



## Pro Se Packet

### *Filing an Appeal in the Fifth District Court of Appeals*

***Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, and Tuscarawas Counties***

To properly file a timely appeal to the Fifth District Court of Appeals, you must file the following 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 30 days**. Those documents are listed on pages 2-3 below.

If you are past the 30-day deadline, you must file a Motion for Leave to File a Delayed Appeal in the Fifth District Court of Appeals, at the same time that you file the documents listed on pages 2-3 below in the Court of Common Pleas.

Each of the documents required for a timely appeal is included in this packet. If you need to file a delayed appeal, we have a separate pro se packet that contains the necessary documents for that filing. 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 Fifth 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 different judges in a different court – NOT your trial judge.

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

If you are within 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 30-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 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**
  - 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.
  - Fill in the blanks on the forms. Write neatly in pen or, if possible, type.
  - Fill in the “Case No. \_\_\_\_\_” 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. Write neatly in pen. 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 Preparation of Complete Transcript of Proceedings 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, Praeipice and Notice to Court Reporter**
  - Fill in the blanks with as much information as you know. Write neatly in pen. Include the dates of your proceedings in front of the court, to the extent that you are able.
- **Docketing Statement**
  - Fill in the blanks with as much information as you know. Write neatly in pen. Depending on your case, fill out Section E for Criminal or Section F for Civil. A time-stamped copy of your sentencing entry **MUST** be attached to your Docketing Statement.

Once each of these documents and their corresponding certificates of service are completed and signed, you will need to make copies. You must send the original documents, plus four copies of each, to the Clerk of Courts in the county where you were convicted. If you include a postage-paid envelope addressed to you, the clerk will return time-stamped copies of each document back to you.

You **MUST** send a copy of every document to the Office of the Prosecuting Attorney in the county where you were convicted. 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  
\_\_\_\_\_ COUNTY, OHIO

STATE OF OHIO,

:

Plaintiff-Appellee,

:

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 Fifth 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 \_\_\_\_\_ County Prosecutor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Mailed to:

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

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

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, OHIO

STATE OF OHIO,

:

Plaintiff-Appellee,

:

Case No. \_\_\_\_\_

vs.

:

\_\_\_\_\_,

:

JUDGE \_\_\_\_\_

Defendant-Appellant.

:

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**AFFIDAVIT OF INDIGENCY**

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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.

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DEFENDANT-APPELLANT, PRO SE

Sworn to and subscribed in my presence this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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NOTARY PUBLIC

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. _____
vs.	:	
_____	:	JUDGE _____
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 (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 (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 (2005), quoting *Griffin v. Illinois*, 351 U.S. 12, 24 (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 (1963).

Ohio has undertaken to provide a process of appellate review through its constitution, statutes, and rules. Although the Ohio Constitution does not expressly provide for a “right” to appeal, Ohio Const., art. IV, § 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, § 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,

\_\_\_\_\_  
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 \_\_\_\_\_ County Prosecutor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Mailed to:

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

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

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, OHIO

STATE OF OHIO,

:

Plaintiff-Appellee,

:

Case No. \_\_\_\_\_

vs.

:

\_\_\_\_\_,

:

JUDGE \_\_\_\_\_

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 COMMON PLEAS  
\_\_\_\_\_ COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. _____
vs.	:	
_____	:	JUDGE _____
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 lack 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 (1956).

Indigent defendants in the State of Ohio are constitutionally entitled to adequate and effective appellate review. *Id.* at 19; *Mayer v. Chicago*, 404 U.S. 189, 194 (1971). This review is “impossible without a trial transcript or adequate substitute.” *Bounds v. Smith*, 430 U.S. 817, 822 (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 (1971). *Accord*, *State v. Arrington*, 42 Ohio St.2d 114 (1975), paragraph one of the syllabus. In addition, the Supreme Court of Ohio has determined that art. I, § 16 of the Ohio Const. 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 (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

---

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 \_\_\_\_\_ County Prosecutor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Mailed to:

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

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

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, OHIO

STATE OF OHIO,

:

Plaintiff-Appellee,

:

Case No. \_\_\_\_\_

vs.

:

\_\_\_\_\_,

:

JUDGE \_\_\_\_\_

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  
\_\_\_\_\_ COUNTY, OHIO

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

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

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**TO THE APPELLEE:**

\_\_\_\_\_ hereby states an intention 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 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 court reporter. 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 \_\_\_\_\_

County Prosecutor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Mailed to:

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

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

# OHIO FIFTH DISTRICT COURT OF APPEALS DOCKETING STATEMENT

Trial Court Judge \_\_\_\_\_

Appeal No. \_\_\_\_\_

Trial Court No. \_\_\_\_\_

Plaintiff's Counsel or Unrepresented Party: \_\_\_\_\_

Trial Court Caption: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Plaintiff - ( ) Appellant ( ) Appellee ( ) Cross Appellant  
( ) Cross Appellee (Check all that apply)

Defendant's Counsel or Unrepresented Party: \_\_\_\_\_

-vs-

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Defendant - ( ) Appellant ( ) Appellee ( ) Cross Appellant  
( ) Cross Appellee (Check all that apply)

**List any additional parties/attorneys/GAL and their addresses on an attached sheet.**

A. DATES of the judgment being appealed: \_\_\_\_\_

Time to Appeal extended per App.R. ( ) Yes ( ) No

Specify Reason: \_\_\_\_\_

B. ( ) A time-stamped copy of the judgment entry or order which makes your case appealable as well as a copy of all other judgment entries being appealed is attached. **THIS IS A REQUIREMENT. FAILURE TO DO SO MAY RESULT IN A DISMISSAL.**

C. PROBABLE ISSUES FOR REVIEW: \_\_\_\_\_

D. ( ) **This is an Interlocutory Marsy's Law Appeal. See R.C. 2930.19(A)(2)(b). (Case has not concluded in trial court.)**

E. THIS APPEAL SHOULD BE ASSIGNED TO: (Check one)

( ) The regular calendar. ( ) The accelerated calendar. See Loc.R.6(B) and App.R. 11.1.

F. THE RECORD: This Docketing Statement serves as a praecipe to the clerk to prepare and transfer the docket and journal entries. Please indicate the Type of Record to be Filed: (Check One)

( ) Docket and Journal Entries Only, no transcript of proceedings.

( ) Transcript has already been prepared. It is a ( ) Full or a ( ) Partial Transcript. If partial, see App.R. 9(B).

( ) Statement of the record pursuant to App.R. 9(C).

( ) Agreed Statement of the Record pursuant to App.R. 9(D).

( ) Transcript of the Proceedings. ( ) Less than or ( ) Greater than 100 pages.

( ) Full or ( ) Partial transcript has been ordered. If partial, see App.R. 9(B).

**WARNING:** If a transcript of proceedings is needed, a copy of the notice of appeal and an appropriate praecipe must be served by Appellant on the court reporter. A copy of the praecipe to the court reporter shall be filled with this Court showing service of the notice of appeal and praecipe upon the court reporter.

## G. CRIMINAL CASE

1. CHARGE (s): \_\_\_\_\_
2. DEGREE: ( ) Misdemeanor ( ) Felony ( ) Trial ( ) Guilty/No Contest Plea
3. Is this an appeal of Post-Conviction Relief? (R.C. 2953.21) ( ) Yes ( ) No. If yes, was a hearing held in the trial court?  
( ) Yes ( ) No. What was the original charge and sentence? \_\_\_\_\_
4. Type of Appeal: (Check One)  
( ) Appeal as of Right ( ) State's Appeal as of Right (R.C. 2945.67(A), Crim.R 12(K) & Loc.R. 7) (Expedited)  
( ) Appeal by Leave of Court (App.R. 5) ( ) State's Appeal by Leave of Court
5. Is this an appeal for review of sentencing pursuant to R.C. 2953.08? ( ) Yes ( ) No
6. Was counsel appointed for trial? ( ) Yes ( ) No
7. Was counsel appointed for appeal? ( ) Yes ( ) No **To request appointed counsel, you must file a separate motion per Loc. R. 3.**

## H. CIVIL CASE

### 1. ACTION BROUGHT IN LOWER COURT:

2. Did this action originate in a Trial Court or in an Administrative Agency? Indicate which:  
( ) County Court ( ) Municipal Court ( ) Common Pleas Court ( ) Administrative Agency ( ) Board of Tax Appeals  
( ) Probate Court ( ) Family Court ( ) Juvenile Court ( ) Court of Claims ( ) Other \_\_\_\_\_
3. Must this case be expedited as being one of the following types: ( ) Yes ( ) No. If yes, check one of the following:  
( ) Appeal from orders granting or denying (1) termination of parental rights; (2) adoption of a minor child; (3) abortion without parental consent. See App.R. 11.2, Loc.R. 7 & App.R. 11(B).  
( ) Appeal from orders regarding dependent, abused, neglected, unruly, or delinquent children. See App.R. 11.2, Juv.R. 22(F) & Loc.R. 7.  
( ) Appeal involving matters of child custody, allocation of parental rights or responsibilities, or designation of a child's place of residence and legal custodian under R.C. 3109.04(H) & R.C. 3109.06.  
( ) Appeal under determination of local fiscal emergency brought by municipal corporation. R.C. 118.04(C).  
( ) Election contests as provided in R.C. 3515.08.
4. Do you know of another case pending in this Court which raises the same issue(s) or is related to this case? ( ) Yes ( ) No. If yes, please cite case(s): \_\_\_\_\_
5. Have you determined in good faith the judgment appealed from is a final appealable order? (R.C. 2505.02) ( ) Yes ( ) No.
6. Was a stay of judgment requested in trial court? ( ) Yes ( ) No If yes, stay was: ( ) GRANTED ( ) DENIED ( ) PENDING

## I. MEDIATION:

1. Have the parties previously participated in mediation in this dispute: ( ) Yes ( ) No
2. Would a mediation conference assist in the resolution of this matter? ( ) Yes ( ) No ( ) Maybe

## CERTIFICATION

I certify that the information provided on this docketing statement is accurate.

\_\_\_\_\_  
Signature of Counsel (or Party if not represented by Counsel)

\_\_\_\_\_  
Supreme Court Registration Number

## *Selected Local Rules of the Fifth District Court of Appeals*

*Annotations current through March 1, 2021*

**The Ohio Rules of Appellate Procedure (available in the library) govern the process of a direct appeal from a trial court entry to the court of appeals. In addition to those rules, the following are a selection of *local rules specific to your appellate district*.**

### **INTRODUCTION**

The Fifth Appellate Judicial District is comprised of the following fifteen counties: Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, and Tuscarawas.

### **RULE 1. COSTS DEPOSITS**

**(A) Original Actions.** No complaint in an original action (mandamus, prohibition, procedendo, quo warranto, or except where prohibited by R.C. 2725.28 or other law, habeas corpus) shall be accepted for filing in this court of Appeals unless the party bringing the action shall first have deposited with the Clerk of the Court of Appeals of the county in which the action is to be brought the sum of eighty-five dollars (\$85) as security for the payment of the costs that may accrue in the action.

Subpoenas shall not issue for witnesses in actions in habeas corpus unless an additional deposit of ten dollars (\$10) per witness is deposited as security for costs with the Clerk of the Court of Appeals of the county in which the action is brought together with the praecipe for subpoena.

**(B) Appeals.** Within ten days after filing the notice of appeal or cross-appeal, appellants or cross-appellants shall comply with section (C) of this rule or shall deposit with the Clerk of the Court of Appeals of the county in which the appeal is filed the sum of ninety dollars (\$90) as security for the payment of costs that may accrue in the appeal. Any personal check given for deposit shall be made payable to the “Clerk of the Court of Appeals.”

This deposit for costs may be made with the clerk of the trial court when the notice of appeal is filed in that court, and any deposit so made shall be forwarded by that clerk to the Clerk of the Court of Appeals along with the copy of the notice of appeal and other papers required by App.R.3(D).

Failure to make this deposit for costs shall not prevent the filing of a notice of appeal in the trial court.

Failure to make this deposit for costs within ten days of the filing of the notice of appeal is failure to prosecute the appeal for which the appeal may be dismissed pursuant to App.R. 3(A).

**(C) Actions Brought by Indigents.** If the party bringing an original action, bringing an appeal, or seeking the attendance of witnesses files with the Clerk of the Court of Appeals evidence of indigency (a financial disclosure form establishing indigency or evidence the trial court determined the appellant was indigent for purposes of appeal, such as a copy of the entry of appointment), then the requirements of Sections (A) and (B) of this rule shall not be effective. Evidence of indigency must be filed for each and every notice of appeal and original action. The party asserting to be indigent is under a continuing duty to notify this court if the party becomes financially able to secure and pay costs of the action. The Court will impose costs pursuant to App.R. 24 at the conclusion of the case, even if the prepayment of the deposit is waived pursuant to this Rule.

(Former Rule 2 adopted effective May 1, 1981; amended effective September 1, 1981; July 1, 1983; January 1, 1993; August 30, 1995; amended and renumbered as Rule 1 effective May 1, 1997; amended effective January 1, 2008; amended effective January 1, 2015; amended effective January 1, 2019.)

## **RULE 2. CLERKS OF THIS COURT; FILING DOCUMENTS; PROPOSE JUDGMENT ENTRY REQUIRED**

**(A) Clerks of this Court.** The Clerks of the Courts of Common Pleas of the counties comprising the Fifth Appellate Judicial District are the Clerks of this court of Appeals in their respective counties pursuant to R.C. 2303.03.

**(B) Filing Documents.** Motions, records, briefs, and all other documents required to be filed in this court or with the Clerk of this court shall be filed with the Clerk of the Court of Appeals of the county in which the trial of the action appealed took place or, in the case of original actions, with the Clerk of the Court of Appeals of the county in which the complaint is filed, such county properly being any county where this court may obtain personal jurisdiction over the parties.

Documents mailed, faxed, or delivered directly to the offices of the judges in Canton will not be considered filed either when mailed or when received.

**(C) Electronic Filing.** The provisions of this local rule are adopted under App.R.13(A). Documents may be filed with the appropriate Clerk of Courts by facsimile transmission subject to the following conditions:

**(1) Applicability.** Only motions to this court and their responses, subsequent to a notice of appeal or original action complaint, may be transmitted by facsimile to the appropriate Clerk of this court for filing. No other pleadings, including the notice of appeal or briefs, shall be filed via facsimile or other electronic transfer.

**(2) Original Filing**

**(a)** A document received and filed by facsimile shall be accepted by the Clerk of Court as the effective original filing. The source document and additional copies need not follow by mail for purpose of filing. The person making the fax filing must, however,

maintain in his or her records and have available for production on request by the Court the source document, filed by fax for with original signatures as otherwise required under applicable rules, together with the original copy of the facsimile cover page used for the subject filing.

- (b) The source document filed by fax shall be maintained by the person making the filing until the case is closed and all opportunities for post-judgment relief are exhausted.

(3) **Definitions.** As used in these rules, unless the context requires otherwise:

- (a) **Facsimile Transmission** means the transmission of a source document by a facsimile machine that encodes a document into optical or electronic signals, transmits and reconstructs the signals to print a duplicate of the source document at the receiving end.
- (b) **Fax** is an abbreviation for “facsimile” and refers, as indicated by the context, to facsimile transmit or to a document to transmitted.

(4) **Cover Page**

- (a) All documents sent by facsimile shall be accompanied by a cover page containing the following information: (See Appendix for example.)
  - (i) The name of the Court
  - (ii) The caption of the case
  - (iii) The case number
  - (iv) The assigned judge(s), if applicable
  - (v) The title of the document being filed
  - (vi) The date of transmission
  - (vii) The transmitting facsimile number
  - (viii) An indication of the number of pages included in the transmission, including cover page
  - (ix) The name, address, telephone number, facsimile number, Supreme Court registration number, and e-mail address of the person filing the fax document, if available, and
  - (x) If applicable, a statement explaining how costs are being submitted.
  - (xi) If requesting oral argument, must prominently display “ORAL ARGUMENT REQUESTED” on cover page of opening brief.
- (b) If a document is sent by fax to the clerk of court without the cover page information listed above, the clerk will:
  - (i) Enter the document in the case docket and file the document, if possible.

- (ii) If the faxed document does not contain sufficient information to file the document, the clerk of court will deposit the document in a file of failed faxed documents with a notation of the reason for the failures; in this instance, the document *shall not* be considered filed with the clerk of courts.
  - (c) The clerk of court is not required to send any form of notice to the sending party of a failed fax filing. However, if practicable, the clerk may attempt to inform the sending party of a failed fax filing.
- (5) **Signature.** Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. Any party who files a signed document by fax represents that the physically signed source document is in his/her possession or control. Documents may be filed with a signature or with the notation “/s/” followed by the name of the signing person where the signature appears in the signed source document. If it is established that any document was transmitted without authority, the Court shall order the filing stricken.
- (6) **Exhibits**
  - (a) Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the Court orders otherwise, the missing exhibit shall be filed with the Court, as a separate document, not later than five (5) court days following the filing of the facsimile document. Failure to file the missing exhibits as required may result in the Court striking the document and/or exhibit.
  - (b) Exhibits filed in this manner shall be attached to a cover sheet containing the caption of the case, which sets forth the name of the court, title of the case, the case number, and the title of the exhibit being filed (e.g., Appellant Smith’s Notice of Filing Exhibit “A” to Appellant Smith’s Motion to Dismiss), and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this court. (See Appendix for Example).
- (7) **Time of Filing**
  - (a) Facsimile transmissions may be made on the basis of 24 hours per day, 7 days per week. Each page of any document received by the Clerk will be automatically imprinted with the date and time of receipt. The date and time imprinted on the document will determine the time of filing, provided the document is deemed accepted by the Clerk and the Clerk of Court’s office is open for

business at the time of receipt. If a document is received on a date and time of which the Clerk of Court's office is not regularly scheduled to be open for business, the document shall be deemed to have been filed on the next day and time the Clerk's office is regularly scheduled to be open.

- (b) Fax filings may NOT be sent directly to the Court for filing but may only be transmitted directly through the facsimile equipment operated by the appropriate Clerk of Courts.
- (c) The Clerk of Court may, but need not, acknowledge receipt of a facsimile transmission.
- (d) The risks of transmitting a document by facsimile to the Clerk of Courts or delay in the document being time-stamped shall be borne entirely by the sending party. Anyone using facsimile filing is urged to verify receipt of such filing by the Clerk of Court through whatever technological means are available.

**(8) Fees and Costs**

- (a) No document requiring prepayment of a fee or cost deposit shall be filed by facsimile, unless an acceptable method of payment has been paid or arranged to be paid pursuant to terms acceptable to the respective Clerk. Documents tendered to the Clerk without payment of court costs or fees, or without arranging payment terms with the Clerk will not be filed.
  - (b) No additional fee shall be assessed for facsimile filings.
- (9)** Facsimile filings shall not exceed twenty (20) pages in length. The filer shall not transmit service copies by facsimile.
- (10)** Effective date. These local rules shall be effective January 1, 2008, and shall govern all proceedings in actions brought after they take effect and also further proceedings in pending actions, except to the extent that, in the opinion of the Court, their application in a particular action pending on the effective date would not be feasible or would work an injustice, in which event, the former procedure applies.

**(D) Electronically Signed Court Documents**

- (1) The following definitions shall apply to this rule:
  - (a) "Electronic" and "electronic signature" have the same meaning as used in section 1306.01 of the Ohio Revised Code. The term

“Document” includes decisions, journal entries, notices, orders, opinions and any other filing by a Judge, Magistrate or Court Administrator of this court.

- (2) All court documents signed by means of an electronic signature, whether transmitted to the Clerk of Courts electronically or via paper, shall have the same force and effect as if the signer had affixed his or her signature to a paper copy of the document.
- (3) Electronic transmission of a court document with an electronic signature by a Judge or Magistrate that is sent in compliance with procedures adopted by the Court shall, upon the complete receipt of the same by the Clerk of Court, constitute the date and time of receipt of the document, provided that the Clerk of Court’s Office is open for business at the time of receipt. If a document is received at a date and time when the Clerk of Court’s Office is not regularly scheduled to be open for business, the document shall be deemed to have been received at the next day and time the Clerk’s Office is regularly scheduled to be open.

**(E) Proposed Judgment Entry Required.** All motions shall be submitted for filing accompanied by a proposed judgment entry suitable for use if the motion is granted.

(Adopted effective August 30, 1995; amended effective May 1, 1997; amended effective January 1, 2008; amended November 19, 2014; amended (renumbered) effective January 1, 2019.)

### **RULE 3. DESIGNATION OF COUNSEL; APPLICATION FOR LEAVE TO WITHDRAW AS COUNSEL**

**(A) Designation of Counsel.** Every notice of appeal, pleading, motion, and brief filed shall have typed or printed on it the name, address, and telephone number of the filing counsel (or the party, if not represented by counsel). The attorney registration number shall follow the name of filing counsel on all documents filed with this court.

Notice or motions to appear as co-counsel with the counsel of record shall be made by the counsel of record.

**(B) Appointment of Counsel.** Except in appeals pursuant to App.R. 5, a request for appointment of counsel shall be made in the first instance in the trial court. A motion to appoint counsel that is filed in the court of appeals must be accompanied by proof that the trial court denied a request for appointment of counsel.

**(C) Selection of Counsel.** The Court shall maintain a list of pre-qualified attorneys who have notified the Court of their interest in serving as appointed counsel in criminal cases. Counsel shall be selected in a continual rotation from a list maintained by the Court, except that the Court may consider the experience and expertise of counsel and counsel’s management of his/her current appellate caseload. Whenever possible, the Court shall appoint counsel practicing in the

county in which the case is filed.

The Court shall keep a record of all counsel appointments made in a given calendar year and shall annually review that record to ensure that appointments are equitably distributed among counsel on the appointment list.

**(D) Attorney's Fees.**

- (1) Application.** Application by appointed counsel in criminal cases for attorney's fees on appeal shall be completed on the most recent forms prescribed by the Ohio Public Defender. Incomplete applications, applications submitted without the proper financial disclosure form, or applications submitted on the wrong forms shall be returned to counsel and could result in reduction or non-payment of fees. Untimely applications may also result in reduction or non-payment of fees.
- (2) Limitations on Compensation.** Payments for services will not exceed the schedule of fees established by each county pursuant to law, unless counsel also files a motion for extraordinary fees with reasons supporting the request, accompanied by a proposed judgment entry suitable for use if the motion is granted.

**(E) Application for Leave to Withdraw as Counsel.** Counsel who has entered an appearance with this court, whether appointed or retained, may not withdraw representation without leave of this court. Counsel seeking to withdraw shall file a written motion which shall:

- (1)** Show good cause for the request.
- (2)** Include notice that a party has 14 days from filing of the motion to withdraw to file any objection to the motion.
- (3)** Be signed by the client, signed by the client's new counsel (if any), or contain a certification that the motion was served upon the client by certified or express mail and by regular mail.
- (4)** Include the address of the client's new counsel, or if none, the name and address of the client.

(Adopted effective September 11, 1984; amended effective August 30, 1995; amended effective May 1, 1997; amended effective July 1, 1999; amended effective January 1, 2008; amended effective January 1, 2015; amended effective January 1, 2019.)

**RULE 4. ORIGINAL ACTIONS**

**(A) How Instituted.** Service in original actions shall be made and the action shall commence upon the filing of a complaint and proceed as a civil case under the Ohio Rules of Civil Procedure unless those rules are clearly inapplicable.

**(B) Evidence.** Unless consent of the Court is otherwise obtained, the evidence in all original actions, except in habeas corpus, shall be submitted to the Court by means of an agreed statement of facts, affidavits, stipulations, depositions or exhibits; oral testimony will not be heard.

Court stenographers will not be in attendance at the trial of the action unless arranged for and employed by one or more of the parties and appointed by the Court, except as otherwise ordered by the Court due to exceptional circumstances.

(Adopted effective May 1, 1997; amended effective January 1, 2008; amended effective June 1, 2012.)

## **RULE 5. DISMISSALS FOR FAILURE TO PROSECUTE THE APPEAL**

Unless the appellant demonstrates that no undue delay and no prejudice to appellee has been caused by the failure to comply with the rules, the following shall be deemed good cause for dismissal of an appeal, *sua sponte*, for failure to prosecute:

**(A)** Failure to cause the record on appeal to be timely transmitted to the clerk of this court.

**(B)** Failure to timely file the brief or otherwise fail to comply with all the provisions of App.R. 16 or Loc.App.R.9.

**(C)** Failure to timely file a fully completed docketing statement pursuant to Loc.App.R.6.

(Adopted effective May 1, 1997; amended effective March 31, 2011.)

## **RULE 6. DOCKETING STATEMENT; ACCELERATED CALENDAR**

**(A) Docketing Statement.** Each appellant and cross-appellant shall file a fully completed docketing statement, typed or legibly printed, at the same time as filing the notice of appeal or cross-appeal. A docketing statement is not fully completed unless a time-stamped copy of the judgment being appealed is attached. The party prosecuting an appeal shall serve a copy of the completed docketing statement together with the notice of appeal on the opposing party.

The clerk of the trial court shall provide docketing statement forms as prescribed by this court. (See Appendix for Docketing Statement Form). Docketing statements of a form other than the one shown in the Appendix will not be allowed. The clerk of the trial court shall send a copy of the docketing statement to the Court of Appeals along with a copy of the notice of appeal.

**(B) Accelerated Calendar.** Pursuant to App.R.11.1, this court has adopted an accelerated calendar. The Court shall determine from the docketing statement whether the appeal will be assigned to the accelerated or regular calendar. If the appeal is assigned to the accelerated calendar, oral arguments shall not be scheduled and the matter will be determined upon submission of all briefs.

If appellee or cross-appellee objects to the assignment of the appeal to the accelerated calendar, appellee or cross-appellee may file an objection with this court within thirty days of the filing of the docketing statement and the case shall be assigned to the regular calendar.

(Adopted effective September 30, 1995; amended effective May 1, 1997; amended effective January 1, 2008; amended effective March 31, 2011; amended effective March 1, 2021.)

## **RULE 7. EXPEDITED CASES**

**(A)** A criminal appeal by the state as of right or a civil appeal of the type listed under section (G)(3) of the Docketing Statement must be expedited by this court. Therefore, all parties shall give their prompt attention to such appeals and prosecute them diligently. Requests for extensions of time to transmit the record or to file the briefs should be minimized.

**(B)** Oral arguments on expedited cases, once scheduled, will not be continued absent a showing of extraordinary circumstances. Oral Arguments will be scheduled on the earliest available date and, if necessary to expedite, will be held in any county within the Fifth Appellate District.

(Adopted effective May 1, 1997; amended effective March 31, 2011; amended effective March 1, 2021.)

## **RULE 8. THE RECORD**

**(A) Extensions of Time for Filing the Record.** The trial court shall closely limit its extensions of time for transmission of the record (App.R. 10 (C)), shall overrule any motion for an extension of time where good cause is not set forth and shown, and in no event shall any such order operate to extend such time beyond the eightieth (80th) day after the filing of the notice of appeal.

**(B) Inability of Court Report to Supply a Necessary Part of the Record.** Motions filed with this court to supplement the record or for an extension of time to transmit the record, needed by reason of a claimed inability of the court reporter to supply a necessary part of the record, must be accompanied by an affidavit of the court reporter stating the circumstances relied on as justifying the extension, the date of the notice of appeal, and the date of service of the praecipe to the court reporter ordering the transcript.

**(C) Evidence Consisting of Weapons, Ammunition, Money, Drugs, or Valuables.** The clerk of the trial court shall not, unless directed to do so by this court upon a motion by a party, transmit any trial exhibits consisting of weapons, ammunition, money, drugs, or valuables. The list of documents that the trial clerk transmits with the record (App.R. 10(B)) shall designate which exhibits are not being transmitted pursuant to this rule and the custodian of the exhibits.

(Adopted effective October 1, 1981; amended effective May 1, 1997.)

## **RULE 9. THE BRIEFS**

**(A) Contents of Brief.** In addition to the requirements of App.R. 16, the brief of appellant shall contain clear copies of the following:

- (1) These documents, as applicable, shall be included as the first exhibits to the brief.
  - (a) The judgment entry appealed from; (Handwritten judgment entries are inappropriate and shall be considered by this court except for uniform traffic citations. See Ohio Traffic Rules);
  - (b) Any opinion of the trial court announcing the decision reflected by the judgment entry appealed from;
  - (c) Any written fact findings and conclusions of law signed and/or adopted by the trial judge contained in the record on appeal; and
- (2) Where a summary judgment is appealed, a statement on a separate page following the assignments of error, declaring whether the claim is that judgment is inappropriate as a matter of law on the undisputed facts or that a genuine dispute exists as to a material fact or facts, coupled with a separate statement of the specific fact issue or issues claimed in the trial court to have been material and genuinely disputed. See *North v. Pa. Ry. Co.*, 9 Ohio St.2d 169, 224 N.E.2d 757, syllabus 2.

**(B) Length of Briefs.** In addition to the requirements of App.R. 16, no brief by any party in an appeal or original action, excluding appendices, table of contents, table of cases, statement of assignments of errors, and statement of the issues shall exceed thirty pages, unless, upon a motion requesting an increase of a specific number of pages and the showing of good cause, this court orders otherwise. No reply brief shall exceed fifteen pages.

**(C) Mechanical Requirements.** All documents shall be single-sided and the text shall be at least 12-point, double-spaced, non-condensed type. Footnotes and quotations may be single spaced; however, they shall also be in 12-point, non-condensed type. As used in this provision, “non-condensed type” shall refer to Times New Roman type or Arial.

**(D) Font Requirements.** The text of all documents shall be at least 12-point, double-spaced, non-condensed type. Footnotes and quotations may be single spaced; however, they shall also be in 12-point, non-condensed type. As used in this provision, “non-condensed type” shall refer to Times New Roman type or Arial.

**(E) Length of Time for Filing a Brief.** In extension of App.R. 14(B), motions for enlargement of time to file a brief shall state the number of previous extensions granted pursuant to that rule. A motion to file a brief *instantly* must state that the brief was delivered to the clerk for filing with the motion to file *instantly*.

**(F) Filing and Service of Briefs on Cross-Appeal.** In extension to App.R. 18, a cross-appellant shall serve and file the cross-appellant brief within the same time guidelines that apply to an appellee brief. The cross-appellee/appellant shall serve and file the cross-appellee brief and may serve and file an appellant reply brief within twenty days after service of the cross-appellant brief. The cross-appellant may serve and file a reply brief within ten days after service of the cross-appellee’s brief.

**(G) *Anders* Brief with Motion to Withdraw as Counsel.** In a criminal appeal in which counsel has been appointed for the appellant, counsel may file a no error brief under the procedure identified in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). An *Anders* brief must contain potential assignments of error as well as law and argument with references to the record. When appellant's counsel files an *Anders* brief, counsel shall simultaneously file a separate motion requesting leave to withdraw as counsel. Counsel shall serve the client with the motion to withdraw and the *Anders* brief. Service on the client shall be indicated in the proof of service.

Upon the filing of an *Anders* brief, the court will issue an Order that grants appellant leave to file a pro se brief and assignment(s) of error that comports with the appellate rules and local appellate rules within 45 days.

If the appellant files a pro se brief, the appellee may respond and the appellant may reply as provided by the Appellate Rules and Local Appellate Rules. Once briefing is complete, or the 45-day period for filing a pro se brief has lapsed without a brief being filed, the appeal and the motion to withdraw will be assigned to a merit panel for review. The panel will conduct an independent examination of the record to determine if it discloses an issue of arguable merit prejudicial to the appellant. The appeal will be considered submitted on the briefs unless the court sua sponte sets an oral argument date. Should the panel find arguable merit, the Court shall order the appointment of new counsel and the matter will proceed accordingly.