

COURT OF APPEALS

The following procedures govern appeals to Court of Appeals from the trial courts of record, in Ohio. There are twelve Appellate District Courts of Appeals. This manual contains only the Rules of Appellate procedure and statutory requirements that apply to all appeals. Each Clerk should insert any local rules from their own district. Reference is made to the Rules of Appellate Procedure contained in Chapter 25. Ohio Revised Code, Chapter 2501, Chapter 2505, Chapter 2953, and §I 901.30.

DEFINITIONS IN APPELLATE PROCEDURE

Notice of Appeal - The document filed with the court giving notice the person appealing is dissatisfied with the judgement and is seeking a review of the case by a higher court. *TRIAL COURT MAY REQUIRE A FEE TO PREPARE APPEAL UPON FILING. (Some courts charge around \$50.....fee would be paid to city or county.)*

Appellant - The party taking, or prosecuting, the appeal from a lower to a higher court.

Appellee - The party, who was successful in the trial court, opposes a reversal or modification of the judgment.

Record - Under the Appellate Rules it consists of (1) original papers and any exhibits attached thereto (2) Transcripts of proceedings and exhibits (3) certified copy transcript of docket and journal entries.

Transcript of Proceedings - Formerly called a bill of exceptions and is the typewritten record of everything that occurred at trial, which is prepared by the Appeals court reporter. If a video tape recording is made of the proceedings, it shall, when properly certified, be considered a transcript of the proceedings. When a video tape is filed, the attorneys still must have transcribed, typed and attached to their briefs the parts upon which they rely. Audio tapes only, must be transcribed and filed in the regular way.

Transmission of Record - The action of the trial clerk in transferring from the trial clerk to the Court of Appeals Clerk the papers constituting the record, defined above, which have been assembled.

Brief - A written argument by the attorneys for the parties in support of their claims in the case.

APPEAL AS OF RIGHT - WHEN TAKEN

Apr. R. 4 provides in part as follows:

- (A) Appeals in Civil Cases. In a civil case, the Notice of Appeal shall be filed with the Clerk of the trial court within thirty (30) days of the date of the entry of judgement or order appealed from.

(B) Appeals in Criminal Cases.

1. Appeals in Criminal Cases (by defendant). In a criminal case the Notice of Appeal by a defendant shall be filed with the Clerk of the trial court within thirty (30) days of the date of the entry of judgment or order appealed from.
2. Appeals in Criminal Cases (by the prosecutions). In an appeal by the Prosecution, the notice of Appeal shall be filed with the Clerk of the trial within thirty (30) days of the date of the entry of the judgement or order appealed from.

EXCEPT that in an appeal under Criminal Rule 12 (J), the notice of appeal shall be filed within seven (7) days of the date of the entry of the judgement or order appealed from.

Crim. Rule 12 (J) provides for the State's rights of appeal upon granting of motion to return property or motion to suppress evidence.

A judgement or order is entered within the meaning of this subdivision when it is filed with the clerk of the trial court for journalization.

APPEALS BY LEAVE OF COURT IN CRIMINAL CASES

APP. R. 7

App R. 5 provides the procedures for filing a late appeal in a criminal case.

**STAY OF INJUNCTION PENDING APPEAL
CIVIL AND JUVENILE ACTIONS**

APP. R. 7

App. R. 7 provides the procedure for a stay or injunction pending appeal in a civil case.

**BAIL AND SUSPENSION OF EXECUTION
OF SENTENCE IN CRIMINAL CASES**

App. R. 8

App. R. 8 provides the procedure for bail and suspension of execution in criminal cases.

DUTY OF THE APPELLANT

The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgement, order or part thereof appealed from; and shall name the court to which the appeal is designation of appellant and appellee (App. R. 3 (C))

Counsel for the appellant is required by App. R. 9(B) to file, along with Notice of Appeal either:

1. A copy of the written order to the court reporter for a complete transcript of proceedings, together with proof that he has delivered that order to the court reporter (receipt signed by the court reporter), or;
2. The appropriate designation of parts of the record he intends to include, or;
3. A statement that no transcript of proceedings is necessary, or;

4. A declaration of intent to comply with either App. R. 9 or 9 (D), and;
5. In each of the forgoing options, a statement of the Assignments of Error the appellant intends to present on the appeal. (See App. R. 9 (B))

A "naked" notice of appeal always violates App. R. 9 (B) and exposes appellant to possible dismissal for wants of prosecution.

DUTIES OF THE CLERK OF THE TRIAL COURT

The Clerk of the trial court shall serve immediately a copy of the Notice of Appeal to all counsel of record except the appellant. If a party is underrepresented, a copy shall be mailed to the party at his last known address; and shall forward the following, immediately to the Clerk of the Court of Appeals:

1. A copy of the Notice of Appeal; and
2. A copy of the notice to the court reporter ordering the transcript; and
3. A copy of the designation, if any, that a partial transcript or no transcript will be filed, or an alternative will be filed; and
4. A copy of the trial court docket entries. (Some appellate courts require a certified copy of the docket entries, Check your local rules.) and
5. Deposit for the cost payable to the Clerk of the Court in which the Notice of Appeal is filed.

The clerk of the trial court shall note on each copy served, the date on which the Notice of Appeal was filed; and

Note on the trial docket, the date and time of mailing and the name of the parties to whom copies were mailed.

TRIAL CLERK'S DUTIES AS TO RECORD

Time for Transmission of Record by Trial Clerk. It is the duty of the trial to assemble and transmit the record to the Clerk of the Court of Appeals within forty (40) days. The rules are structured to require transmission at the earliest possible time after the notice of appeal is filed unless accelerated calendar notice is received.

When no transcript is ordered. When a statement filed with a Notice of Appeal reflects no transcript is being ordered, the appellee has ten days after service of the designation upon him to order a full or partial transcript. If the appellee does not order a transcript or part thereof, at the end of the ten-day period the clerk shall transmit the record.

When a full or partial transcript is ordered. If the clerk has ordered a full or partial transcript from the reporter, immediately upon receipt of the transcript, the record shall be transmitted.

When alternatives to transcript of proceedings designated. These alternatives will be one of two forms:

(a) If no court reporter was present at a hearing so a formal transcript of proceedings cannot be prepared, the appellant may prepare a statement of the evidence and proceedings as best as he can, and serve it on appellee who may prepare amendments. The statements and objections or amendments are submitted to trial judge for approval, and as approved shall be included by you in the record on appeal. The appellant must serve this statement in the appellee no less than 20 days prior to the time for transmission of record, who then has 10 days thereafter to file objections or proposed amendments. The attorneys present this to the trial judge who must act upon it prior to the time for transmission of record. When approved by the trial judge, it is given to the Clerk who shall forthwith transmit the record.

(b) The second alternative is utilization of an agreed statement by the attorneys in place of the record as herein defined. This statement agreed to by counsel will show how the issues presented by the appeal arose and were decided by the trial court and such facts proven, or sought to be proven, necessary to a decision upon the appeal. This statement signed by the attorney must be presented to the trial court no later than 10 days prior to time for transmission of record. The trial court to the time for transmission. When approved by the court and filed with the clerk, it shall be certified and transmitted forthwith by the clerk as the record. While technically, not necessary when an agreed statement is used, you should assemble the original papers and [re]are a certified transcript of the docket and journal entries and transmit them with the agreed statement.

Time of Transmission of Record when no extension of time for transmission or time has expired. The trial court and Court of Appeals have authority to extend, by order, the time for transmission of the record. If the trial court extends the time for transmission, a copy of such extension shall be certified to the Clerk of the Court of Appeals.

If no extension of time is granted by court order and even if a transcript of proceedings has been ordered but not filed, or an alternative to record was indicated to be filed but was not, you shall consider the record complete at the end of the fortieth (40) day, and transmit to the Clerk of the Court of Appeal all other items constituting the record. Transmission is effective on date of mailing or otherwise forwarding the record. The same rule applies when an extension has been granted and expires with no extension.

If more than one Notice of Appeal has been filed from the same judgment, one record will be sufficient and shall be transmitted within forty (40) days from the filing date of the last Notice of Appeal.

Method of Assembly of Record and Transmittal by Trial Clerk. In assembly the record for transmission you must:

1. Place number on each document constituting record, preferably on lower right hand corner. (Check your local rule.)
2. Prepare a paper setting out and identifying each document and its number.
3. Documents of unusual bulk and weight and physical exhibits, other than documents, need not be transmitted unless directed to do so by a party or Clerk of the Court of the Court of Appeals. (Check your local rules.)
4. You must indicate, by endorsement on the face of the record, the date you transmitted it to the Clerk of Court or Appeals.

5. Enter date of transmission of record in the trial docket.

By agreement of the parties or by trial court order, the clerk may temporarily retain the record for the use of parties in preparing appeal as set forth in Rule 10. See also in Rule 10 other provisions for retention of records.

TIME REQUIREMENTS

30 days: To file Notice of Appeal in the trial court.

40 days: To cause a timely transmission of the record BY THE TRIAL COURT TO THE COURT OF APPEALS.

Trial court has no other time requirements, until the case is referred back from the Court of Appeals.

The following are requirements once case is sent to Court of Appeals.

20 days: To file the Appellant's Brief.

20 days: To file the Appellee's Brief.

10 days: Appellant's Reply Brief

Applies to all criminal and civil cases.

Failure of appellant to file timely any of the required documents will result in sua sponte dismissal of the case.

NOTICE OF APPEAL

(Enter Name of Trial Court)

Plaintiff-Appell _____

Trial Court No. _____

- vs -

Court of Appeals No. _____

Defendant-Appell _____

Notice is hereby given that _____ appeals to the
Eleventh District Court of Appeals from trial court Judgement Entry time-stamped _____
(describe it) _____

Counsel for Appellant

Address

Phone No.

Atty. Regis. No.

Name of Opposing Counsel

___ Check here if court-appointed and
attach copy of appointment and
Affidavit of Indigency

Address

___ Check here if any co-counsel for
for Appellant and attach separate
sheet indicating name, address
and phone number.

Phone

TRANSCRIPT INFORMATION (App.R. 9[B]) (TO BE COMPLETED BY ATTORNEY)

- ___ I have ordered a complete transcript from the court reporter as evidenced by the completion of the Court Reporter Acknowledgment.
- ___ I have ordered a partial transcript from the court reporter as evidenced by the completion of the Court Reporter Acknowledgment.
- ___ A statement pursuant to App. R. 9(C) or (D) is to be prepared in lieu of a transcript.
- ___ Video tapes to be filed (See App. R. 9[A] or [B].)
- ___ No transcript or statement pursuant to either App. R. 9(C) or (D) is necessary.

Date

Attorney's Signature

COURT REPORTER ACKNOWLEDGMENT – MUST BE COMPLETED BY COURT REPORTER BEFORE FILING NOTICE OF APPEAL

Date Order Received _____

Estimated Completion Date _____
(Give specific date)

Court Reporter's Signature

Estimated Number of Pages _____
(Give specific number)

Date

DISTRICT COURT OF APPEALS

DOCKETING STATEMENT

(To be attached to and filed with Notice of Appeal)
(CAPTION – must be complete) (NAME, ADDRESS & PHONE FOR COUNSEL)

| | |
|--------------|-----------------------|
| | |
| | |
| Appell _____ | Appeal No. _____ |
| - vs - | TRIAL COURT NO. _____ |
| | |
| | |
| Appell _____ | |

TYPE OF CASE: (Please indicate)

- A. No transcript of proceedings required.
- B. Length of transcript is such that preparation time will not be a source of delay.
- C. Agreed or narrative statement to be submitted pursuant to App.R. 9(C or D).
- D. Record was made in administrative hearing and filed with trial court.
- E. All parties to case approve assignment to accelerated calendar.
- F. Criminal cases involving:
 - 1. Crim. R. 11 challenges
 - 2. Post-conviction appeals alleging ineffective assistance or counsel
 - 3. Challenges to sentencing to revocation of probation or to failure to grant probation
 - 4. Crim. R. 29 or weight or evidence challenges, especially with lesser crimes.
 - 5. Routine DUI cases and other minor traffic offenses.
 - 6. Expungement cases.
- G. Civil cases involving:
 - 1. Routine administrative appeals.
 - 2. Actions on account.
 - 3. Slip and fall.
 - 4. Civ. R. 60 (B) motions.
 - 5. Simple contract cases.
 - 6. Minor negligence actions.
 - 7. Property division in divorce case or post-decree support motions.
- H. Other _____

PROBABLE ISSUE FOR REVIEW: _____

NOTE: Information re Record (and Court Reporter's Certification, if applicable) MUST be completed on Notice of Appeal. Copy of Judgment Entry being appealed MUST be attached to Notice of Appeal.

CERTIFICATE OF SERVICE: I certify that I have mailed or otherwise delivered a copy of this Docketing Statement to all counsel or record or the parties if unrepresented.

DATE: _____ SIGNATURE: _____