ohio, from the judgment entry of conviction, entered in this  
court on the \_\_\_ day of \_\_\_\_\_, 20\_\_.

Respectfully submitted,

\_\_\_\_\_  
DEFENDANT-APPELLANT, PRO SE

\_\_\_\_\_  
Inmate Number/Institution

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code

**CERTIFICATE OF SERVICE**

I certify a copy of the foregoing NOTICE OF APPEAL has been sent by regular U.S. mail to the Office of the Hamilton County Prosecutor, 230 E. 9th Street, Suite 4000, Cincinnati, Ohio 45202, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

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DEFENDANT-APPELLANT, PRO SE





IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT  
HAMILTON COUNTY, OHIO

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : Appeal Case No. \_\_\_\_\_  
 vs. : C.P. Case No. \_\_\_\_\_  
 \_\_\_\_\_, :  
 Defendant-Appellant. :

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**MOTION FOR APPOINTMENT OF COUNSEL**

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\_\_\_\_\_ moves this court to appoint appellate counsel in the above-captioned case. The Federal Constitution does not obligate states to provide an opportunity to appeal in criminal cases. *McKane v. Durston*, 153 U.S. 684, 687, 14 S.Ct. 913, 914-915, 38 L.Ed. 867 (1894). If a state chooses to create such a right to review, however, it must employ procedures that satisfy due process and equal protection. *Evitts v. Lucey*, 469 U.S. 387, 393, 105 S.Ct. 830, 834, 83 L.Ed.2d 821 (1985). If the state provides the right to appellate review, it may not “bolt the door to equal justice.” *Halbert v. Michigan*, 545 U.S. 605, 610; 125 S. Ct. 2582, \*\*; 162 L.Ed. 2d 552 (2005) quoting *Griffin v. Illinois*, 351 U.S. 12, 24, 76 S.Ct. 585, 100 L.Ed. 891 (1956) (Frankfurter, J., concurring in judgment). When a state provides a first appeal as of right, it must also provide counsel. *Douglas v. California*, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963).

Ohio has undertaken to provide a process of appellate review thru its constitution, statutes, and rules. Although the Ohio Constitution does not expressly provide for a "right" to appeal, Ohio Constitution, Article IV, Section 3(B)(1)(f) provides for the establishment of an appellate court system with jurisdiction “[i]n any cause on review as may be necessary to its complete

determination.” Moreover, Section (3)(B)(2) provides that “[c]ourts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals...”

Ohio has also established a statutory right to appeal. R.C. 2505.03 provides that every final order, judgment, or decree of a court and, when provided by law, the final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality, may be reviewed unless otherwise provided by law. R.C. 2953.02 authorizes appellate courts to review, in criminal cases, the "judgment or final order" of an inferior court.

Finally, R.C. 2953.08 provides that “[i]n addition to any other right to appeal[,]” a person who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed under listed circumstances.

App.R. 3(A) makes every litigant entitled to an appeal as of right by filing a notice of appeal within the time allowed by App.R. 4. Crim. R. 32 specifically provides the court must notify a person convicted of an offense of the right to appeal (1) a conviction after imposition of sentence in a serious offense that has gone to trial or, (2) the sentence imposed, under certain circumstances, and in both instances the right to counsel and transcript at state expense. And in conjunction, Crim.R. 44 provides for the appointment of counsel on an appeal of right unless waived.

Having so established a framework establishing the right to appeal a criminal conviction, Ohio is subject to the constitutional requirements of *Griffin* and its progeny, including the right to counsel set forth in *Douglas*. As attested by the accompanying Affidavit of Indigency, I am unable to retain counsel and request the services of counsel at state expense.

Respectfully submitted,

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DEFENDANT-APPELLANT, PRO SE

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Inmate Number/Institution

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Address

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City, State, and Zip Code

**CERTIFICATE OF SERVICE**

I certify a copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL has been sent by regular U.S. mail to the Office of the Hamilton County Prosecutor, 230 E. 9th Street, Suite 4000, Cincinnati, Ohio 45202, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

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DEFENDANT-APPELLANT, PRO SE

IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT  
HAMILTON COUNTY, OHIO

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : Appeal Case No. \_\_\_\_\_  
 vs. : C.P. Case No. \_\_\_\_\_  
 \_\_\_\_\_, :  
 Defendant-Appellant. :

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**JOURNAL ENTRY**

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On motion of the Defendant-Appellant and for good cause shown, it is hereby ORDERED that the motion for appointment of counsel is granted and \_\_\_\_\_ is hereby appointed for purposes of appeal.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JUDGE

IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT  
HAMILTON COUNTY, OHIO

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : Appeal Case No. \_\_\_\_\_  
 vs. : C.P. Case No. \_\_\_\_\_  
 \_\_\_\_\_, :  
 Defendant-Appellant. :

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**MOTION FOR PREPARATION OF COMPLETE TRANSCRIPT  
OF PROCEEDINGS AT STATE EXPENSE**

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\_\_\_\_\_ moves this court for an order directing the official court reporter, at state expense, to prepare and file a **complete** transcript of the proceedings in the above-styled case and to furnish a copy thereof to counsel. The transcript shall include: all plea and pretrial proceedings; all trial proceedings, including voir dire, opening statements, bench conferences, jury instructions, and closing arguments; and all post-trial and sentencing proceedings.

This transcript is necessary to the effective pursuit of this appeal as of right to the court of appeals. I am indigent and lacks the resources to pay the cost of preparing the transcript, and therefore am entitled to a complete transcript of proceedings at state expense. *Griffin v. Illinois*, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed.2d 891 (1956).

Indigent defendants in the State of Ohio are constitutionally entitled to adequate and effective appellate review. *Griffin v. Illinois*, 351 U.S. at 19; *Mayer v. Chicago*, 404 U.S. 189, 194, 92 S.Ct. 410, 30 L.Ed.2d 372 (1971). This review is “impossible without a trial transcript or

adequate substitute.” *Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977). Thus, “there can be no doubt that the state must provide an indigent defendant with a transcript of prior proceedings when that transcript is needed for an effective defense or appeal.” *Britt v. North Carolina*, 404 U.S. 226, 227, 92 S.Ct. 431, 30 L.Ed.2d 400 (1971). *Accord*, *State v. Arrington*, 42 Ohio St.2d 114, 326 N.E.2d 667 (1975), at paragraph one of the syllabus. In addition, the Supreme Court of Ohio has determined that Article I, Section 16 of the Ohio Constitution ensures a criminal defendant-appellant the availability of an unabridged transcript of proceedings. *State ex rel. Spirko v. Court of Appeals*, 27 Ohio St.3d 13, 17, 501 N.E.2d 625 (1986).

I am without resources and am unable to pay the cost of preparing a transcript and am entitled to the preparation of a complete transcript at state expense. I move this court for an order directing the court reporter to provide a copy of that transcript to appointed counsel at state expense.

Respectfully submitted,

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DEFENDANT-APPELLANT, PRO SE

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Inmate Number/Institution

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Address

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City, State, and Zip Code

**CERTIFICATE OF SERVICE**

I certify a copy of the foregoing MOTION FOR PREPARATION OF COMPLETE TRANSCRIPT OF PROCEEDINGS AT STATE EXPENSE has been sent by regular U.S. mail to the Office of the Hamilton County Prosecutor, 230 E. 9th Street, Suite 4000, Cincinnati, Ohio 45202, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

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DEFENDANT-APPELLANT, PRO SE



IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT  
HAMILTON COUNTY, OHIO

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : Appeal Case No. \_\_\_\_\_  
 vs. : C.P. Case No. \_\_\_\_\_  
 \_\_\_\_\_, :  
 Defendant-Appellant. :

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**JOURNAL ENTRY**

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On motion of the Defendant-Appellant and for good cause shown, it is hereby ordered that the motion for preparation of complete transcript of proceedings at state expense is granted.

The Court hereby orders the court reporter to prepare, at state expense, the transcript of the above-captioned case, and to provide a copy to appointed counsel at state expense, within 40 days of the date on which the notice of appeal was filed. The original should be filed with the clerk and a copy forwarded to appointed counsel.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JUDGE

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : C.P. Case No. \_\_\_\_\_  
 :  
 vs. :  
 :  
 \_\_\_\_\_, : JUDGE \_\_\_\_\_  
 :  
 Defendant-Appellant. :

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**STATEMENT, PRAECIPE AND  
NOTICE TO THE COURT REPORTER**

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**TO THE APPELLEE:**

The Defendant-Appellant hereby states that he intends to include in the record a complete transcript of the trial proceedings, including opening statements, evidence, and final arguments, including voir dire.

**TO THE CLERK:**

Immediately prepare and assemble the original papers and exhibits thereto filed in the court and a certified copy of the docket and journal entries. As a complete transcript of proceedings will be included by the Defendant-Appellant as part of the record to portray the assignment of error, do not transmit these documents to the clerk of the court of appeals of this county for filing in that court until the complete transcript of proceedings has been delivered to you by the undersigned or his counsel. At that time you will transmit the documents prepared and assembled by you and the complete transcript of proceedings delivered to you by the undersigned to the clerk of the court of appeals for filing as the record on appeal. In the event that the undersigned does not furnish you with the complete transcript of proceedings within forty days after the filing of the notice of appeal,

or within any proper extension of the time for transmission of the record, as prescribed by the Appellate Rules or the Local Appellate Rules, then upon such fortieth day or upon the last day of any proper extension of the time for transmission of the record, you shall transmit the documents prepared and assembled by you to the clerk of the court of appeals, without such transcript of proceedings, for filing as the record on appeal.

**TO THE COURT REPORTER:**

Please prepare a transcript of the proceedings that were heard on the \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_ 20\_\_, by JUDGE \_\_\_\_\_ in this case. **Also, in the event there are prior or subsequent hearings related to the above listed hearings, please prepare a transcript of those proceedings as well.** Notify appellate counsel when completed.

Respectfully submitted,

\_\_\_\_\_  
DEFENDANT-APPELLANT, PRO SE

\_\_\_\_\_  
Inmate Number/Institution

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code

**CERTIFICATE OF SERVICE**

I certify a copy of the foregoing STATEMENT, PRAECIPE AND NOTICE TO COURT REPORTER has been sent by regular U.S. mail to the Office of the Hamilton County Prosecutor, 230 E. 9th Street, Suite 4000, Cincinnati, Ohio 45202, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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DEFENDANT-APPELLANT, PRO SE



**Parties**

Party's name _____	Party's name _____
Party's designation _____	Party's designation _____
Attorney's name _____	Attorney's name _____
Attorney's registration number _____	Attorney's registration number _____
Address of counsel or party _____	Address of counsel or party _____
_____	_____
Phone _____	Phone _____
Email _____	Email _____

**Record**

Will there be a transcript of proceedings filed? Yes  No

If yes, will the transcript be (check one and attach a copy of the transcript order form):

- Complete transcript of proceedings [App.R. 9(B)]
- Partial transcript of proceedings [App.R. 9B)]

**\*If either box above is checked, please have the court reporter complete *Court Reporter's Certification* below and comply with Loc. R. 9(B)(1).**

If no, please select **one** of the following:

- Statement under App.R. 9(C) will be filed
- Agreed Statement pursuant to App.R 9(D) will be filed
- No transcript or proceedings, no App.R. 9(C) Statement, no App.R. 9(D) Agreed Statement will be filed

\*Choosing any of the above will be deemed sufficient compliance with App.R. 9(C) and Loc.R.9(A).

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**COURT REPORTER'S CERTIFICATION (must be signed by the court reporter)**

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The Court Reporter will complete and file the requested transcript of proceedings within 40 days of the filing of the notice of appeal (20 days if on the accelerated calendar)

- Yes
- No

If No, please explain why the transcript of proceedings will not be ready for filing within 40 days from the notice of appeal (or 20 days for the accelerated calendar)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Estimated Date of Filing:** \_\_\_\_\_

Signature of Court Reporter: \_\_\_\_\_ Date: \_\_\_\_\_

**Calendar Designation**

Please choose the appropriate calendar designation for this case.

**Regular Calendar:** Pursuant to Loc.R. 11.1(A), all appeals proceed by default on the regular calendar unless the Court places an appeal on the accelerated calendar or the appellant requests the accelerated calendar.

**Accelerated Calendar** Do you wish to have your appeal assigned to the accelerated calendar?

- Yes
- No

If Yes, please identify the applicable factor under Loc.R. 11.1(B) which supports the assignment of the case on the accelerated calendar: \_\_\_\_\_

\_\_\_\_\_

**Expedited Calendar:** Must this case be expedited as being one of the following types of cases?

Yes  No

- Prosecutorial Appeals under Crim.R. 12(K) and Juv.R. 22 (App.R. 11.2(D))
- Appeals Concerning Delinquent Children (App.R. 11.2(D))
- Denial of bail bond (R.C. 2937.222(D))

**Certificate of Service**

I certify that a copy of this docket statement was served upon \_\_\_\_\_ on

\_\_\_/\_\_\_/20\_\_\_ by the following method: \_\_\_\_\_.

\_\_\_\_\_  
Signature

# *Selected Rules of the First District Court of Appeals*

*Annotations current through January 1, 2022*

## **Rule 1 Scope of Rules**

### Appeals

The Rules of Appellate Procedure, as supplemented by these local rules, govern all procedures in appeals to the First District Court of Appeals of Ohio from the trial courts of record within the jurisdictional boundaries of the First District and other tribunals as provided by law.

### Original actions

Original actions filed in this Court are governed by the following:

The Ohio Rules of Civil Procedure;

The local rules of the First District Court of Appeals of Ohio; and

All applicable statutes.

## **Rule 3.1 Appeals - How Taken**

### **Required documents**

An appeal as of right shall be taken by filing: (1) a notice of appeal; and (2) a docket statement. The docket statement is not jurisdictional but its omission may be the basis for dismissal of the appeal.

### Notice of appeal.

#### Content of the notice of appeal.

The notice of appeal shall: (1) specify the party or parties taking the appeal; (2) designate the judgment, order or part thereof appealed from; and (3) state that the appeal is made to the First District Court of Appeals of Ohio.

The notice of appeal shall have attached to it a copy of the judgment or order being appealed. The subject attachment is not jurisdictional but its omission may be the basis for dismissal of the appeal.

#### Amendment of the notice of appeal.

A party may amend a notice of appeal without leave if the time to appeal from the order that was the subject of the initial notice of appeal has not yet lapsed under App.R. 4. Thereafter, the Court of Appeals within its discretion and upon such terms as are just may allow the amendment of a notice of appeal, so long as the amendment does not seek to appeal from a trial court order beyond the time requirements of App.R. 4.

If the Court permits an appellant to cure a defective notice of appeal where the time has lapsed under App.R. 4, failure to do so within the time permitted by the Court may result in a dismissal of the appeal.

An amended notice of appeal shall be filed in both the trial court and the Court of Appeals.

Cases consolidated below. A party is required to file only one notice of appeal from a judgment entered in cases consolidated in the trial court. The notice of appeal must list all consolidated case numbers. The appeal will proceed under one case number unless otherwise ordered by the Court. (See Form 3.1NCR Notice of Appeal — Criminal and Form 3.1NCV Notice of Appeal — Civil, Appendix of Forms.)



Docket statement.

Criminal docket statement. In a criminal appeal, in an appeal from the denial of postconviction relief, and in an appeal in a juvenile-delinquency case, the appellant shall file a completed criminal docket statement.

(See Form 3.1DCR Docket Statement — Criminal, Appendix of Forms.)

Civil docket statement. In a civil appeal, the appellant shall file a completed civil docket statement. (See Form 3.1DCV Docket Statement — Civil, Appendix of Forms.)

Docket statement missing or incomplete. If the appellant fails to file a docket statement with the notice of appeal or otherwise files an incomplete docket statement as required by this rule, the Court may order the appellant to either file a completed docket statement within seven days or show cause why the appeal should not be dismissed. If the appellant fails to comply with the Court's order, the Court may dismiss the appeal.

### **B. Where filed**

For all appeals, the appellant shall file with the clerk of the trial court from which the appeal is taken.

The appellant should file electronically, except as provided in Loc.R. 13.1, via the clerk of court's e-filing system for the trial court from which the appeal is taken. If no e-filing system is available for a particular court, the appeal may be filed in person or by any other means provided for in these rules.

For in-person filings from the General Division and the Domestic Relations Division of the Hamilton County Court of Common Pleas, the notice of appeal will be accepted at the appellate division of the clerk's office, located on the 12th floor of 230 East Ninth Street, Cincinnati, OH, 45202. The appellant shall file four copies of the notice of appeal and two copies of the docket statement.

### **C. Service**

The party filing the notice of appeal shall serve upon the appellee's counsel, or the appellee if unrepresented, a copy of the notice of appeal and a copy of the docket statement.

### **D. Waiver of filing fee and cost deposit**

The clerk will not accept for filing any notice of appeal or original action unless the party bringing the action deposits with the clerk of courts the sum of \$85.00. But the clerk will receive and file the appeal or action without payment of \$85.00:

If the appellant files with the clerk a sworn affidavit of indigency or affirmation of inability to pay (see Form 3.1 Affidavit of Indigency, Appendix of Forms); or

If the appellant produces evidence that the trial court determined that the appellant was indigent for purposes of appeal; or

If the requirement of prepayment is otherwise excused by operation of law.

## **Rule 3.2 Appeal as of Right--How Taken--Docket Statement**

### **A. Designation of counsel**

The notice of appeal and each subsequent filing shall contain the name, attorney-registration number, office address, telephone number, and e-mail address of counsel representing the party for whom the document is filed. If counsel is a law firm or a government agency, every filing shall also contain the name and attorney-registration number of the attorney within the firm or agency who is primarily responsible for the case.

### **B. Designation of counsel for other parties**

Every filing shall also contain the name, attorney-registration number, street address, e-mail address, and telephone number of counsel of record for all other parties served with the notice of appeal.

### **C. Designation of party - pro se appeals**

If any party is not represented by counsel, every filing shall contain that party's name, street address, e-mail address, and telephone number.

### **D. Admission pro hac vice**

An attorney who is not licensed to practice law in the State of Ohio who seeks permission to appear pro hac vice in this Court must first register with the Supreme Court Office of Attorney Services pursuant to Gov.Bar R. XII.

After the attorney completes the registration requirements and receives a certificate of pro hac vice registration, the attorney must file a Motion for Permission to Appear Pro Hac Vice with this Court. The motion must succinctly state the qualifications of the attorney seeking admission, include the certificate of registration furnished by the Supreme Court Office of Attorney Services, and shall contain all of the information required by Gov.Bar R. XII, Section 2(A)(1) through (3).

### **E. Withdrawal of designated counsel**

Appointed trial counsel. In a case where trial counsel served by appointment, trial counsel may withdraw by motion: (1) affirming that the notice of appeal has been properly filed; (2) demonstrating good cause for withdrawal; (3) bearing proof of service upon the appellant;(4) indicating counsel was appointed below; and (5) requesting appointment of new counsel or indicating that counsel will be hired.

Criminal appeal. In a criminal appeal, the Court may, in its discretion, permit designated counsel to withdraw from the case only upon motion: (1) affirming that the appeal has been properly filed under Loc.R. 3.1; (2) demonstrating good cause for withdrawal; and (3) bearing proof of service upon the appellant. If new counsel is seeking to represent the appellant, the motion shall also show the name, attorney-registration number, street address, e-mail address, and telephone number of substitute counsel, and shall be signed by substitute counsel.

Civil appeal. In a civil case, designated counsel may withdraw upon notice to the Court bearing proof of service upon all parties and containing the following:

a statement that designated counsel intends to withdraw;

a showing of good cause for withdrawing; and

the name, attorney-registration number, street address, e-mail address, and telephone number of substitute counsel or, if none, the name, street address, e-mail address, and telephone number of the party represented by designated counsel.

## **Rule 9 The Record on Appeal - Notification**

### **A. No transcript of proceedings or statement**

If the record on appeal will not include a transcript of proceedings, a statement of the proceedings, or an agreed statement, as described in App.R. 9, counsel for the appellant, or the appellant if unrepresented, shall notify the Court of this fact in writing no later than 30 days after filing the notice of appeal. This required notification may be provided on the docket statement required by App.R. 3 and Loc.R. 3.1.

### **B. Transcript of proceedings**

If the record on appeal will include a transcript of proceedings, the appellant shall order the transcript in writing, including the dates requested to be transcribed, and shall file a copy of the transcript order with the clerk of the trial court in accordance with App.R. 9(B)(3).

The court reporter should include an electronic copy of the transcript of proceedings where it is available by emailing the electronic copy of the transcript to COA\_transcript@cms.hamilton-co.org. The case number should be included in the subject of the email address. See App.R. 9(B)(6)(i).

Transcripts of proceedings will only be considered part of the record on appeal if one of the following apply:

The court reporter has signed and certified the original transcript;

The transcript was originally filed in the trial court;

The court appeals has granted a motion to supplement or complete the record.

No party is permitted to file a copy of a transcript, which is defined as not the original transcript created by the official court reporter, unless leave of court is requested and granted by this Court. Any copy of a transcript may be sua sponte stricken by this court.

### **C. Exhibits**

Unless otherwise directed by the court of appeals, the clerk of the trial court shall not transmit to the clerk of the court of appeals any physical trial exhibits (e.g. weapons, ammunition, money, drugs, clothing, or valuables). Where exhibits are retained pursuant to this rule, the clerk shall identify the retained exhibits and the custodian on the transcript of docket and journal entries transmitted pursuant to App.R. 10(B).

## **Rule 11.1 Accelerated Calendar**

Pursuant to App.R. 11.1, this Court adopts an accelerated calendar which shall be administered in the following manner.

### **A. Regular calendar - default**

All appeals shall proceed by default on the regular calendar under the Ohio Rules of Appellate Procedure unless:

The Court, upon review of the docketing statement and/or relevant filings, issues a scheduling order placing the appeal on the accelerated calendar; or

The appellant requests the accelerated calendar.

**B. Accelerated calendar - factors**

In evaluating whether to assign a case to the accelerated calendar, the Court will consider:

Whether a transcript of proceedings is required and the approximate length of the transcript;  
In a criminal case, whether the appeal is from a plea or solely challenges the defendant's sentence;  
Which court the case is appealed from;  
Any need for accelerated treatment;  
The anticipated number and complexity of assignments of error;  
The presence of a cross-appeal or any appellate jurisdictional dispute; and  
Any other factor that implicates the complexity or precedential nature of the appeal.

**C. Method of assignments**

This Court may assign an appeal to the accelerated or regular calendar at any stage of the proceedings:

Upon its own initiative; or

Upon a motion demonstrating good cause filed by any party before the appellant's brief is scheduled to be filed. The motion shall be supported by a memorandum setting forth the specific reasons for the change with reference to the applicable factors identified in subsection (B) above.

**D. Rules governing accelerated appeals**

The proceedings in an appeal placed on the accelerated calendar shall be governed by this rule and by the Ohio Rules of Appellate Procedure, including the procedures specific to accelerated appeals set forth in App.R. 3, 10, and 11.1. However, the scheduling order issued pursuant to Loc.R. 3.4 shall set forth deadlines for briefs and transmission of the record.

Oral argument in an accelerated appeal shall be governed by App.R. 21 and Loc.R. 21. Generally, the Court will endeavor to schedule appeals on the accelerated calendar for argument/submission date sooner than contemporaneously filed appeals on the regular calendar.

Briefs filed in an accelerated appeal shall conform to App.R. 16 and Loc.R. 16.1 and 19.1. An appellant may file a reply brief, which shall be filed within ten days of the filing of the appellee's brief.

**Rule 15.1 Motions--Content; Copies; Opposing Memorandum; Determination**

**A. Content of motion**

A motion seeking an order or other relief shall be accompanied by an entry referencing the specific motion to which it applies and granting the relief sought. The entry should be filed in Microsoft Word (.doc or .docx) format, pursuant to Loc.R. 13.1(A)(1)(b).

**B. Opposing memorandum**

Any memorandum opposing a motion seeking substantive relief must be filed within ten days after the filing of the motion. A memorandum opposing a motion seeking only a procedural order may be filed only by leave of court. The following are examples of routine procedural motions:

Motions to enlarge or reduce the time to file briefs or the record;  
Motions to consolidate;  
Motions to file non-complying briefs;  
Motions to appoint counsel;

Motions to extend the time to act set by the Appellate Rules, local rules, or an order of this Court, including, for example, to comply with in forma pauperis requirements, comply with a show cause order, or to extend a deadline previously set by this Court.

**C. Determination of motion for substantive relief**

A panel of three judges shall decide a motion seeking substantive relief. A single judge of the panel or the presiding judge shall endorse the entry granting or denying the motion.

**Rule 16.1 Contents of Briefs**

**A. Contents of appellant's brief**

Briefs shall be signed by counsel or by the party if pro se and shall follow the format set forth in this rule, in App.R. 16, and in Loc.R. 16.2. The Court may strike a brief that does not substantially comply with these rules. Briefs shall include the following:

Table of contents, assignments of error, and issues presented for review. Consistent with App.R. 16(A)(1) through 16(A)(4), the table of contents shall index the brief's contents, the assignments of error, and the issues presented for review. Under each assignment of error, the brief shall list as indented numbered subparagraphs the issues presented for review for the assignment of error.

Table of authorities. Consistent with App.R. 16(A)(2), the table of authorities shall list cases, statutes, and other authorities cited, with references to the pages of the brief where cited.

Statement of the case. Consistent with App.R. 16(A)(5), the statement of the case shall briefly summarize the nature of the case, the course of the proceedings, and the disposition below. The statement of the case shall be followed by, under appropriate headings and in the order indicated, the following:

Statement of jurisdiction. The statement of jurisdiction shall state that the appeal was timely filed and was taken from a final appealable order and shall contain references to the relevant parts of the record and citations to the relevant rules and statutes.

Procedural posture. The procedural posture shall state the relevant procedural events leading to the action of the trial court appealed and shall contain references to the relevant parts of the record.

Statement of the facts. The statement of the facts shall recite the facts relevant to the assignments of error and shall contain references to the relevant parts of the records.

Argument. Consistent with App.R. 16(A)(7), the argument shall state the assignments of error and the issues presented for review in precisely the same manner and order in which they are stated in the table of contents. The argument shall set forth, in the order indicated, the following:

Assignment of error. An assignment of error shall state how the trial court is alleged to have erred, e.g., "The trial court erred in denying the motion to suppress." An assignment of error shall not be stated as a "proposition of law" as contemplated by S.Ct.Prac.R. VI(2)(B)(4). Each assignment of error shall be followed by references to the parts of the record demonstrating the alleged error.

Issues presented for review. Under each assignment of error, the brief shall set forth the numbered issues presented for review. An issue presented for review may be stated in the manner of a "proposition of law" as contemplated by S.Ct.Prac.R. VI(2)(B)(4), but shall be designated as an "Issue Presented for Review."

Standard of review. Under each numbered issue presented for review, the brief shall state the applicable standard of review.

Body of argument. Under each numbered issue presented for review, after the statement of the applicable standard of review, the brief shall set forth the contentions relevant to the issue and the reasons supporting each contention. Each contention supporting an issue presented for review shall contain references to the relevant parts of the record and citations to the relevant legal authorities. Conclusion. Consistent with App.R. 16(A)(8), the conclusion shall briefly summarize the argument and shall precisely state the relief sought on appeal.

Certificate of service. The certificate of service must be signed and shall specify to whom the brief was served, and the date and manner of service, including the email or mailing address used to complete service, if applicable.

Attachments. The appellant shall attach to the brief a copy of the final order from which the appeal is taken, along with any supporting opinion, decision, or findings of facts and conclusions of law.

#### **B. Contents of appellee's brief**

The appellee's brief shall comply with subsection (A) of this rule except that the statement of the case or of the facts relevant to the assignments of error need not be made unless the appellee is dissatisfied with the statement of the appellant. The appellee may also recast the appellant's issues presented for review in a manner that supports the appellee's argument on appeal.

#### **C. Contents of reply brief**

A reply brief shall be confined in content to rebutting the appellee's brief.

#### **D. References in briefs to the record**

A reference in a brief to a transcript of proceedings shall be abbreviated "T.p.," followed by the relevant page number, e.g., "T.p. 25." A reference to the transcript of the docket, journal entries, and original papers shall be abbreviated as "T.d.," followed by the document number assigned by the clerk of courts, e.g., "T.d. 10." A reference to a page in a multipage document included in the transcript of the docket, journal entries, and original papers shall be made to the document number, followed by "at" and the relevant page number, e.g., "T.d. 10 at 50."

#### **E. Unnecessary and prohibited attachments**

A party should generally refrain from appending a copy of a constitutional provision, statute, ordinance, rule, or regulation to the brief, unless the authority is not readily available on Westlaw, LexisNexis, or the internet.

Attachment of materials not contained within the record is prohibited. If a party appends documents from the record, other than the final order as required by subsection (A)(6) of this Rule, the party must include a table of contents for the Appendix and provide a citation to where the document can be found in the record.

#### **F. Citations to authorities in briefs**

The citations to authority in the brief shall be in the form adopted by the Supreme Court of Ohio, and shall be in the body of the brief and not in footnotes. The Writing Manual adopted by the Supreme Court of Ohio is available on the Supreme Court of Ohio's website.

<https://www.supremecourt.ohio.gov/ROD/manual.pdf>

**G. References to the parties in briefs**

When referring to a party to an appeal, a brief shall use the party's name or a descriptive term rather than "appellant" or "appellee."

**RULE 18.1 Filing and service of briefs-time for filing and serving briefs; copies**

**A. Time for filing and serving briefs**

The Court will issue a scheduling order for filing and serving the briefs. If the appellant files a Notice of Automatic Extension of Time to File Brief pursuant to Loc.R. 14, or if the Court grants the appellant an extension of time to file the appellant's brief pursuant to Loc.R. 10(B)(2) or 14(D), the appellee shall, without further order of the Court, file and serve the appellee's brief within 20 days after the appellant's brief was filed.

This division shall not apply to an expedited appeal under App.R. 11.2.

**B. Number of copies to be filed and served**

A party shall file an original and one copy of a brief. The original brief shall be unbound and without dividers or tabs, but the copy may be bound at the top left corner.

This division shall not apply to briefs filed electronically under Loc.R. 13.1.

**Rule 19.1. Form of briefs and other pleadings**

**A. Filings in general**

Every filing must contain:

- The name of the Court and the appeal number;
- The caption of the case;
- The case number below;
- The type of filing;
- The designation of counsel pursuant to Loc.R. 3.2;
- Signed by the filing party; and
- Certificate of Service

**B. Length of briefs**

Parties' briefs shall not exceed the following limitations, which are exclusive of the cover page, table of contents, table of authorities, certificates of counsel, certificate of compliance, signature blocks, certificate of service, and appendices.

Length of briefs — regular calendar.

For appeals on the regular calendar, principal briefs of appellant(s) and appellee(s) shall not exceed 9,000 words OR 40 pages.

For appeals on the regular calendar, a reply brief of appellant(s) shall not exceed 4,500 words OR 20 pages.

Length of briefs — accelerated calendar.

For appeals on the accelerated calendar, principal briefs of appellant(s) and appellee(s) shall not exceed 4,500 words OR 20 pages.

For appeals on the accelerated calendar, a reply brief of appellant(s) shall not exceed 2,200 words OR 10 pages.

The Court may permit a brief exceeding the limits in subsection (1) upon good cause shown in a written motion filed within the time provided for filing the brief.

If a party's brief exceeds the page limits in subsection (1), the brief must include a certificate of compliance, signed by the attorney or unrepresented party, indicating that the brief complies with the word count limitation. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief. The certificate must state the number of words in the brief, as calculated under subsection (1). The following certificate may be used:

#### CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with the word-count provision set forth in First District Local Rule 19(B)(1). This Brief is printed using Times New Roman or Georgia 14-point typeface using \_\_\_\_\_ word processing software and contains \_\_\_\_\_ words.

\_\_\_\_\_  
Signature

#### **C. Form of briefs**

**Paper Size.** The brief must be formatted to fit on 8 ½ by 11 inch paper when printed.

**Font size.** All text must be in at least 14-point font.

**Line Spacing.** Text must be doubled-spaced between lines, except quotations more than three lines long may be indented and single-spaced. Headings and footnotes may be single-spaced.

**Margins.** The brief must have margins of at least one inch on all four sides.

**Typeface and Type Style.** The body of the brief must be set in Times New Roman or Georgia typeface. The style of the brief should be set in a plain, roman style, although italics and boldface may be used for emphasis.

**Reproduction.** A brief may be reproduced by any process that yields an image with clear black text in at least 14-point typeface when printed. This applies to both e-filed documents and those submitted in paper form.

#### **D. Handwritten pleadings and briefs**

Every document filed with the Court shall be typewritten or prepared by a word processor or other standard typographic process. A handwritten document may be accepted for filing only in an emergency, provided the document is legible and an explanation is provided as to why the document is handwritten. As to briefs, a handwritten brief will be permitted only with the permission of the Court.

#### **E. Failure to comply**

A filing not prepared in accordance with these rules and the Ohio Rules of Appellate Procedure may be stricken with an order for a conforming document to be filed within a specified time. An appellant's failure to conform may result in dismissal of the appeal; an appellee's failure to conform may result in its brief being stricken or the right to argue being denied.