



Office of the Ohio Public Defender

Elizabeth R. Miller, State Public Defender

Pro Se Packet

Filing an appeal in the Twelfth District Court of Appeals Brown, Butler, Clermont, Clinton, Fayette, Madison, Preble, and Warren Counties

To properly file a timely appeal to the Twelfth District Court of Appeals, you must file certain documents in the court of common pleas of the county where you were convicted, within **30 DAYS** of the date that your sentencing entry was time-stamped. This means **the court must receive the documents within 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 Twelfth 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 also has its own rules called Local Rules. Parts of the local appellate rules for the Twelfth 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 Clerk of Courts’ and the Prosecuting Attorney’s addresses are both located in your legal orientation handouts. Or you can contact the library or prison legal services for the addresses.

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

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

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

- **Notice of Appeal**

- 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 of your entry, or you may contact a family member or friend to obtain a copy from the clerk’s office in your county. If you are close to your 30-day deadline, legal services staff *may* agree to call the county and request that the entry be faxed to the legal services office.
- Fill in the blanks on the forms. Write neatly in pen.
- Fill in the “Case No. _____” with your trial court number. That number is located on the bottom of the second page of the legal packet that you received at orientation. If you have more than one case number, include each, but only if the cases are from the same county. If you have cases in different counties, you must file an appeal in each county.

- **Affidavit of Indigency**

- You must fill in the blanks on the affidavit and sign it in the presence of a notary public. Write neatly in pen. Legal services will provide notary service. If legal services staff is unavailable, ask your unit staff how to access a notary.

- **Certificate of Indigency**
 - Fill in your name and case number in the spaces at the top of the form. Write neatly in pen. Then, you must send the form to the Cashier’s Office of your institution, and a cashier must complete the form, and return it to you to include with the other documents that you will send to the court.

- **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. Do not sign. This is only for the Judge to sign.

- **Statement, Praecipe 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.

- **Criminal Docketing Statement or Civil Docketing Statement**
 - Depending on your case, you will need to use either the Criminal or the Civil Docketing Statement. Do not use both. Fill in the blanks with as much information as you know. Write neatly in pen. Attach copy of Docketing Statement to your Notice of Appeal.

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.

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

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

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

NOTICE OF APPEAL

_____ hereby gives notice of an appeal to the Twelfth 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. :

AFFIDAVIT OF INDIGENCY

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

DEFENDANT-APPELLANT, PRO SE

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

NOTARY PUBLIC

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

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

CERTIFICATE OF INDIGENCY

Now comes _____, Account Clerk, pursuant to Local Rule 2, and hereby certifies that on this ____ day of _____, 20__, that _____ has _____ dollars in their account at _____.

ACCOUNT CLERK

IN THE COURT OF COMMON PLEAS
_____ COUNTY, OHIO

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

MOTION FOR APPOINTMENT OF COUNSEL

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

Ohio has undertaken to provide a process of appellate review through its constitution, statutes, and rules. Although the Ohio Constitution does not expressly provide for a “right” to appeal, Ohio Constitution, Article IV, Section 3(B)(1)(f) provides for the establishment of an appellate court system with jurisdiction “[i]n any cause on review as may be necessary to its complete determination.” Moreover, Section (3)(B)(2) provides that “[c]ourts of appeals shall have

such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals...”

Ohio has also established a statutory right to appeal. R.C. 2505.03 provides that every final order, judgment, or decree of a court and, when provided by law, the final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality, may be reviewed unless otherwise provided by law. R.C. 2953.02 authorizes appellate courts to review, in criminal cases, the “judgment or final order” of an inferior court. Finally, R.C. 2953.08 provides that “[i]n addition to any other right to appeal[,]” a person who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed under listed circumstances.

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

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

Respectfully submitted,

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. :

JOURNAL ENTRY

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. :

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

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

This transcript is necessary to the effective pursuit of this appeal as of right to the court of appeals. I am indigent and 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, 76 S.Ct. 585, 100 L.Ed.2d 891 (1956).

Indigent defendants in the State of Ohio are constitutionally entitled to adequate and effective appellate review. *Griffin v. Illinois*, 351 U.S. at 19; *Mayer v. Chicago*, 404 U.S. 189, 194, 92 S.Ct. 410, 30 L.Ed.2d 372 (1971). This review is “impossible without a trial transcript or adequate substitute.” *Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

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

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

Respectfully submitted,

DEFENDANT-APPELLANT, PRO SE

Inmate Number/Institution

Address

City, State, and Zip Code

CERTIFICATE OF SERVICE

I certify a copy of the foregoing MOTION FOR PREPARATION OF COMPLETE TRANSCRIPT OF PROCEEDINGS AT STATE EXPENSE has been sent by regular U.S. mail to the office of the _____ 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. :

JOURNAL ENTRY

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. :

STATEMENT, PRAECIPE AND NOTICE TO COURT REPORTER

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

FORM I.
OHIO TWELFTH DISTRICT COURT OF APPEALS
CRIMINAL DOCKET STATEMENT

Revised 06/14/2021

APPEAL NO. _____
TRIAL COURT NO. _____
TRIAL JUDGE _____

Parties:

Counsel:*

Plaintiff-Appellant/Appellee
(Circle designation)

(Name & Supreme Court Registration No.)

(Address)

(Telephone Number)

(E-mail address)
 Filing appeal but not representing party on appeal

vs.

vs.

Defendant-Appellant/Appellee
(Circle designation)

(Name & Supreme Court Registration No.)

(Address)

(Telephone Number)

(E-mail address)
 Filing appeal but not representing party on appeal

*** List at least one counsel for each party to the appeal. List any additional parties and/or attorneys on an attached sheet. If a party will be represented by more than one counsel, designate which counsel is to be primarily responsible for prosecuting the appeal and receiving notices and pleadings from the court and all other parties. See Loc.R. 9(A).**

1. I request that this appeal be assigned to:

- A. The **Regular Calendar** with Full Briefing
 - Transcript is more than 100 pages.
 - Brief in excess of 15 pages is necessary to argue the issues adequately, or more than 15 days will be required to file the brief.
 - Appeal concerns unique issues of law which will be of substantial precedential value in determination of similar cases.
 - Other _____

- B. The *Accelerated Calendar**
- No transcript required.
- Transcript consists of less than 100 pages, or is of such length that preparation time will not be a source of delay.
- Other: _____

- | | YES | NO |
|--|--------------------------|--------------------------|
| 2. Was counsel appointed for trial? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Has counsel been appointed for appeal by trial court? (See Loc.R. 9[C]) | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Was Motion for Bond or Stay of Execution made in the trial court? (See Loc.R. 8) | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. If so, was the motion granted? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Offense(s) convicted of: _____ | | |
| 7. Sentence: _____ | | |
| 8. Probable issues for review: _____ | | |
| 9. Was a presentence, psychiatric or other investigative report submitted to the court in writing before sentence was imposed? | <input type="checkbox"/> | <input type="checkbox"/> |

10. Type of record to be filed:

Transcript of proceedings has already been prepared and filed in the trial court.

OR

No Transcript of proceedings will be filed.

If this box is checked, the court will consider Loc.R. 5 notice for purposes of completing the record on appeal.

Transcript(s) of proceedings to be prepared Estimated length of transcript(s): _____

Partial transcript of proceedings Specify parts ordered: _____

Estimated length of partial transcript: _____

Statement of evidence or agreed statement to be prepared [App.R. 9(C) or (D)]

11. Time needed to complete transcript: _____

12. Time needed to file brief after record is complete
(not to exceed 15 days for accelerated calendar cases): _____

13. List all related or pending appeals: _____

Signature of Counsel or Pro Se Party

*By requesting that an appeal be placed on the accelerated calendar, the parties acknowledge responsibility for reviewing Loc.App.R. 6, which requires, inter alia, briefs limited to 15 pages, limited extensions of time, and may result in a memorandum decision or judgment entry being filed by the court instead of a full opinion or decision.

FORM II.
OHIO TWELFTH DISTRICT COURT OF APPEALS
CIVIL DOCKET STATEMENT

Revised 06/14/2021

APPEAL NO. _____
TRIAL COURT NO. _____
TRIAL JUDGE _____

Parties:

Counsel:*

Plaintiff-Appellant/Appellee
(Circle designation)

(Name & Supreme Court Registration No.)

(Address)

(Telephone Number)

(E-mail address)
 Filing appeal but not representing party on appeal

vs.

vs.

Defendant-Appellant/Appellee
(Circle designation)

(Name & Supreme Court Registration No.)

(Address)

(Telephone Number)

(E-mail address)
 Filing appeal but not representing party on appeal

*** List at least one counsel for each party to the appeal. List any additional parties and/or attorneys on an attached sheet. If a party will be represented by more than one counsel, designate which counsel is to be primarily responsible for prosecuting the appeal and receiving notices and pleadings from the court and all other parties. See Loc.R. 9(A).**

1. I request that this appeal be assigned to:

- A. The **Regular Calendar** with Full Briefing
 - Transcript is more than 100 pages.
 - Brief in excess of 15 pages is necessary to argue the issues adequately, or more than 15 days will be required to file the brief.
 - Appeal concerns unique issues of law which will be of substantial precedential value in determination of similar cases.
 - Other _____

- B. The *Accelerated Calendar**
- No transcript required.
 - Transcript consists of less than 100 pages, or is of such length that preparation time will not be a source of delay.
 - Transcript was filed in trial court as part of an administrative proceeding or objection to magistrate's report
 - Other: _____

2. Indicate General Nature of Case:

- | | | | |
|----------------------|--------------------------|-----------------------|--------------------------|
| Administrative | <input type="checkbox"/> | Insurance | <input type="checkbox"/> |
| Contractual | <input type="checkbox"/> | Juvenile/Permanent | <input type="checkbox"/> |
| Declaratory Judgment | <input type="checkbox"/> | Custody | <input type="checkbox"/> |
| Domestic Relations | <input type="checkbox"/> | Personal Injury | <input type="checkbox"/> |
| | | Probate | <input type="checkbox"/> |
| | | Other (specify below) | <input type="checkbox"/> |

Specify: _____

3. Probable issues for review: _____

4. Does this appeal involve the adoption of a minor child or termination of parental rights? Yes No
 If so, see Appellate Rule 11.2.

5. Type of record to be filed:

Transcript of proceedings has already been prepared and filed in the trial court.

OR

No Transcript of proceedings will be filed.

If this box is checked, the court will consider Loc.R. 5 notice for purposes of completing the record on appeal.

Transcript(s) of proceedings to be prepared Estimated length of transcript(s): _____

Partial transcript of proceedings Specify parts ordered: _____

Estimated length of partial transcript: _____

Statement of evidence or agreed statement to be prepared [App.R. 9(C) or (D)]

6. Time needed to complete transcript: _____

7. Time needed to file brief after record is complete
 (not to exceed 15 days for accelerated calendar cases): _____

8. List all related or pending appeals: _____

 Signature of Counsel or Pro Se Party

*By requesting that an appeal be placed on the accelerated calendar, the parties acknowledge responsibility for reviewing Loc.App.R. 6, which requires, inter alia, briefs limited to 15 pages, limited extensions of time, and may result in a memorandum decision or judgment entry being filed by the court instead of a full opinion or decision.

Selected Local Rules of the Twelfth District Court of Appeals

Annotations current through February 3, 2023

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.*

Rule 1 SCOPE AND APPLICATION OF RULES.

The following rules have been adopted by the judges of the Twelfth District Court of Appeals pursuant to Section 5(B), Article IV of the Ohio Constitution, as amended, and App.R. 41 in the interest of promoting the administration of justice and increasing the efficiency of the court's operation. They shall be cited as follows: "12th Dist.Loc.App.R. ____."

These rules and the Ohio Rules of Appellate Procedure shall govern all procedures in appeals to the Twelfth District Court of Appeals from courts of record within the jurisdictional boundaries of the Twelfth District. The Rules of Appellate Procedure and these rules prescribe the procedures to be followed in this court by all parties, whether represented or unrepresented.

The Ohio Rules of Civil Procedure, as supplemented by the Rules of Appellate Procedure and these rules, shall govern all procedures in original actions filed in the Twelfth District Court of Appeals.

Rule 2 COST DEPOSIT.

(A) **Appeals.** After the initial filing, no notice of appeal or cross-appeal shall be permitted to proceed in the court unless the party bringing the appeal or cross-appeal first deposits with the clerk of the trial court a deposit in the sum of \$225 as security for payment of costs, except where the party who proffers the filing makes and files with the clerk a sworn affidavit of inability to secure costs by such prepayment or produces evidence that the trial court determined that the appellant is indigent for purposes of appeal. In the event the affidavit is filed by an inmate of a state institution, it shall be accompanied by a certificate by the warden or other appropriate officer of the institution setting forth the amount of funds, if any, that the inmate has on deposit with the institution available to the inmate to secure costs. No security shall be required on appeals by the state or any of its subdivisions. R.C. 109.19.

The deposit for costs shall be forwarded upon receipt by the clerk of the trial court to the clerk of the court of appeals along with a copy of the notice of appeal, a copy of the entry or order appealed from, a copy of the listing of docket and journal entries and a copy of the docket statement required by Loc.R. 4. Any personal check given for the deposit amount shall be made payable to the clerk of the court of appeals. The deposit for costs shall be in addition to any other fees or deposits required by law, including the lawful fees of the clerk of the trial court prescribed by R.C. 2303.20 and 2303.31. The deposit for costs shall be applied by the clerk of the court of appeals to the costs,

if any, assessed against the respective appellant(s) or cross-appellant(s) during the appeal, as determined by this court, and any balance remaining shall be returned by the clerk to the depositor.

(B) Original Actions. No complaint in an original action (mandamus, prohibition, procedendo, or quo warranto, and except where prohibited by law, habeas corpus) shall be permitted to proceed in the court of appeals unless the party bringing the action shall have first deposited with the clerk the sum of \$225 as security for payment of the costs that may accrue in the action. The deposit for costs shall be in addition to any other fees or deposits required by law. A subpoena shall not be issued for any witness in an action unless an additional deposit in the amount of \$30 as security for costs is deposited with the clerk together with a praecipe for subpoena. A \$30 deposit and praecipe shall be submitted for each subpoena to be issued. If the party bringing the action or the party seeking the attendance of witnesses makes and files with the clerk a sworn affidavit of inability to secure costs by such prepayment, the clerk shall receive and file the complaint and subpoena witnesses without such deposits, subject to the approval of the court of appeals. In the event the affidavit is filed by an inmate of a state institution, it shall be accompanied by a certificate by the warden or other appropriate officer of the institution setting forth the amount of funds, if any, that the inmate has on deposit with the institution available to the inmate to secure costs.

Rule 3 NOTICE OF APPEAL.

(A) The notice of appeal shall comply in all respects with App.R. 3(D) and shall be accompanied by a docket statement as required by Loc.R. 4. If the docket statement is not filed with the notice of appeal, it shall be filed with the clerk of the court of appeals no later than five (5) days after filing of the notice of appeal. Filing of the docket statement is not jurisdictional, but omission of the docket statement may be a basis for dismissal, or may result in assessing against the appellant such court costs as may be attributable to failure to file the docket statement.

(B) The appellant shall file with the notice of appeal a praecipe directing the clerk of the trial court to prepare a record of the original papers and exhibits, and a copy of the docket and journal entries as specified in App.R. 9(A).

(C) Upon filing of the notice of appeal, the clerk of the trial court shall within 5 days promptly forward to the clerk of the court of appeals (1) a copy of the notice of appeal and docket statement; (2) a copy of the entry or order appealed from; (3) a copy of the opinion or decision supporting such entry or order if any, and a copy of any findings of fact and conclusions of law filed in the trial court; (4) a copy of the transcript of docket and journal entries; and (5) the deposit amount or affidavit of indigency, with Loc.R. 2 certificate of funds if applicable.

Rule 4 DOCKET STATEMENT; SCHEDULING ORDER.

(A) Upon every appeal filed in the court of appeals, counsel of record for the appellant, or the appellant when unrepresented and acting *pro se*, shall complete a docket statement (criminal appeal - Form 1; civil appeal - Form 2) and file the completed docket statement with the notice of appeal in the trial court clerk's office as set forth in Loc.R. 3(A). The clerk of the trial court shall then forward the notice of appeal, the docket statement and the other items required by Loc.R. 3(C) to the clerk's office of the court of appeals within five (5) days. Failure to file a docket

statement may result in dismissal of the appeal, or may result in assessing against the appellant such court costs as may be attributable to failure to file the docket statement.

(B) Upon receipt of the notice of appeal and the docket statement, the court will cause a scheduling order to be issued pursuant to Loc.R. 7 directing when the record and the briefs are to be filed.

(C) If necessary, the court administrator or the court mediation attorney may schedule a pre-scheduling order conference with counsel of record to resolve preliminary issues such as (1) the finality of the order being appealed, (2) the type of record to be filed, (3) the probable time required to complete preparation of the record on appeal, (4) the assignments of error and issues to be raised, (5) the time needed for briefing and oral argument, and (6) other matters of relevance to the appeal.

Rule 5 NOTIFICATION OF LACK OF TRANSCRIPT OR NARRATIVE STATEMENT; APP.R. 11(B) NOTICE.

(A) In every appeal taken in which no transcript of proceedings or narrative statement or agreed statement as described in App.R. 9 will be filed, or such transcript or narrative statement is already a part of the trial court record, counsel for the appellant shall file a notice of such fact with the clerk of the court of appeals for the county from which the appeal is being taken.

(B) Counsel for the appellant need not file the statement required by paragraph (A) above if the docket statement (see Loc.R. 4) indicates that no transcript or App.R. 9 statement will be filed, or that such transcript or narrative statement is already a part of the trial court record.

(C) Upon the filing of a complete record for purposes of an appeal, the clerk of the court of appeals shall serve upon all parties to the appeal notice as required by App.R. 11(B). Simultaneously with service of said notice upon the parties, the clerk shall forward a copy of the notice to the Court of Appeals at 1001 Reinartz Blvd., Middletown, Ohio 45042 (See Form 3 – suggested App.R. 11(B) Notice). Service of the App.R. 11(B) notice shall begin the time for filing the appellant's brief as set forth in the scheduling order (see Loc.R. 7).

Rule 6 ACCELERATED CALENDAR.

Pursuant to App.R. 11.1, this court hereby adopts an accelerated calendar, which shall be administered as follows:

(A) Each appellant and cross-appellant when filing the docket statement required by Loc.R. 4, and each appellee within ten (10) days thereafter, may request that the case be placed on the court's accelerated calendar. Based upon a review of the docket statement and pursuant to App.R. 3(G), the court may issue a scheduling order accelerating the appeal. The court in its discretion may *sua sponte* assign or remove any appeal from the accelerated calendar at any stage of the proceedings. Cases accepted for mediation may be removed from the accelerated calendar to accommodate scheduling.

(B) Counsel for the party not requesting acceleration may, within ten (10) days after journalization of the scheduling order accelerating the appeal, file a motion requesting that the appeal be removed

from the accelerated calendar. The motion shall be supported by a memorandum setting forth good cause for such request.

(C) Cases typically considered appropriate for assignment to the accelerated calendar include the following:

(1) Cases where:

1. No transcript of proceedings is required.
2. Length of the transcript is such that preparation time will not be a source of delay.
3. The record was made in an administrative hearing and filed with the trial court.
4. All parties to the case approve assignment to the accelerated calendar.

(2) Criminal cases involving:

1. Crim.R. 11 challenge.
2. Challenge to sentencing involving revocation of community control or failure to impose community control.
3. Crim.R. 29 or weight of the evidence challenge, especially if a lesser crime is involved.
4. Routine OVI or other minor traffic offense.
5. Expungement.

(3) Civil cases involving:

1. Administrative appeal.
2. Action on an account.
3. Slip and fall.
4. Civ.R. 60(B) motion.
5. Simple contract action.
6. Minor negligence action.
7. Post-decree support motion in a custody case.
8. Foreclosure.

(D) All briefs filed in a case that has been accelerated shall conform to the appellate rules and the local rules of this court as to form and content; however, such briefs shall not exceed either fifteen (15) pages or 4,500 words excluding table of contents and appendices. The appellant shall serve and file a brief within fifteen (15) days of the date on which the record is filed. The appellee shall serve and file a brief within fifteen (15) days after service of the brief of the appellant. Reply briefs may be filed within five (5) days after service of the brief of the appellee and shall not exceed either five (5) pages or 1,500 words in length.

(E) Total extensions granted to either party on a case on the accelerated calendar shall not exceed seven (7) days.

(F) In its discretion, the court may issue a memorandum decision, an entry or full opinion. Pursuant to App.R. 11.1(E), the court may state the reasons for its finding on each assignment of error in brief and conclusory form.

(G) All cases placed on the accelerated calendar shall be so designated following the case number on the caption of each brief, pleading or other document filed in the case.

Rule 7 SCHEDULING ORDER.

Upon receipt of the notice of appeal and docket statement, the court will issue a scheduling order of events with respect to the appeal. The scheduling order will be modified only upon written motion establishing good cause or pursuant to Loc.R. 22(D) [Prehearing Mediation Conference Procedure]. An unexcused failure to comply with the scheduling order in any respect may result in dismissal of the appeal. No scheduling order will be issued on appeals from orders denying bail (see Loc.R. 23).

Rule 8 STAYS; BAIL; SUSPENSION OF EXECUTION OF SENTENCE.

All motions for stay, motions for bond pending appeal and motions for suspension of execution of sentence pending appeal shall be made in the first instance in the trial court as required by App.R. 7 and 8. If any such motion is denied by the trial court, it may be made in the court of appeals. Service shall be made upon all other parties, and absent exigent circumstances, the motion will be decided in accordance with Loc.R. 13.

Rule 9 COUNSEL.

(A) Every notice of appeal, pleading, motion and brief filed shall have typed or printed thereon the name, Ohio Supreme Court registration number, address, telephone and/or cell phone number, and e-mail address of all counsel (or parties, if not represented by counsel). Where a party is represented by more than one attorney, or by a firm of attorneys, one attorney shall be designated as having primary responsibility for the appeal. Counsel so designated shall be responsible for conducting the appeal, including the filing of briefs and other memoranda, attending and preparing for mediation, presenting oral argument, and receipt of notices and pleadings from the court and all other parties.

(B) Counsel seeking to withdraw shall, with a written application showing good cause, submit proof of service of the notice of withdrawal upon the client, and the name and address of any substitute counsel, or, if none, the name and address of the client.

(C) In cases where appointment of appellate counsel is necessary, such appointment shall be sought in the first instance in the trial court.

(D) Admission of an out-of-state attorney pro hac vice will be allowed only following compliance with Gov.Bar R. XII, Rules for the Government of the Bar promulgated by the Supreme Court of Ohio. Prior to being granted permission to appear pro hac vice, the attorney shall have applied for registration with the Supreme Court Office of Attorney Services, paid the annual registration fee

and been issued a certificate of pro hac vice registration. A motion for admission pro hac vice shall briefly and succinctly state the qualifications of the attorney seeking admission and comply with the requirements of Gov.Bar R. XII. It shall be filed with the first pleading or brief in which the attorney seeks to participate or at least thirty (30) days before oral argument if the attorney seeks only to participate in oral argument. The court may withdraw admission to participate pro hac vice at any time.

Rule 10 FILING OF THE RECORD.

(A) If a transcript of proceedings is to be filed in accordance with App.R. 9(B), a copy of the notice of appeal with praecipe shall be served by the appellant upon the court reporter. The appellant is responsible for contacting the court reporter and ordering the transcript of proceedings, and filing the transcript with the clerk of the trial court in accordance with App.R. 9(B). The court reporter shall comply and prepare those portions of the record enumerated in the praecipe, subject to being made secure in the payment of fees by the party who ordered the transcript.

(B) If a statement of evidence or agreed statement is to be filed in lieu of a transcript pursuant to App.R. 9(C) or (D), the statement of evidence or agreed statement approved by the trial court shall be filed with the clerk of the trial court within the time permitted for transmission of the record pursuant to the scheduling order. A Loc.R. 5 notice shall not be filed with the clerk of the court of appeals if a statement of evidence or agreed statement will be filed.

(C) Additional material filed after the clerk has filed an App.R. 11(B) notice that the record on appeal is complete will not be considered by the court unless a motion to supplement the record is filed within 14 days and granted by the court.

(D) Extensions of time by trial court and court of appeals.

(1) The appellant is responsible for causing timely transmission of the record and for obtaining such extensions as are necessary to discharge this responsibility. The appellant shall file with the clerk of the court of appeals a copy of any extension obtained from the trial court.

(2) The trial court shall not extend the time for transmitting the record beyond eighty (80) days after the filing of the notice of appeal, and the court of appeals will not recognize an order of the trial court purporting to do so. Extensions of time for transmitting the record beyond the eightieth day may be granted only by the court of appeals.

(3) See Loc.R. 14 for additional requirements applicable to motions for extension of time.

(D) The transcript of proceedings or Loc.R. 5 notice shall be filed with the clerk of the trial court of the county from which the appeal is being taken. It should then be forwarded to the clerk of the court of appeals for filing in the court of appeals. No filings of any kind can be made at the court's central office in Middletown.

Rule 14 EXTENSIONS OF TIME.

(A) Except as provided in Loc.R. 22(D) [Prehearing Mediation Conference], applications to the court of appeals for extensions of time to file briefs and other motions and memoranda shall be made by written motion and supported by a memorandum which sets forth facts demonstrating good cause for the extension. Motions for extensions of time filed after the time sought to be extended has expired will generally not be granted absent extraordinary circumstances.

(B) All motions for extension of time shall state whether the court has previously granted the movant an extension of time in the case, and the length of the extension of time that was previously granted.

(C) See Loc.R. 10(D) for additional requirements regarding extensions of time for transmitting the record.

Rule 15 FAILURE TO PROSECUTE.

(A) Unless it is demonstrated that no undue delay and no prejudice has been caused to the opposing party by the failure to comply with these rules or the Rules of Appellate Procedure, the following shall be deemed good cause for dismissal of an appeal:

- (1) Failure to file a docket statement as required by Loc. R. 4.
- (2) Failure to file with the notice of appeal filings required by App.R. 9(B).
- (3) Failure to timely order in writing from the court reporter any necessary transcript of proceedings, or to timely file any necessary statement of evidence or agreed statement pursuant to App.R. 9(C) or (D), or a notice that no transcript or narrative statement will be filed as required by Loc.R. 5.
- (4) Failure to cause the record on appeal to be timely transmitted to the clerk of this court.
- (5) Failure to timely file a brief and assignments of error presented for review.
- (6) Any other noncompliance with the appellate rules or the rules of this court.

For any failure to comply with the appellate rules of procedure or the rules of this court, the court may, at its discretion, dismiss the appeal or issue a show cause order directing the party to show cause for the failure to comply.

(B) If a brief is not timely filed on behalf of the appellee, the court may, at its discretion, submit the case for decision on the appellant's brief only, or issue a show cause order directing the appellee to show cause for the failure to comply.