



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 the following documents in the court of common pleas of the county where you were convicted, within THIRTY DAYS of the date that your sentencing entry was time-stamped. If that date has passed, 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 following documents in the Court of Common Pleas. Each of these documents is included in this packet. Parts of the local appellate rules are also included at the end of the packet.

- **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 "C.P. 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.

- **Motion for Transcript at State Expense**
 - Fill in the blanks with as much information as you know. Write neatly in pen.

- **Statement, Praecipe, and Notice to Court Reporter**
 - Fill in the blanks with as much information as you know. Write neatly in pen.

- **Docketing Statement**
 - Fill in the blanks with as much information as you know. Depending on your case, fill out Section A if Criminal and Section B if Civil. If Civil, you need to attach all entries to Docketing Statement if you answer “Yes” to question B (1)(a). Write neatly in pen.

- **Praecipe**
 - 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.

If for whatever reason you are unable to obtain the required number of copies, file what you have. It may be possible to correct this deficiency later. It is the timely filing of the notice of appeal that is a jurisdictional prerequisite to the appellate court's authority, not the contents of that notice. Indeed, a reviewing court is free to take whatever action it believes is appropriate, including dismissal of the appeal when a notice of appeal is defective under App.R. 3. When it does so, however, it is not because of any jurisdictional impediment, but as an exercise of its discretion under this rule. *Cook v. Smith*, Tenth District No. No. 12AP-489, 2012 Ohio 4951.

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

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

NOTICE OF APPEAL

Defendant-Appellant, _____, hereby gives notice of his appeal to the Eighth District Court of Appeals, Cuyahoga County, Ohio, from the judgment entry of conviction, entered in this Court on the ___ day of _____, ____.

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, Justice Center, 1200 Ontario Street, 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, :
 vs. : C.P. No. _____
 :
 _____, : 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

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, :
 vs. : C.P. No. _____
 :
 _____, : JUDGE _____
 :
 Defendant-Appellant. :

MOTION FOR APPOINTMENT OF COUNSEL

Defendant-Appellant, _____, 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 defendant 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 the defendant 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*. Defendant-Appellant, as attested by the accompanying Affidavit of Indigency, is unable to retain counsel and thus 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, Justice Center, 1200 Ontario Street, 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, :
 vs. : C.P. No. _____
 : JUDGE _____
 _____, :
 Defendant-Appellant. :

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

Defendant-Appellant, _____, hereby applies to the 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 Defendant-Appellant's appeal as of right to the court of appeals. Defendant-Appellant is indigent and lacks the means to pay the cost of preparing such transcript from his own resources. Therefore, he is 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 Ohio Supreme Court has determined that Section 16, Article I 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).

As an indigent, Defendant-Appellant is without means and is unable to pay the cost of preparing a transcript from his own resources. For these reasons Defendant-Appellant is entitled to the preparation of a complete transcript at state expense. Defendant-Appellant further moves this Court for an order directing the court reporter to provide a copy of that transcript to appellate 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, Justice Center, 1200 Ontario Street, 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, :
 vs. : C.P. No. _____
 : JUDGE _____
 _____, :
 Defendant-Appellant. :

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

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 Cuyahoga County Prosecutor, Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113, this ___ day of _____, 20__.

DEFENDANT-APPELLANT, PRO SE

EIGHTH DISTRICT COURT OF APPEALS-- LOCAL RULE NO. 9

DOCKETING STATEMENT

Plaintiff,

Trial Court Case No. _____

vs.

Defendant.

A. CHOOSE THE APPROPRIATE DESIGNATION FOR THIS CASE (Check One):

- Accelerated calendar (See Loc.App.R. 11.1)
- Regular calendar
- Denial of bail appeal
- Appeal (Check one of the following):
 - A. From an order granting or denying:
 - 1. Adoption of a minor child; or
 - 2. Termination of parental rights. See App.R. 11.2
 - B. Concerning a dependent, neglected, unruly, or delinquent child. See App.R. 7(C).

(Item A of this docketing statement was adopted at the Judges meeting on February 15, 2001, to comply with Appellate Rule 11.2.)

Assigned to the accelerated calendar for the reason(s) checked (see Local Rule 11.1).

- 1. No transcript required.
- 2. Transcript and all other evidentiary materials consist of one hundred (100) or fewer pages.

Assigned to the regular calendar with full briefing for reason(s) checked.

- 1. Transcript and all other evidentiary materials are more than one hundred (100) pages.
 - 2. Brief in excess of fifteen (15) pages is necessary to argue the issues adequately.
 - 3. Appeal concerns unique issue of law which will be of substantial precedential value in the determination of similar cases.
 - 4. Appeal concerns multiple or complex issues.
 - 5. A statement is submitted under App. R. 9(C).
- _____

B. THE FOLLOWING QUESTIONS APPLY TO ALL CIVIL AND ADMINISTRATIVE APPEALS:

1. Final appealable order:

(a) Has the trial court disposed of all claims by and against all parties?

- Yes. Attach copies of all judgments and orders indicating that all claims against all parties have been dismissed.
- No.

(b) If the answer to (a) is "No," has the trial court made an express determination that there is "no just reason for delay," per Civ.R. 54(B), with respect to the judgment or order from which the appeal is taken?

- Yes, in the same judgment or order.
- Yes, in a subsequent order dated _____. Attach a copy of the subsequent order.
- No.

(c) Is the judgment or order subject to interlocutory appeal under R.C. 2505.02 (check all that apply)?

- Yes, because the order affects a substantial right in an action and prevents a judgment. See R.C. 2505.02(B)(1).
- Yes, because the order was made in a special proceeding. See R.C. 2505.02(B)(2).
- Yes, because the order vacates or sets aside a judgment or grants a new trial. See R.C. 2505.02(B)(3).
- Yes, because the order grants or denies a provisional remedy and meets the other criteria of R.C. 2505.02(B)(4).
- Yes, because the order determines that an action may or may not be maintained as a class action. See R.C. 2505.02(B)(5).
- No.

(d) Does the right to an immediate appeal arise from a provision of a statute other than R.C. 2505.02?

- Yes. Identify statute: _____.
- No.

NOTE: IF THE ANSWER TO ALL OF THE ABOVE IS "NO", THE ORDER IS NOT A FINAL APPEALABLE ORDER, AND THE APPEAL WILL BE SUMMARILY DISMISSED FOR LACK OF APPELLATE JURISDICTION.

2. Nature of Case:

- Administrative Appeal
- Contract
- Declaratory Judgment
- Domestic Relations
- Juvenile
- Medical Malpractice
- Personal Injury
- Probate
- Other (describe): _____

3. Do you know of another case pending before this court that raises the same issue or issues?

Yes No

If yes, please cite the case(s): _____

4. Does the appeal turn on an interpretation or application of a particular case or statute?

Yes No

If yes, please cite the case(s) or statute(s): _____

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

None
 Minimal
 Moderate
 Extensive

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

Yes No

7. Would a prehearing conference assist the resolution of this matter?

Yes No Maybe

Please explain (optional): _____

8. Briefly summarize the assignments of error presently anticipated to be raised on appeal. (Attach a separate sheet if necessary.)

Appellant Pro Se or Attorney for Appellant

The primary purpose of a prehearing conference is to encourage the parties to explore any possibilities there may be for settlement of the case before incurring additional expenses, or, if that is not possible, to limit the issues.

Loc.App.R. 20(E) provides that this court may assess reasonable expenses, including attorney fees, assess all or a portion of the appellate costs, or dismiss the appeal for failure to comply with provisions of this Rule.

EIGHTH DISTRICT COURT OF APPEALS--LOCAL RULE NO. 9

PRAECIPE

<hr/> <hr/> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <hr/> <hr/> <p style="text-align: center;">Defendant.</p>	<p>Trial Court Case No. _____</p> <p>Date of Final Judgment In Trial Court _____, 20____</p> <p>The Notice of Appeal was filed timely In Compliance with:</p> <p><input type="checkbox"/> App.R. 4(A) -- within 30 days of the entry of judgment</p> <p><input type="checkbox"/> App.R. 4(B) -- exceptions to the 30-day requirement</p>
--	--

TO THE CLERK OF THE TRIAL COURT:

- 1. Appellant requests that the clerk immediately prepare and assemble the original papers and exhibits filed in the trial court and a certified copy of docket and journal entries.
- 2. In addition, appellant will cause the record in this appeal to include the following (if applicable):
 - a. Complete transcript under Appellate Rule 9(B).
 - b. Partial transcript under Appellate Rule 9(B).
 - c. Statement of evidence or proceedings under Appellate Rule 9(C).
 - d. Agreed statement under Appellate Rule 9(D).

Appellant Pro Se or Attorney for Appellant

PLEASE NOTE:

1. The appellate must instruct the court reporter to prepare the transcript.
2. If the items checked above are not timely filed with the court, then the appeal will be dismissed. App. R. 10(A).

Selected Rules of the Eighth District Court of Appeals

Rule 3. Appeal as of right--how taken; cost deposit; consolidated appeals

(A) 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 \$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 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).

[Amended eff. July 1, 2012.]

(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 bearing the clerk's stamp "Received for Filing" with the date of receipt by the clerk and a copy of Affidavit of Indigency where relevant. 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 with sufficient copies for service on all counsel. In the event an appellee is unrepresented, then the appellee's current address and a copy for service on that appellee must be provided.

(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.

(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.

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 service, dated and signed, designating the necessary counsel or parties to be served by the clerk of the trial court 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.

(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 forms set forth in Appendices A and B 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.

(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, 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.

Rule 10. Transmission of the record

If the appellant does not timely:

- (A) File a praecipe;
- (B) Secure the transmission of the docket and journal entries; and
- (C) Effect the transmission of the record on appeal;

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.

The appellant must cause timely transmission of the record or seek an extension of time to do so from this court. 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.

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 docketing statement and the praecipe form required by Loc.App.R. 9. The purpose of the docketing statement is to determine whether an appeal will be assigned to the accelerated or regular calendar and the suitability of the appeal for prehearing conference.
- (2) If the appellee objects to the assignment of the appeal requested by the appellant on the docketing statement, appellee may, within seven (7) days after the praecipe is filed, 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 fourteen (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 twenty (20) days after the filing of the notice of appeal;
 - (b) The appellant must serve and file a brief and assignments of error within fifteen (15) days after the record is filed;
 - (c) The appellee must serve and file an answer brief, if any, within fifteen (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 fifteen (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 Appendix A for Praeceptum conforming to Loc.App.R. 9. See Appendix B for Docketing Statement conforming to Loc.App.R. 9. See App. R. Form 3 for Judgment Entry--Accelerated Docket.

[Amended Eff. July 1, 1999.]

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 before the due date to avoid dismissal of the case.

An appellee desiring an extension of time to file additional designations of the record, briefs, or any other documents shall file a written motion for an extension of time with supporting brief or affidavit 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 which demonstrate why additional time is necessary, and will be granted only in exceptional circumstances, and in the interest of justice.

(Adopted eff. July 15, 2013.)

Rule 16 Briefs

(A) Length and Form. All briefs filed in this court must comply with the requirements of Appellate Rules 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 forty (40) pages, and the appellant's reply brief, if any, must not exceed ten (10) 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: 14.

(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 forty (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 forty (40) pages, and the portion relating to the cross-appeal must not exceed an additional twenty-five (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 (10) pages, and the portion relating to the cross-appeal must not exceed an additional twenty-five (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 (10) 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 twenty (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 Rule 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 15. whom the issues are directed. In the event

the parties cannot agree on a proposed stipulated briefing order, the parties shall adhere to the requirements of Rule 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, Rule 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 Rule 16(A)(1).

(5) **Exclusions from Page Limitations:** All page limitations are exclusive of the table of contents, the table of authorities, statutes, any other authorities cited, 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) 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 which may be found at <http://www.supremecourt.ohio.gov>.

(C) Unreported Trial Court Opinions. If unreported opinions issued by a trial court are cited, copies must be attached to the briefs, or, if voluminous, submitted in a separate appendix of unreported opinions, and furnished to opposing counsel. Failure to do so may be grounds for striking the brief.

(D) Failure to Comply. A brief not prepared in accordance with these rules and the formalities mandated by App.R. 16 and 19 may be returned by the court to counsel to be conformed to the rules within a specified time. 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-appeal; and an appellee's/crossappellee's failure to conform may result in the brief being stricken and the right to argue being denied.

Credits

(Adopted effective February 1, 1999; Amended effective February 1, 2006; January 1, 2010; January 19, 2010.)

OH R 8 DIST A Rule 16

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 Loc.App.R. 26(A)(1). (See App.R. 3(A), 4(A), 11(C) and 18(C).)

Credits

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

Eighth District Local Appellate Rule 18, OH R 8 DIST A Rule 18

Current with amendments received through 8/1/2012

OH R 8 DIST A Rule 18

Rule 22 Entry of judgment; announcement of decision; reconsideration

(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) 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 proceeding below unless such reference is essential to clarify or explain the role of such person in the course of said proceedings.

Credits

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

Eighth District Local Appellate Rule 22, OH R 8 DIST A Rule 22

Current with amendments received through 8/1/2012

OH R 8 DIST A Rule 22

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) Judicial Request for En Banc Consideration. Any judge may submit a request to the Administrative Judge for en banc consideration before or within five days after a decision is journalized.

(C) Party 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 file an original and three copies of the application, opposing brief, or reply brief, and shall email the application, opposing brief, or reply to: enbanc@8thappeals.com at the time of filing. The subject line of the email shall identify the appeal number and the type of document being submitted, whether application,

opposing brief, or reply brief. The application or brief shall be attached to the email in Microsoft Word, WordPerfect, or PDF format.

(1) *Contents of the Application for En Banc Consideration.* An application for en banc consideration shall (a) disclose the dispositive point of law upon which the panel's decision conflicts with the decision of another panel of this court, (b) specifically cite the conflicting authority and the point of law stated therein that conflicts with the present case, and (c) explain why en banc consideration is necessary to secure and maintain uniformity of this court's decisions. Any application that fails to comply with this provision may be summarily dismissed. In addition, the party or counsel who fails to comply with this provision is subject to sanctions.

(D) **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. If a majority of the en banc court votes to consider a case en banc, the Administrative Judge shall call an en banc conference at the earliest convenient date, which may be at the regularly scheduled judges' meeting. When a sua sponte request for en banc consideration is granted after the panel's decision has been journalized, the Administrative Judge will also issue an order vacating the panel's decision. Additional briefing and / or oral argument will be permitted only at the court's request. A decision reached by a majority of the en banc court will be binding upon the whole court. In the event a majority of the full-time judges of the appellate district is unable to concur in a decision, the decision of the original panel shall remain the decision in the case.

Credits

(Adopted eff. July 20, 2010; amended eff. February 15, 2011.)

OH R 8 DIST A Rule 26