



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Pro Se Packet

Filing an Appeal in the Eighth District Court of Appeals Cuyahoga County, Ohio

To properly file a timely appeal to the Eighth District Court of Appeals, 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 Eighth 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 has its own rules called Local Rules. You will find parts of the local appellate rules for the Eighth 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 in your legal orientation packet on the bottom of the first page. If you no longer have that document, you will find legal directories in the Law Library where you can look up 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**
 - Note: a time-stamped copy of your sentencing entry *must* be attached to your notice of appeal. 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, legal services staff *may* agree to call the county and request that the entry be faxed to the legal services office.
 - Fill in the blanks on the forms. Write neatly in pen.
 - Fill in the “Case No. _____” with your trial court number. That 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 will 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.

- **Praeipice and Docketing Statement**
 - Check the applicable boxes and fill in the blanks with as much information as you know. Write neatly in pen.

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

Clerk of Courts, Court of Common Pleas
Cuyahoga County Courthouse
Justice Center
1200 Ontario Street, 2nd Floor
Cleveland, Ohio 44113

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 Cuyahoga 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.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. _____
 :
 vs. :
 :
 _____, : JUDGE _____
 :
 Defendant-Appellant. :

NOTICE OF APPEAL

_____ hereby gives notice of an appeal to the Eighth 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 Cuyahoga County Prosecutor, The Justice Center, Courts Tower, 1200 Ontario Street, 9th Floor, Cleveland, Ohio 44113, this ____ day of _____, 20__.

DEFENDANT-APPELLANT, PRO SE

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. _____
 :
 vs. :
 :
 _____, : JUDGE _____
 :
 Defendant-Appellant. :

AFFIDAVIT OF INDIGENCY

I, _____, do hereby solemnly swear that I have presently this
____ day of _____, 20____, no means of financial support and no assets of any value and,
therefore, cannot secure costs to pay for any legal services, fees or costs in the above-styled case.

DEFENDANT-APPELLANT, PRO SE

Sworn to and subscribed in my presence this ____ day of _____, 20__.

NOTARY PUBLIC

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. _____
 :
 vs. :
 :
 _____, : JUDGE _____
 :
 Defendant-Appellant. :

MOTION FOR APPOINTMENT OF COUNSEL

_____ 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 requests the services of counsel at state expense.

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 MOTION FOR APPOINTMENT OF COUNSEL has been sent by regular U.S. mail to the Office of the Cuyahoga County Prosecutor, The Justice Center, Courts Tower, 1200 Ontario Street, 9th Floor, Cleveland, Ohio 44113, this ___ day of _____, 20__.

DEFENDANT-APPELLANT, PRO SE

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. _____
 :
 vs. :
 :
 _____, : JUDGE _____
 :
 Defendant-Appellant. :

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

_____ 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,

DEFENDANT-APPELLANT, PRO SE

Inmate Number/Institution

Address

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 Cuyahoga County Prosecutor, The Justice Center, Courts Tower, 1200 Ontario Street, 9th Floor, Cleveland, Ohio 44113, this ____ day of _____, 20__.

DEFENDANT-APPELLANT, PRO SE

**EIGHTH DISTRICT COURT OF APPEALS LOCAL
APPELLATE RULE 9
Praecipe and Docketing Statement**

Name of Trial Court: _____

Case Caption: _____

Plaintiff,

vs.

Defendant

Trial Court Case Number: _____

Trial Court Judge: _____

Date of judgment appealed: _____

The notice of appeal was filed in compliance with:

- App.R. 4(A) (within 30 days); or
- App.R. 4(B) (time extended); or
- App.R. 5 (delayed appeal)

A. PRAECIPE: REQUESTING THE RECORD

TO THE CLERK OF THE TRIAL COURT:

1. By checking this box, appellant requests that the clerk of the trial court immediately prepare and assemble the original papers and exhibits filed in the trial court and a certified copy of docket and journal entries under App.R. 9(A). **(If appellant only selects this box, appellant acknowledges that no transcript is required to be prepared.)**
2. Check this box if you seek the record in this appeal to include one of the following listed below that is necessary for the resolution of the appeal. **(Please select only one of the following below.)**
 - a. Complete transcript under App.R. 9(B). (Note: the appellant must instruct the court reporter to prepare the transcript.)
 - b. Partial transcript under App.R. 9(B). (Note: the appellant must instruct the court reporter to prepare the transcript.)
 - c. Statement of evidence or proceedings under App.R. 9(C).
 - d. Agreed statement under App.R. 9(D).

B. CALENDAR

Choose the appropriate calendar designation for this case. **Check only one of the following:**

Regular Calendar

This is the appropriate selection if **any** of the following apply:

- Transcript and all other evidentiary materials are more than one hundred pages;
- A brief in excess of 15 pages is necessary to argue the issues adequately;
- Appeal concerns unique issues of law that will be of substantial precedential value in determining similar cases;
- Appeal concerns multiple or complex issues; or
- Do not want accelerated calendar.

Accelerated Calendar (*See [LocApp.R. 11.1](#)*)

An appeal may be assigned to the accelerated calendar if (1) no transcript is required, or (2) the transcript and all other evidentiary materials consist of 100 or fewer pages. If any of the criteria listed above for regular calendar applies, the appeal will not be assigned to the accelerated calendar.

Expedited Calendar (*See [App.R. 11.2](#)*)

This is the appropriate selection if any of the following apply. Please designate the specific category below:

- Abortion-related appeal from juvenile court
- Adoption or parental rights appeal (includes award of temporary custody to the agency)
- Dependent, abused, neglected, unruly or delinquent child appeal
- Prosecutorial appeal from suppression order
- Denial of a bail bond as provided in R.C. 2937.222(D)
- Elecon contests as provided in R.C. 3515.08

C. GENERAL INFORMATION

1. Was a stay requested in the trial court? Yes No (*See App.R. 7 and App.R. 8*)

If a stay was requested, how did the trial court rule?

- Granted Denied Pending

2. If this case has previously been before this court, list prior appellate case number(s):

3. List case names and numbers of cases pending in this court that involve the same transaction or controversy involved in this appeal:

4. Probable issues for appeal (if known):

5. Have you attached a time-stamped copy of the final judgment being appealed as required under Loc.App.R. 3(B)? Yes

6. Have you been declared a vexatious litigator? Yes No

If yes, did you comply with R.C. 2323.52(F)(2) and seek leave to file?

- Yes No

D. CRIMINAL CASE

(If this is an appeal from a civil case, skip ahead to SECTION E. If a criminal case, complete this section and then skip to the signature block.)

1. Does the sentencing order contain the following **four requirements**:

- fact of conviction for **each** count;
- separate sentence for **each** convicted count;
- signature of trial court judge; and
- file stamp of the clerk of court?

- Yes No

2. If a co-defendant(s) was indicted and convicted under the same complaint, list the name(s) of co-defendant(s):

3. Type of Appeal (**Select only one of the following**):

- Defendant’s Appeal as of Right State’s Appeal as of Right
 Defendant’s Delayed Appeal by Leave of Court (*See App.R. 5(A)*)
 State’s Appeal by Leave of Court (*See App.R. 5(B)*)

E. CIVIL CASE

1. Specify the type of action in the trial court (e.g. administrative appeal; contract; declaratory judgment; domestic relations; juvenile; medical malpractice; personal injury; probate; etc.):

2. Is the order appealed from a final appealable order:

- a. Did the judgment dispose of all claims by and against all parties?

Yes No

- b. If not, is there a determination that there is “no just reason for delay” per Civ.R. 54(B)?

Yes No

- c. If you are appealing an interlocutory order, specify what authority (e.g. specific provision under R.C. 2505.02, other statute, or case law) that gives this court jurisdiction to hear the appeal:

3. Settlement discussions:

a. How would you characterize the extent of your settlement discussions before judgment?

- None Minimal
 Moderate Extensive

b. Have settlement discussions taken place since the judgment or order appealed from was entered?

- Yes No

c. Would a mediation conference assist in the resolution of this matter?

- Yes No
 Maybe

I certify that the above information is accurate to the best of my knowledge. I also acknowledge that I must file the Notice of Appeal along with this Praecipe and Docketing Statement in the trial court.

Appellant or Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that a copy of this Praecipe and Docketing Statement was served upon

_____ on ___/___/20___ in the following manner: _____

(Signature)

Selected Rules of the Eighth District Court of Appeals

Annotations current through December 28, 2020

RULE 3. APPEAL AS OF RIGHT — HOW TAKEN; COST-DEPOSIT; CONSOLIDATED APPEALS; CROSS-APPEAL

(A) **Filing Fee and Cost Deposit.** The clerk will not accept for filing any notice of appeal, notice of cross-appeal, or original action unless the party bringing the action deposits with the clerk of courts the sum of \$175.00. Of that sum, \$150.00 will be security for the payment of costs, and \$25.00 is a fee, authorized under R.C. 2501.16(B), for the operation of the court. But, the clerk will receive and file the appeal or action without the payment of \$175.00:

(1) If the appellant files with the clerk a sworn affidavit (“affidavit of indigency”) or affirmation of inability to secure costs by prepayment; or

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

(3) If the requirement of prepayment is otherwise excused by operation of law, e.g., R.C. 109.19 and 325.31(C).

(B) Appeal As of Right.

(1) The notice of appeal must individually name each party taking the appeal and must have attached to it a copy of the judgment or order appealed from (journal entry) signed by the trial judge and time-stamped with the date of receipt by the clerk. The subject attachments are not jurisdictional but their omission may be the basis for a dismissal.

(2) 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.

(3) Counsel, or litigants filing notices of appeal on their own behalf, must include current names and addresses for counsel of record for appellees. In the event an appellee is unrepresented, then the appellee’s current address and email must be provided. If filing the notice of appeal in paper form, appellant is required to provide the original and one copy as well as the necessary number of copies for service.

(C) Consolidation of Appeals.

(1) Consolidation Of Appeals. Either on motion or sua sponte, the court may consolidate cases involving related transactions or the same or similar principles of law, even though the parties are not identical. When consolidation has been ordered, the parties with a common interest must try to prepare a common brief with an addendum to cover any proposition that a party deems unique to that party. Any addendum may not exceed 15 pages without leave of court.

(2) Service In Consolidated Appeals. When appeals are consolidated, the clerk of the court of appeals may limit its notice of journal entries to one notice for each counsel (or party, if not represented by counsel) where identical journal entries are being made in each consolidated appeal. Such service will constitute due notice as to all the consolidated appeals. Costs will ordinarily be assigned to the lowest case number.

(3) Manner of Filing in Consolidated Appeals. After consolidation of appeals, parties shall file any documents, including motions, briefs, and notices, under the lowest appeal number, indicating on the title of the document all appellate case numbers subject to the consolidation.

(D) **Cross-Appeal**. Notice of cross-appeal shall be filed like a notice of appeal with the clerk of the trial court and with the praecipe and docketing statement.

(E) **Service by Prosecutor**. When a prosecutor takes an appeal either of right or accompanied by a motion for leave to appeal in a felony, misdemeanor, or juvenile delinquency case, and including from an order sealing the record pursuant to R.C. 2952.31, et seq., the prosecutor shall send a notice of the appeal to the Appellate Division of the Cuyahoga County Public Defender's Office via United States mail or by sending an electronic copy to pdgeneral@cuyahogacounty.us. The fact of service to the Cuyahoga County Public Defender's Office shall be included within the certificate of service.

(Adopted eff. Feb. 1, 1999; amended eff. July 1, 1999; Apr. 1, 2004; July 1, 2012; Aug. 1, 2016; Apr. 9, 2018; Feb. 1, 2019.)

RULE 9. THE RECORD ON APPEAL; PRAECIPE; TRIAL CLERK'S DUTIES; ABSENCE OF COURT REPORTER

(A) The appellant must file with the clerk of the trial court, and serve upon each of the parties, the notice of appeal and an attached certificate of service, dated and signed. This does not preclude the clerk of the trial court's requirement to separately serve the parties of record in accord with App.R. 3(E). The appellant must provide the clerk with the original and one copy as well as the necessary number of copies for service if filing in paper form.

(B) Simultaneously with filing the notice of appeal, the appellant must file with the clerk of the trial court, and serve upon each of the parties, a complete praecipe and docketing statement in accord with the form set forth in Appendix A to these local rules. The appellant must also provide the clerk with the original and one copy as well as the necessary number of copies for service if filing in paper form. Otherwise, if filing electronically, appellant may rely on the court's electronic transmission facilities to make service under App.R. 13(C)(6) to any party who is registered for electronic service on the court's electronic filing transmission facilities and does not need to provide any copies.

(C) The clerk of the trial court shall effect the following:

(1) The prompt service of the notice of appeal, praecipe and docketing statement; and

(2) The prompt service to the clerk of the court of appeals of a copy of the notice of appeal, and the praecipe and docketing statement with the filing fee.

(D) In transmitting the record, the clerk of the trial court shall:

(1) Include on the docket sheet (App.R. 10(B)), the filing date and a brief description of each of the documents filed in the trial court;

(2) Ascertain that the journal entries have been signed by the judge and file-stamped by the trial court clerk; and

(3) Neatly assemble the original papers.

(E) The clerk of the trial court shall not transmit any trial exhibits consisting of weapons, ammunition, money, drugs, or any contraband, unless a majority of the members of the panel of the court of appeals assigned to hear the appeal issue a journal entry instructing the clerk to inform the custodian to make the retained exhibits available to the court for review on a date and at a time specified in the entry. A single member of the panel may issue a journal entry instructing the clerk of the trial court to inform the custodian to make the retained exhibits available for that judge's review at the secure area maintained by the custodian. Regardless of the location of the court's review, the custodian shall be present at all times and shall retain custody of the item(s) specified herein. After the court has concluded its review, the custodian shall return the specified item(s) forthwith to the appropriate secure area in accordance with established procedure. On the pagination sheet, the clerk shall identify the retained exhibits and their custodian.

(F) App.R. 9(B) describes a court reporter as "the person appointed by the court to transcribe the proceedings * * *." When a reporter is used to transcribe the events at trial, the record must reflect that reporter's appointment by the trial court. The court may make this appointment sua sponte or on motion. If an official court reporter is not then under contract to the court, then the trial court shall appoint a professional court reporter on a case-by-case basis.

(G) Any transcript of proceedings filed in support of an appeal shall consist of the original transcript as created by the official court reporter designated by the trial court under App.R. 9(B)(2). No party is permitted to file a copy of a transcript, which is hereby 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.

(Adopted eff. Feb. 1, 1999; amended eff. July 1, 1999; June 1, 2004; Feb. 1, 2019.)

RULE 10. TRANSMISSION OF THE RECORD

It is the duty of the appellant to do the following timely: (1) file a praecipe and docketing statement as provided in Loc.App.R. 9; and (2) cooperate with the clerk of the trial court to secure the transmission of the docket and journal entries and to effect the transmission of the record, including a transcript if applicable, on appeal.

If the appellant fails to timely perform these duties, then the court may, without prior notice, dismiss the appeal for failure to prosecute.

Extensions of time to transmit the record to this court may be granted only by the court of appeals. Applications for extension of time to transmit the record must be made by written motion and must be accompanied by one or more affidavits setting forth facts showing good cause for extension.

Cases dismissed under this rule will be reinstated only for good cause shown.

(Adopted eff. Feb. 1, 1999; amended eff. Feb. 1, 2019.)

RULE 11.1. ACCELERATED CALENDAR

Under App.R. 11.1, this court's accelerated calendar will operate as follows:

(A) Assignment of Cases to Accelerated Calendar. The court may assign an appeal to the accelerated or regular calendar at any stage of the proceedings.

(1) An appeal may be assigned to the accelerated calendar if any of the following applies:

- (a) No transcript is required (e.g., summary judgment or judgment on the pleadings); or
- (b) The transcript and all other evidentiary materials consist of one hundred (100) or fewer pages.

(2) An appeal will not be assigned to the accelerated calendar if any of the following applies:

- (a) A brief in excess of fifteen (15) pages (see Loc.App.R. 16) is necessary adequately set forth the facts and argue the issues in the case;
- (b) The appeal concerns a unique issue of law of substantial precedential value in determining similar cases;
- (c) The appeal concerns multiple or complex issues;
- (d) A cross-appeal is filed; or
- (e) A statement is submitted under App.R. 9(C).

(B) Procedure.

(1) Each appellant and cross-appellant must complete a praecipe and docketing statement form required by Loc.App.R. 9 (see Appendix A for Praecipe and Docketing Statement Form). This form allows the court to determine whether an appeal will be assigned to the accelerated or regular calendar and the suitability of the appeal for a prehearing mediation conference.

(2) If the appellee objects to the assignment of the appeal requested by the appellant on the praecipe and docketing statement form, appellee may move the court under App.R. 15(B) to assign the appeal to the calendar not requested by appellant.

(3) If waiver of argument is desired, then the parties must file a joint motion waiving the argument at least 14 days before the date scheduled for oral argument. However, the court may direct that the case be argued.

(4) If an appeal is assigned to the accelerated calendar, then:

(a) The appellant must cause the record to be filed within 20 days after the filing of the notice of appeal;

(b) The appellant must serve and file a brief and assignments of error within 15 days after the record is filed;

(c) The appellee must serve and file an answer brief, if any, within 15 days after service of appellant's brief;

(d) The court will not accept any reply brief by appellant; and

(e) Neither brief may exceed 15 pages.

(5) In its discretion, the court may issue "judgment entry — accelerated calendar" or a full opinion. (*See* App.R. Form 3).

(6) Upon motion for good cause shown, the court may order a case to be expedited as to transmission of the record, briefing, hearing, and disposition on such schedule and priority as the court may direct.

See App.R. Form 3 for Judgment Entry — Accelerated Docket.

(Adopted eff. Feb. 1, 1999; amended eff. July 1, 1999; Feb. 1, 2019.)

RULE 14. COMPUTATION AND EXTENSION OF TIME

An appellant desiring an extension of time to file the record, assignments of error, briefs, or any other document shall file a written motion for an extension of time with supporting brief or affidavit setting forth good cause for the extension before the due date to avoid dismissal of the case.

An appellee desiring an extension of time to file additional designation of the record, briefs, or any other documents shall file a written motion for an extension of time with supporting brief or affidavit setting forth good cause for the extension before the due date. Otherwise, the case will be placed on the calendar for oral argument. (*See* App.R. 18(C).)

Any motion for an extension of time shall include the original due date of the document and the total number of extensions, if any, the party has been granted to date. If a request for an extension of time has been granted previously, any subsequent request must be supported by facts that demonstrate why additional time is necessary, and the request will be granted only in exceptional circumstances and in the interest of justice.

(Adopted eff. Feb. 1, 1999; amended eff. July 1, 2012; July 15, 2013; Feb. 1, 2019.)

RULE 16 BRIEFS

(A) **Length and Form.** All briefs filed in this court must comply with the requirements of App.R. 16 and 19.

(1) Appeal Involving No Cross-Appeal. In the absence of a cross-appeal, the appellant's opening brief and the appellee's answering brief must each not exceed 40 pages, and the appellant's reply brief, if any, must not exceed ten pages.

(2) Appeal Involving Single Cross-Appeal. If a single cross-appeal has been filed, there shall be a total of four briefs, each containing only one cover, one table of contents, and one table of authorities and conforming to the following requirements:

(a) Appellant's Opening Brief. The first brief is the appellant's opening brief, which shall address only those issues related to the appellant's appeal and must not exceed 40 pages.

(b) Appellee's Answer Brief/Cross-Appellant's Opening Brief. The second brief is the appellee / cross-appellant's brief, identified on its face as an answer brief and brief in support of the cross-appeal. The table of contents of the brief shall designate which portion of the brief relates to the appeal and which portion relates to the cross-appeal. The portion relating to the appeal must not exceed 40 pages, and the portion relating to the cross-appeal must not exceed an additional 25 pages.

(c) Appellant's Reply Brief/Cross-Appellee's Answer Brief. The third brief is the appellant / cross-appellee's brief, identified on its face as a reply brief in support of the appellant's appeal and an answer brief to the cross-appeal. The table of contents of the brief shall designate which portion of the brief is a reply and which portion relates to the cross-appeal. The portion that is a reply in support of the appeal must not exceed ten pages, and the portion relating to the cross-appeal must not exceed an additional 25 pages. The reply portion of the brief must be restricted to matters in rebuttal to the answer portion of the second brief.

(d) Cross-Appellant's Reply Brief. The cross-appellant may file a reply brief in support of the cross-appeal, which must not exceed ten pages. The cross-appellant's reply brief must be restricted to matters in rebuttal to the portion of the third brief addressing the cross-appeal.

(3) Appeal Involving Multiple Cross-Appeals. If more than one cross-appeal has been filed, the parties shall propose to the court for approval or modification, no less than 20 days before the first brief would otherwise be due, a stipulated briefing order setting page limitations and including

other provisions that conform as closely as reasonably possible to the provisions of Loc.App.R. 16(A)(2), but also taking into account the potential need for adjustment to those provisions as necessary to accommodate the multiple issues raised and the parties to whom the issues are directed. In the 21 event the parties cannot agree on a proposed stipulated briefing order, the parties shall adhere to the requirements of Loc.App.R. 16(A)(2), unless the court on motion issues a different briefing order.

(4) Cross-Appeal(s) Involving Fewer Than All Appellees: In the event of multiple appellees, Loc.App.R. 16(A)(2) and (3) apply only to those cross-appellees who have filed cross-appeals. Any appellee who has not filed a cross-appeal shall follow the length and form requirements of Loc.App.R. 16(A)(1).

(5) Exclusions from Page Limitations: All page limitations are exclusive of the table of contents, the table of authorities, certificate of service, and any appendices.

(6) Motion to Exceed Page Limitations: Application for permission to file a longer brief may be made by a motion specifying the number of extra pages requested, the portion of the brief requiring extra pages, and why extra pages are needed.

(B) **Notice of Conceded Error**. When a party concedes an error that is dispositive of the entire appeal, the party conceding the error shall file a separate notice of conceded error in lieu of a responsive brief. Once briefing is completed, the appeal will be randomly assigned to a merit panel for review. The appeal will be considered submitted on the briefs unless the assigned panel sets an oral argument date.

(C) **Case Citation**. Citation to authority in a brief shall be included in the body text of the brief, except when the citation supports a proposition made in a footnote, and shall conform to the manual of citation issued by the Supreme Court of Ohio's Reporter of Decisions that may be found at <http://www.supremecourt.ohio.gov>.

(D) **Unnecessary Attachments of Legal Authority Disfavored**. Parties are discouraged from attaching to briefs any legal authority generally accessible through online legal research databases. Only if the determination of the assignments of error presented requires consideration of legal authority not accessible through any online resources shall the relevant parts be reproduced in an attachment or appendix at the end of the brief.

(E) **Failure to Comply**. A brief not prepared in accordance with these rules and the formalities mandated by App.R. 16 and 19 may result in the brief being stricken and the court ordering that an amended brief complying with the rules be filed by a specified date. An appellant's failure to conform may result in dismissal of the appeal; a cross-appellant's failure to conform may result in dismissal of the cross- 22 appeal; and an appellee's / cross-appellee's failure to conform may result in the brief being stricken and the right to argue being denied.

(Adopted eff. Feb. 1, 1999; amended eff. Feb. 1, 2006; Jan. 1, 2010; Jan. 19, 2010; July 30, 2014; Feb. 1, 2019.)

RULE 18 FILING AND SERVICE OF BRIEFS; CROSS-APPEALS; CONSEQUENCES OF FAILURE TO FILE

(A) Cross-Appeals.

(1) A cross-appellant must serve and file the appellee's brief and the cross-appellant's brief within 20 days after service of the appellant's brief. The appellee's brief and the cross-appellant's brief must be filed as a single document.

(2) The cross-appellee must serve and file the cross-appellee's brief and may serve and file an appellant's reply brief within 20 days after service of the cross-appellant's brief. The cross-appellee's brief and the appellant's reply brief must be filed as a single document.

(3) The cross-appellant may serve and file a reply brief within ten days after service of the cross-appellee's brief.

(B) Failure to File. If the record, assignments of error, or brief of appellant has not been timely filed, then the appeal will be dismissed. A motion for reconsideration may be filed under App.R. 26(A)(1). (See App.R. 3(A), 4(A), 11(C) and 18(C).)

(Adopted eff. February 1, 1999; amended eff. July 22, 2010.)

RULE 22 ENTRY OF JUDGMENT

(A) Journalization. This court will file the journal entry and opinion or any other dispositive entry with the clerk of this court for journalization as of the date of its release.

(B) Remand and Dismissal Orders.

(1) An order of remand shall contain a specific description of the basis for the remand and shall state the date upon which the record is to be returned to the clerk of this court.

(2) The clerk of this court shall serve, upon the trial court judge and the administrative judge of the trial court, any order of this court that remands an appeal for correction of the record under App.R. 9(E) or dismisses an appeal for lack of a final appealable order.

(C) Form of Opinions. Opinions of this court will not identify or make reference by proper name to the trial judge, magistrates, court officials, administrative personnel, or counsel for the parties involved in the proceedings below unless such reference is essential to clarify or explain the role of such person in the course of said proceedings. 29

(Adopted eff. Feb. 1, 1999; July 26, 2000; amended eff. July 20, 2010; Feb. 1, 2019.)

RULE 26 EN BANC CONSIDERATION

(A) **Scope of Review.** This court shall consider an appeal en banc in accordance with App.R. 26(A)(2) and the procedures set forth in this rule. En banc consideration is not favored.

(B) **Application For En Banc Consideration.** App.R. 26(A)(2) governs parties' applications for en banc consideration. The parties must strictly comply with the time limits of the appellate rule for filing an application, an opposing brief, or a reply brief. The application and opposing brief shall not exceed ten pages. The reply brief shall not exceed five pages. The parties shall electronically file an application, opposing brief, or reply brief in accordance with Loc.App.R. 13.1.

(1) Contents of the Application for En Banc Consideration.

(a) An application for en banc consideration shall include a concise one-paragraph statement of the dispositive point of law upon which the applicant asserts that the panel's decision conflicts with a prior panel's decision of this court.

(b) The application must specifically identify the paragraph(s) of the panel opinion at issue and the paragraph(s) of the prior panel's opinion that conflict on a point of law and explain why en banc is necessary to secure and maintain uniformity of this court's decisions.

(2) Parties seeking both reconsideration and en banc application must file a combined application in a single document that does not exceed ten pages.

(C) **Procedure.** The administrative judge may summarily dismiss any application for en banc consideration that does not comply with the requirements of App.R. 26(A)(2) and this local rule. When a majority of the en banc court votes to consider a case sua sponte after the panel's decision has been journalized, the administrative judge will issue an order indicating the case is being considered for en banc review and additional briefing may be ordered by the court.

(Adopted eff. July 20, 2010; amended eff. Feb. 15, 2011; Feb. 1, 2019.)