

FREQUENTLY ASKED QUESTIONS

Please be aware that these questions and answers have been prepared as a courtesy to explain the basic steps and procedures for filing and litigating appeals in the Eighth District Court of Appeals. Both the Ohio Rules of Appellate Procedure and the Local Rules of the Eighth District Court of Appeals apply to all appeals filed in this court. These FAQs are not legal authority or a substitute for the requirements found in those rules.

A. Overview of Eighth District Court of Appeals

What are the hours of the court of appeals?

The court of appeals is open Monday through Friday from 8:30 a.m. to 4:30 p.m. The court of appeals is closed on the following holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day.

Where is the court of appeals located?

The court of appeals is located in the Cuyahoga County Courthouse at 1 West Lakeside Avenue in Cleveland, Ohio. The building is located at the intersection of Ontario Street and Lakeside Avenue. Click [map](#). The administrative offices are on the second floor. The clerk for the court of appeals is located on the first floor.

What cases does the court of appeals hear?

The court of appeals hears two kinds of cases: appeals and original actions (also known as writs).

What is an appeal?

An appeal is a request for this court to determine whether or not the trial court erred—made a mistake—based on what was presented to the trial court. The appellant must convince the court of appeals that the trial court made a mistake.

What can I appeal?

Appeals arise from cases that have already been decided by the court of common pleas (including domestic relations, juvenile and probate court) as well as municipal courts, small claims courts, and the board of tax appeals. Appeals to this court of appeals may only arise from courts located within Cuyahoga County.

Do I have a final appealable order?

A final appealable order is defined in Ohio Revised Code Section 2505.02 and court decisions interpreting that provision. *See also* Ohio Civil Rule 54(B) and Ohio Criminal Rule 32. The personnel at the court of appeals cannot make that determination for you.

In an appeal, what will happen if I do not comply with the rules?

The party bringing the appeal, known as the appellant, may lose the opportunity to challenge the judgment of the trial court. That is, if the appellant does not execute all of the steps of an appeal in a timely and proper manner, the court of appeals may dismiss the appeal, which prevents the appellant from arguing that the trial court's decision was wrong. The party who won in the trial court, known as the appellee, may lose the opportunity to present its position to the court if they fail to comply with the rules.

B. Getting Help for my Appeal

Am I required to have a lawyer?

No, but parties who represent themselves are expected to follow the [Ohio Rules of Appellate Procedure](#) and the [Local Rules of the Eighth District Court of Appeals](#) in preparing and presenting their cases.

Where can I find a lawyer?

The Cleveland Metropolitan Bar Association (“CMBA”) provides a Lawyer Referral Service, which you may contact weekdays 9 a.m. – 4 p.m. by phone at (216) 696-3532. You can also find a lawyer through the yellow pages of the phone book, internet search, or by word of mouth from friends or family. The personnel at the court of appeals do not make referrals.

What if I cannot afford to hire an attorney?

For civil cases, you may be eligible for representation through the CMBA's Civil Appellate Pro Bono Program, which is a new pilot program that refers selected people to pro bono counsel ("Volunteer Counsel"). If you wish to have Volunteer Counsel, you should fill out an application and email it to the CMBA at hzirke@clemetrobar.org. Submission of a form, however, does not guarantee Volunteer Counsel will be appointed. Application will be reviewed by a panel of volunteer lawyers who will determine whether the appointment of Volunteer Counsel is warranted. To learn more about the program, visit the [CMBA's website](#).

For civil cases, you can also call The Legal Aid Society of Cleveland at (216) 687-1900 and ask about legal advice and representation.

For criminal cases, you can contact the Cuyahoga County Public Defender's office at (216) 443-7583.

You may be entitled to have the court of appeals appoint an attorney to represent you on appeal if you are appealing a criminal conviction, juvenile delinquency adjudication or the termination of parental rights. You need, however, to submit a written motion to the court requesting the appointment of counsel.

If I am not a lawyer, may I represent a family member or my company in an appeal?

No. An individual possesses the right to represent himself or herself, but may not represent other persons or legal entities, such as wholly owned companies.

Where can I get information on how to handle a case in the courts of appeals?

The Ohio Rules of Appellate Procedure are available in many libraries and on the Supreme Court of Ohio website as well as this website under [Rules](#). The Local Rules of the Eighth District Court of Appeals are also posted on this website.

C. Filing an Appeal

How do I file an appeal?

You need to file a Notice of Appeal with the *clerk of the trial court* within 30 days of the date of the judgment being appealed. You need to attach a copy of the judgment entry and also file a Praecipe and a Docketing Statement along with the Notice of Appeal. You must also submit the filing fee at the time of filing the Notice of Appeal, unless you satisfy one of the exceptions of App.R. 3.

What is a Praecipe and Docketing Statement?

A Praecipe is an order to the clerk of the trial court that specifies what the record, which is sent to the court of appeals, will contain. The original papers are always part of the record. Through the Praecipe, the party filing the appeal may also request a complete transcript, a partial transcript, a Statement of Evidence under [App.R. 9\(C\)](#) or an Agreed Statement of Evidence under [App.R. 9\(D\)](#). It is the responsibility of the party filing the appeal to make arrangements with the official court reporter for preparation of a transcript.

The Docketing Statement is a required form that provides the court of appeals important information about your appeal and the order that you are appealing.

Where do I file the Praecipe and Docketing Statement?

You should file the Praecipe and Docketing Statement with the clerk of the trial court at the same time that you file your Notice of Appeal.

Are there any costs involved with filing an appeal?

Yes, a \$175 filing fee is required. If you cannot afford the filing fee, you may demonstrate that fact to the court by filing an Affidavit of Indigency or proof that you were determined to be indigent in the trial court. You may file the affidavit or other proof in place of the filing fee.

Where do I file a cross-appeal?

Like the notice of appeal, the notice of cross-appeal must be filed with the clerk of the trial court and there is a \$175 filing fee that must be paid contemporaneous to the filing of the cross-appeal.

Do I have to e-file?

If you are not represented by counsel on appeal, you are permitted to file documents in paper form. Make sure to include the necessary number of copies and to serve the documents on all parties. The brief and any motions you file in paper form require the original and three additional copies. Although e-filing is not required for self-represented individuals, the court prefers the e-filing system and, therefore, individuals should utilize it if possible.

For parties represented by counsel, the attorney must comply with [Loc.App.R. 13.1](#), filing all documents electronically, unless the attorney obtains leave from the court to file documents in paper form.

Who can I call if experiencing technical difficulties with e-filing or have a question regarding e-filing?

You may call the E-File Help Desk at (216) 698-8682.

Once I have filed my Notice of Appeal and Praecipe and Docketing Statement, what must I do?

After the record is filed, you must prepare and file a brief, which contains the assignments of errors that you intend to argue on appeal. There are strict time limitations and form requirements that must be followed by the appellant and the appellee with regard to the filing of their briefs. Please see [App.R. 16](#), [App.R. 18](#), [App.R. 19](#), [Loc.App.R. 16](#), and [Loc.App.R. 18](#).

D. Stay of the Trial Court's Order

Does the filing of an appeal automatically stay execution of judgment?

No. Once a trial court enters judgment, that judgment can be carried into effect unless the trial court or court of appeals grants a motion for stay of execution of judgment.

How do I obtain a stay of the trial court's judgment?

To stay a trial court's judgment, you must file a motion to stay judgment pursuant to [App.R. 7](#) for civil cases and [App.R. 8](#) for criminal cases. The

rules specify that a motion for stay of execution of judgment *should first be filed in the trial court.*

E. Record on Appeal

Where do I order the transcript for purposes of the appeal?

The appellant is responsible for instructing the court reporter to prepare the transcript. Contact the trial court or consult the trial courts' website.

Some trial courts, such as the juvenile court, require that you first file a motion in the trial court to obtain a transcript of the proceedings. The directions and motion form for obtaining a transcript from a juvenile court proceeding can be found on the Cuyahoga County Juvenile Court's website under the heading "Requesting Transcripts."

See <http://juvenile.cuyahogacounty.us/en-US/forms-publications.aspx>

If I have a copy of the transcript of the court proceedings below, can I simply file the transcript with the court of appeals?

No. The original transcript that has been filed with the clerk of the trial court is the only transcript upon which the court of appeals can rely.

What if the record on appeal does not contain a document that had been filed in the proceedings of the trial court?

If such an item is missing from the record on appeal, you may file a motion to supplement the record under [App.R. 9\(E\)](#).

F. Calendar

What is the purpose of the accelerated calendar?

The accelerated calendar is used to expedite the disposition of appeals. An appeal assigned to the accelerated calendar must involve one or two relatively simple issues that can be fully briefed within fifteen pages. In addition, any evidentiary material contained in the record, including the transcript if requested, may not exceed 100 pages. See [Loc. App.R. 11.1](#).

When is the record due?

For cases on the regular calendar, the record is due 40 days after filing the notice of appeal unless an extension is granted. For cases on the accelerated calendar, the record is due 20 days after filing the notice of appeal unless an extension is granted.

When is my brief due?

If the case is assigned to the regular calendar, the appellant's brief (limited to 40 pages) is due 20 days after the record has been transmitted and filed with the clerk of the court of appeals. The clerk's office will issue a notification when the record is complete. The appellee's brief (limited to 40 pages) is due within 20 days after service of the appellant's brief. The appellant may serve and file a reply brief (limited to ten pages) within ten days after service of the appellee's brief.

For cases on the accelerated calendar, the appellant's brief (limited to 15 pages) is due within 15 days after the record was filed. The appellee's brief (limited to 15 pages) is due within 15 days after service of the appellant's brief. No reply brief is permitted for appeals on the accelerated calendar.

When will my case be set for oral argument?

Generally, the court schedules oral argument approximately five weeks after the briefing has concluded, including the submission of the reply brief. This time frame, however, does not apply if there are irregularities in the record, motions or briefs filed with the court.

Currently, the court is scheduling oral arguments six week in advance.

When can I learn the identity of the judges that will decide my appeal?

Approximately six weeks before oral argument, notice of the identity of the judges deciding the appeal and the date and time of your oral argument will be sent to the parties or their lawyer, and be published in the Daily Legal News. The [Court Calendar](#) will also contain this information.

G. Prehearing Mediation Conference

What is a prehearing mediation conference?

A prehearing conference is an opportunity for the parties and counsel to meet with a conference attorney, who is a mediator for the court, trained in understanding problems in an appeal and in conflict resolution. Through a prehearing conference, the parties may be able to focus the scope of the appeal, avoid procedural difficulties and resolve the case without having to expend more resources.

Are all cases scheduled for a prehearing mediation conference?

No. The mediator reviews the docketing statement to determine whether the case is suitable for mediation. Only civil and administrative appeals are considered for mediation.

What forms do I have to submit before having a prehearing conference?

Within 10 days from receiving the order scheduling the mediation, you are required to submit a confidential statement form which will be provided to you in the mail. You can also access the form on the court's website under [Forms](#). Please note: this form is confidential and should NOT be filed with the clerk of courts. The completed form can either be emailed to cmm@8thappeals.com or delivered to Office of the Conference Attorney, Room 135, 1 W. Lakeside Avenue, Cleveland, Ohio 44113.

H. Brief

What is a brief?

The document that you must file with the court stating and arguing what mistakes you believe that the trial court made and setting forth the relief that you are seeking in the appellate court.

Are there specific requirements for submitting a brief with the court?

There are strict time limitations and form requirements (including the number of pages allowed) that must be followed by the appellant and the appellee with regard to the filing of their briefs. Please see [App.R. 16](#), [App.R. 18](#), [App.R. 19](#), [Loc.App.R. 16](#), and [Loc.App.R. 18](#).

What are the required sections that must be included in a brief?

Specifically, the appellant's brief must include the following in this order: (1) a table of contents, (2) table of cases, (3) statement of assignments of error, (4) statement of the issues, (5) statement of the case, (6) statement of the facts, (7) argument section, and (8) a conclusion. The appellee's brief must contain all of the same components, except a statement of the case or statement of the facts is not necessary, unless the appellee is dissatisfied with the statement of the appellant.

What is a reply brief?

A reply brief is what the appellant files in response to the arguments raised in the appellee's brief. The reply brief must not exceed ten pages and is limited to the issues raised in the other briefs. It is not an opportunity to raise new arguments.

I. Oral Argument

What is oral argument?

At oral argument, each side gets 15 minutes to present their argument to the three judges. Only argument that has previously been set forth in your brief may be presented. No new evidence is allowed. The judges may ask you questions about your case, for example, to clarify what your argument is or what relief you want the court to grant. The appellant may reserve some of its 15 minutes for rebuttal.

What if I have a conflict with the scheduled oral argument date?

You can request that your oral argument be postponed. See [Loc.App.R. 21\(F\)](#). Cases already scheduled for oral argument will be postponed and rescheduled only upon the filing of a motion that establishes good cause for a continuance.

Who may attend an oral argument?

Oral arguments are open to the public and are presumed with regard to each appeal per [Loc.App.R. 21](#).

How do I waive oral argument?

[Loc.App.R. 21\(E\)](#) sets forth the mechanism to request waiver of oral argument. Please note that a party's motion to waive oral argument will not automatically result in cancellation of the scheduled argument. Under the rule, oral argument is automatically cancelled for an appellant who is imprisoned and not represented by counsel, unless one of the exceptions to the rule apply.

J. Motions and Emergency Motions

How do I file an emergency motion?

If you are representing yourself and choosing to file in paper form, an emergency motion, captioned as such, should be filed with clerk of the court of appeals in Room 131 of the Lakeside County Courthouse. Attorneys are required to file the motion electronically through the clerk's e-filing system. Personnel at the court of appeals will notify you of the appellate court's decision on the motion.

What should I do to expedite my emergency motion?

File the emergency motion as soon as possible and as early in the day as possible. Clearly indicate in the motion that you consider the matter urgent and specify why you think it is urgent. You should also indicate to the clerk of the court of appeals that you consider the matter urgent. You will not be allowed to walk the emergency motion through to a judge. Parties that electronically file an emergency motion should notify the court at 216-443-6350 or provide a courtesy hard copy to the court of appeals in Room 202. The clerk's office staff will expedite the motion.

How long does it take for the court of appeals to rule on my emergency motion?

The court of appeals may summarily rule on an emergency motion. The court of appeals may also allow more time for consideration of the matter and to allow the other parties to file a response within ten days.

K. Appointed Counsel

As a registered attorney, can I be appointed to represent a defendant in a criminal appeal?

Pursuant to [Loc.App.R. 46\(B\)](#), the Eighth District Court of Appeals maintains an appointed counsel list for indigent persons for appeals concerning criminal convictions, juvenile delinquencies and the termination of parental rights. If interested in being added to the appointment list, you must be a licensed Ohio attorney in good standing with the Ohio Supreme Court. The applicant must also submit a resume and a completed “Application to Serve” form, which can be found [here](#).

The resume and “Application to Serve” form can be sent to the court either by email to Mph@8thappeals.com or by mail to:

Mary Pat Horwitz
Administrative Counsel/Conference Attorney
Eighth District Court of Appeals
One Lakeside Avenue, Room 202
Cleveland, Ohio 44113

For any questions, please contact Mary Pat Horwitz at 216-443-6331.

As appointed counsel, how do I get paid for the services I provided to my indigent client in the criminal direct appeal?

You must file a completed Appointed Counsel Fee Application and Financial Disclosure Form with the clerk of the appellate court within 30 days after the decision in the case has been journalized. See [Loc.App.R. 46\(C\)](#).

L. Miscellaneous

What if it looks like I will be unable to meet a deadline?

If you need more time to file the record or complete your brief, you may file a motion for extension of time. A motion for extension of time to file the record usually requires an affidavit from the court reporter. The Court has no authority to grant an extension of time to file a Notice of Appeal.

What are the writs that the court of appeals has jurisdiction to grant?

Mandamus: to compel a public official to do a duty.

Procedendo: to compel a judge to proceed to judgment.

Prohibition: to stop a judicial action when the court does not have jurisdiction.

Habeas Corpus: to set reasonable bail is the usual use in Ohio, but also used to compel one's release from confinement.

Quo warranto: to determine the right of a person to use or exercise a public office, public franchise, corporate office, or corporate franchise. The writ may also be used by the Attorney General or Prosecutor to dissolve a corporation.

The court of appeals has just dismissed my appeal for failing to file a praecipe, the record or the brief. What can I do to save my appeal?

File a motion for reconsideration under [App.R. 26\(A\)](#) within 10 days of the dismissal. You should concisely state why the appeal should be reinstated and further provide the missing item or items.

What is the status of my case?

You can call the Clerk of Courts office at 216-443-7937 to inquire about the status of your case.

Why is my motion taking so long to be decided?

It depends upon the type of motion filed. A motion for extension of time is reviewed within a day or two. See [App.R. 14\(B\)](#). If your motion is the type that allows or requires a response from the opposing party, the motion may not be decided for two to three weeks.

Why is my appeal taking so long to be decided after the oral argument?

The appellate court takes every case under consideration immediately after oral argument or at the time scheduled for hearing if oral argument has been waived. Some cases are more complex than others and simply require more time to be reviewed and decided.

What can I do if I am dissatisfied with the decision of the court of appeals?

A party may appeal to the Supreme Court of Ohio. The Rules of Practice of the Supreme Court of Ohio govern proceedings before the Supreme Court of Ohio. The toll-free telephone number for the Supreme Court of Ohio is 1-800-826-9010.