

Eighth District Court of Appeals



Guide to Self-Representation

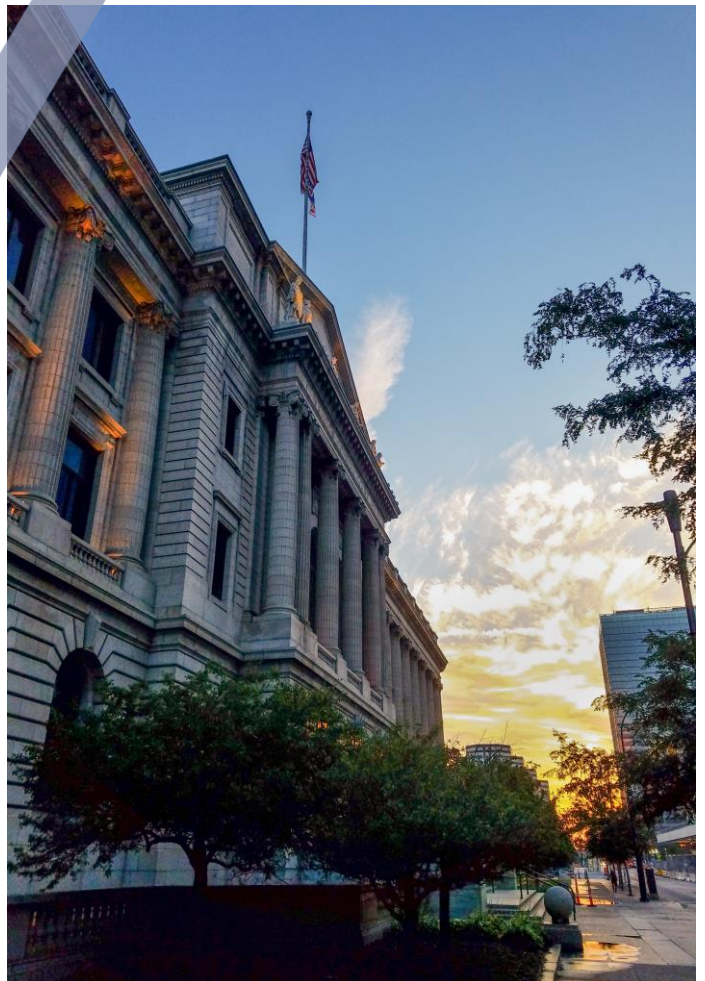


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Introduction

WHO WE ARE AND WHAT WE DO: With 12 judges, the Eighth District Court of Appeals is the largest appellate court in Ohio. The Eighth District is also one of the busiest appellate districts, hearing appeals from all divisions of the Cuyahoga County Court of Common Pleas as well as municipal courts and small claims courts in Cuyahoga County. The court also hears board of tax appeals. Each appeal is heard and determined by a three-judge panel.



SELF-REPRESENTATION: Individuals may appear in the court of appeals without a lawyer and represent themselves on appeal. **You are strongly advised, however, to retain an attorney to represent you.** If you choose to represent yourself, be aware that you must

comply with the appellate rules and any order issued by the court.

PURPOSE OF GUIDE: This guide has 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. This guide is not legal authority or a substitute for the requirements of these rules. Parties appearing in the Eighth District Court of Appeals should consult and rely on the Ohio Rules of Appellate Procedure and the Eighth District Court of Appeals Local Rules in preparing and presenting their cases. Both sets of rules can be found on the court's website.

Introduction

LOCATION: The Eighth District Court of Appeals is located in the Cuyahoga County Courthouse at 1 West Lakeside Avenue in Cleveland, Ohio. The court has three courtrooms that are utilized for oral arguments and hearings. The court's main courtroom is located on the second floor, next to the administrative offices in Room 202. Courtrooms 2 and 3 are located on the first floor of the building in the northeast corner, near Room 135. The Cuyahoga Clerk of Courts, Appellate Division, is located on the first floor of the building.

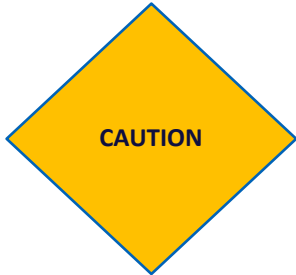


CONTACT: Please note that the Code of Judicial Conduct prohibits judges from speaking with parties outside of formal court proceedings.

Additionally, court employees cannot give you legal advice. The staff, however, will help with general procedural questions when possible.

You can reach the court at (216) 443-6350 between the hours of 8:30 a.m. and 4:30 p.m.

Self-Representation Warning



Important Information . . . Please Read Carefully.

All documents that you file with the court will be available to the public on the internet and the court's docket.

You are responsible for protecting your identity from possible theft. You must remove certain personal identifying information from all documents before you submit the documents to the court for filing. It is not the court's responsibility to remove personal identifying information from your documents before they are electronically docketed.

Also, a litigant, whether represented by counsel or appearing pro se, must not put certain types of personal identifying information in documents for filing. This rule applies to **ALL** documents submitted for filing, including pleadings, exhibits to pleadings, notice of appeals, briefs and any other document submitted by any party for filing. If a litigant finds it necessary to submit a document containing personal identifying information, the litigant must redact or "black out" the personal identifying information prior to submitting the document to the Clerk of Court for filing.

Self-Representation Warning

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Types of Personal Information that MUST be removed or redacted from documents before filing:

Social Security Number or Other Personal Identifier

Names of Minor Children

Names of Victims of a Sexual Offense

Financial Account Numbers

Any other information deemed personal and private by any federal or state constitution, statute, regulation, executive order, or court ruling (e.g., privacy rules under the Health Insurance Portability and Accountability Act ("HIPAA"), Internal Revenue Service ("IRS") income tax filings, etc.)

To the extent that reference to another person is likely to reveal the identity of a minor or victim of a sexual offense, you must identify that person with initials or a generic term in any document that you file in the court. See Loc.App.R. 13.2. **If you include any of the above personal and private information, the court will strike your document from the docket.**

Appeal

A review by the court of appeals of the proceedings in the trial court to determine if mistakes occurred and, if so, whether the mistakes adversely affected the outcome.

Appellant

The party filing an appeal from a trial court to the court of appeals.

Appellee

The party who prevailed in the trial court and opposes a reversal or modification of the judgment.

Assignment of Error

A statement describing the error the appellant believes justifies the reversal or modification of the trial court's judgment.

Brief

A written argument by the parties in support of their claims in the case. The brief will address specific errors that the appellant asserts occurred in the trial court or, if filed by the appellee, inform the court of appeals why the trial court's judgment should be affirmed.

Citation

A reference to legal authority, such as a case or statute, or a reference to the record.

Cross-Appeal

A second appeal filed by a party to the action whose interests are not the same as the first appellant's interests but who still wishes to reverse or modify the trial court's judgment.

Cross-Appellant

A party who files a cross-appeal.

Definitions

Cross-Appellee

A party who opposes the cross-appellant's appeal, usually the original appellant.

Exhibit

A document or object formally presented to the trial court as evidence.

Interlocutory Order

An intermediate order that decides a particular issue in a case but not the entire case itself. Some interlocutory orders are immediately appealable. Most, however, cannot be appealed until the entire case is finished.

Jurisdiction

The authority of a court to consider a case and take action. If a court does not have jurisdiction, it cannot proceed and must dismiss the case.

Motion

A written request asking the court to make a specific ruling or grant some form of relief.

Notice of Appeal

The paper filed with the clerk of the trial court giving notice that the person appealing is dissatisfied with the judgment of that court and is seeking review of the case by a higher court.

Opinion

The final written decision of the court of appeals, including the legal reasons for that decision and the facts on which it is based.

Oral Argument

An in-court oral presentation by the parties or counsel giving the reasons the court of appeals should affirm, reverse or modify a trial court's judgment.

Party

Someone who has the legal right to participate in the appeal.

Praeipie and Docketing Statement Form

This is a single form filed with your Notice of Appeal. The 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 the 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 provides the court of appeals important information about your appeal and the order that you are appealing. A copy of the Praeipie and Docketing Statement Form is found on the court's website under Forms and is attached as Appendix A to this guide.

Prehearing Mediation Conference

A conference held in the beginning stages of the appeal where the parties and counsel meet with a conference attorney who is trained in conflict resolution as a mediator for the court. 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.

Proof of Service

When a party files a document, it must serve a copy of the document on the opposing party and provide "Proof of Service." The court of appeals cannot consider a document unless proof of service is endorsed on the document or filed separately. The proof of service must include the date of service, the manner of service, and the names of the persons served. If a party is represented by counsel, service must be made on counsel. **App.R. 13** sets forth the methods of service, which includes personal or by mail, and must be done at or before the time of filing the document with the clerk. Also, if using the court's electronic filing system, parties are authorized to rely on the court's electronic filing system to make service to any party who is registered for electronic service.

Pro Bono

Legal services provided voluntarily and without requiring payment.

Pro Se

A person who appears before the court of appeals without counsel and represents himself or herself.

Record

The record consists of (1) all original papers and any exhibits filed in the trial court, (2) the transcript of proceedings (if requested) and (3) a certified copy of the docket and journal entries prepared by the clerk of the trial court.

Relief

The result that the party seeks from the court.

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.

Serve

To provide the other party, either the appellant(s) or appellee(s), with a copy of a document that has been filed. Each document filed with the court of appeals must be served on the other party. *See also* "proof of service" definition.

Standard of Review

The standard of review determines the amount of deference that the court of appeals must give the lower court's decision in determining whether the trial court's judgment is erroneous. Different standards of review apply depending on the legal issue being appealed and the proceedings that occurred in the trial court.

Statement of the Case

The procedural history of the case on appeal.

Definitions

Statement of Facts

The facts as found by a jury or the trial court.

Table of Authorities

A listing of all cases, statutes, and other authorities in a brief with the page number on which each was used.

Table of Contents

A listing of all sections of a brief in the order that they appear along with their page number.

Transcript of Proceedings

The typewritten record of everything that occurred at a trial or hearing that is prepared by the official court reporter.

Transmission of Record

The transfer by the trial court clerk of the papers defined as the record to the clerk of the court of appeals.

Where can I find a lawyer? The Cleveland Metropolitan Bar Association 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 can 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. A sample motion is included in this guide and on the court's website under Forms.

Depending on the type of your case, the law clinics at the local law schools may be able to help you with your appeal. Both clinics, which are staffed with law students and supervising attorneys, offer pro bono representation for qualifying clients. Please consult the law schools' websites or contact them directly to see if you are eligible for their assistance.

Getting Help for My Appeal

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Depending on the type of your case, the law clinics at the local law schools may be able to help you with your appeal. Both clinics, which are staffed with law students and supervising attorneys, offer pro bono representation for qualifying clients. Please consult the law schools' websites or contact them directly to see if you are eligible for their assistance.

- ◀ **Cleveland-Marshall College of Law
(Cleveland State University)**
<https://www.law.csuohio.edu/academics/clinics>

Contact Information:

Cleveland Marshall Law Clinics
2121 Euclid Ave., LB 138
Cleveland, Ohio 44115
(216) 687-3947 or JPackard@csuohio.edu

- ◀ **Milton A. Kramer Law Clinic
(Case Western Reserve University)**
<https://law.case.edu/Academics/Experiential-Education/Milton-A-Kramer-Law-Clinic-Center>

Contact Information:

Milton A. Kramer Law Clinic Center
11075 East Boulevard
Cleveland, Ohio 44115
(216) 368-2766

Appellate Case Flow

Filing the Appeal

- The appealing party must file with the clerk of the trial court a Notice of Appeal with the appropriate journal entry attached, and a Praecipe and Docketing Statement, as well as \$175 for costs or an affidavit of indigency, within 30 days of entry of judgment. App.R. 3 and 4; Loc.App.R. 3 and 9.

Transmission of the Record

- Record must be transmitted to the appellate court within 40 days (accelerated docket – 20 days) after the notice of appeal is filed. App.R. 10; Loc.App.R. 10 and 11.1.

Briefing

- Appellant's brief is due within 20 days (accelerated docket – 15 days) after the clerk gives notice that the record was filed. App.R. 11.1 (C) and 18; Loc.App.R. 11.1.
 - ↓
- Appellee's brief is due within 20 days (accelerated docket – 15 days) after service of the appellant's brief. App.R. 11.1(C) and 18; Loc.App.R. 11.1.
 - ↓
- Appellant's reply brief, if appropriate, is due within 10 days after service of the appellee's brief. App.R. 18. No reply brief is permitted in appeals on the accelerated docket unless ordered by the court. App.R. 11.1(C); Loc.App.R. 11.1.

Appellate Case Flow

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Oral Argument

- After briefing is completed, the appellate court will generally schedule oral argument. Argument may be waived or cancelled under certain circumstances. Loc.App.R. 21.

Decision

- After oral argument, the court of appeals enters its journal entry and opinion deciding the appeal. Loc.App.R. 22.

Post-Judgment Motions

- Within ten days after the entry is journalized, any party may file an application for reconsideration, application for en banc consideration, or a motion to certify a conflict, if appropriate. App.R. 25 and 26; Loc.App.R. 26. An application for reconsideration and/or application for en banc consideration will toll the time for appeal to the supreme court. S.Ct. Prac.R. 7.01(A)(5) and (6).

Appeal to the Ohio Supreme Court

- After the opinion of the appellate court has been journalized and any applications for reconsideration and/or en banc consideration have been decided, the parties have 45 days to file an appeal to the Supreme Court of Ohio. S.Ct. Prac.R. 7.01(A)(5) and (6).

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 (\$175) 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 Appr.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 you are appealing.

The Praecipe and Docketing Statement Form, which is a single form, is found the court's website under Forms as well as Appendix A to this guide. It must be filed with the clerk of the trial court at the same time that you file your Notice of Appeal or Notice of Cross-Appeal.

Filing An Appeal

Where do I file the Praecipe and Docketing Statement?

You should file the Praecipe and Docketing Statement Form 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 at the same time of 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.

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 the court of appeals grants a motion for stay of execution of judgment.

How do I seek 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.***

For civil and juvenile actions, a motion for stay may be made to the court of appeals but you must show in your motion that either (1) application to the trial court for the relief sought is not practicable, or (2) the trial court has already denied your application or failed to afford you the relief that you requested. Attach the trial court's judgment entry to your motion. Additionally, set forth the reasons in your motion for the requested stay and the facts relied upon, and if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements. All parties in the case should be provided reasonable notice of your motion and intent to file in the court of appeals, which is accomplished by filing with the clerk of the court of appeals.

In criminal cases, a request for bail and suspension of execution of sentence may be considered by the court of appeals only after the trial court has denied such request. See App.R. 8.

The record consists of (1) all original papers and any exhibits filed in the trial court, (2) the transcript of proceedings (if requested) and (3) a certified copy of the docket and journal entries prepared by the clerk of the trial court.

Under App.R. 9(B), "it is the obligation of the appellant to ensure that the proceedings the appellant considers necessary for inclusion in the record, however those proceedings were recorded, are transcribed in a form that meets the specifications of App.R. 9(B)(6)." You must request the court reporter to prepare the transcript, which will be filed with the clerk of the trial court.

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": <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).

Record on Appeal

When is the record due?

For cases assigned to the regular calendar, the record must be transmitted to the appellate court within 40 days after the notice of appeal is filed. If your case is assigned to the accelerated calendar, the record is due within 20 days after filing the notice of appeal.

Note: Under App.R. 10, it is your duty to comply with App.R. 9(B) and make reasonable arrangements for transcription of the recorded proceedings and make reasonable arrangements to enable the clerk to assemble and transmit the record on appeal.

What if the record is not ready within 40 days after filing my notice of appeal?

Under Loc.App.R. 10, you must file a motion requesting an extension of time for the transmission of the record, which includes more time to get a transcript prepared. In your motion, you must state good cause for the extension.

Brief

What is a brief?

A brief is a written submission that explains your position to the court of appeals. If you are the appellant, your brief must state and argue what mistakes you believe that the trial court made and set forth the relief that you are seeking in the appellate court. If you are the appellee, your brief should inform the court why the trial court's judgment is correct and should be upheld.

When must I file my brief?

The appellant's brief is due within 20 days after the clerk gives notice that the record was filed. The appellee's brief is due within 20 days after service of the appellant's brief. The appellant's reply brief, if appropriate, is due within 10 days after service of the appellee's brief. See App.R. 18(A). The court of appeals, however, may extend these time limits upon motion. See App.R. 14(B).

Accelerated deadlines apply to cases assigned to the accelerated docket: appellant's brief is due within 15 days after notice that the record was filed; appellee's brief is due within 15 days after service of appellant's brief; and no reply is permitted unless ordered by the court.



Note: If you fail to file your appellant's brief within the time period provided, the court of appeals may dismiss your case.

What are the requirements for my brief?

There are strict time limitations and form requirements that must be followed. These requirements are contained in App.R. 16, App.R. 18, App.R. 19, Loc.App.R. 16, and Loc.App.R. 18. Please consult these rules when preparing your brief. Also, a sample copy of an appellant's brief is contained in this guide as Appendix B, which you can use as a point of reference.

Checklist for Briefs

□ **Form:**

- ◀ If filing electronically, your brief must be filed in searchable, but not editable, PDF format.
- ◀ If filing in paper form, your brief should be typewritten or reproduced utilizing any word processing system that produces clear printed matter in at least 12-point font on opaque, unglazed paper. Only one side of the paper may be used.
- ◀ The front cover of brief must contain the following information:
 1. Name of the court and the number of the case;
 2. Title of the case;
 3. Appeal and the name of the trial court below;
 4. Title of the document (e.g. Brief for Appellant);
 5. Your name and address.
- ◀ The style of the brief should be set in a plain, roman style, although italics and boldface may be used for emphasis. See Sample Brief in Appendix B. Case names must be italicized or underlined.

- ◀ The brief must be on 8 ½ by 11 inch paper. Text must be doubled-spaced between lines, except quotations more than four lines long may be indented and single-spaced. Headings and footnotes may be single-spaced but must be at least 12-point font. Left and right-side margins must be at least one inch. Top and bottom margins must be at least ¾ inch. The court prefers that margins be at least one inch on all four sides.

□ **Page Limitations:**

- ◀ 40 pages for appellant's brief
- ◀ 40 pages for appellee's brief
- ◀ 10 pages for appellant's reply brief

Note: If assigned to the accelerated calendar, both the appellant's and appellee's brief are limited to 15 pages. No reply brief is allowed unless ordered by the court.

- ◀ The table of contents, table of authorities, certificate of service page, and any appendices are not included when calculating page count under Loc.App.R. 16.
- ◀ See Loc.App.R. 16(A)(2) for page limitations when a single or multiple cross-appeals are filed.

□ **Brief Components:**

- ◀ The appellant's brief must include the following in this order:
 1. Table of Contents
 2. Table of Authorities
 3. Statement of Assignments of Error
 4. Statement of the Issues
 5. Statement of the Case
 6. Statement of the Facts
 7. Argument section, setting forth the grounds for each assignment of error and citing to the authorities and parts of the record the appellant relies in support of the arguments stated.
 8. Conclusion section, briefly stating the precise relief you are seeking.
- ◀ 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.

□ **Citation to the Record:**

- ◀ Identify the record item with a short description and identify the specific pages of the parts of the record that are relevant if applicable, e.g., Defendant's Motion for Summary Judgment, pgs. 15-17. You may utilize abbreviations as long as it is clear what you are referencing, e.g., 3/28/18 J. Entry.
- ◀ The court prefers that you also identify the specific docket entry number as designated by the clerk of the trial court. In referring to the docket entry number, cite to the record by

using "R." For example, if the clerk of the trial court has assigned the Complaint as #1 in its transmission of the record on appeal, you should cite as follows: Complaint, R. 1.

□ **Citation to Authorities**

- ◀ Citation to legal authority shall conform to the Writing Manual issued by the Supreme Court of Ohio's Reporter of Decisions: <http://www.supremecourt.ohio.gov/ROD/manual.pdf>
The court must be able to find the case or other legal authority that you rely on in support of your argument. Please make sure that your citations are correct.
- ◀ The sample brief contained in Appendix B provides examples of proper case citation.

□ **Service of Brief:**

- ◀ If filing in paper form, you must serve a copy of the brief on the opposing party. If using the court's electronic filing system, parties are authorized to rely on the court's electronic filing system to make service to any party who is registered for electronic service.

□ **Copies:**

- ◀ Paper form filing of brief: Original and three copies must be filed with the clerk of the court of appeals.
- ◀ Electronically filed brief: No copies are required.

Oral Argument

What is oral argument?

At oral argument, each side gets 15 minutes to present their argument to the three judges. Only the argument that has 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.

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 Cuyahoga 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.

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.

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

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

Other Resources

Eighth District Court of Appeals Website:
appeals.cuyahogacounty.us (You can find
fillable forms and answers to FAQs.)

Ohio Supreme Court Website:
www.supremecourt.ohio.gov (If you are
dissatisfied with a decision of the court of
appeals, you may appeal to Supreme Court of
Ohio. The toll-free number for the Court is 1-
800-826-9010.)

Cuyahoga County Clerk of Courts Docket:
[https://cpdocket.cp.cuyahogacounty.us/TOS.as
px](https://cpdocket.cp.cuyahogacounty.us/TOS.aspx) (You can find information regarding your
appeals, including any documents filed and
any orders of the court. You can also call the
Clerk of Courts office at 216-443-7937 to
inquire about the status of your case.)

**Appendix A: Praecipe and
Docketing Statement Form**

Appendix B: Sample Brief

**EIGHTH DISTRICT COURT OF APPEALS
LOCAL APPELLATE RULE 9
Praecipe and Docketing Statement**

Name of Trial Court: _____

Case Caption: _____

Plaintiff,

vs.

Defendant

Trial Court Case Number: _____

Trial Court Judge: _____

Date of judgment appealed: _____

The notice of appeal was filed in
compliance with:

- ☐ [App.R. 4\(A\)](#) (within 30 days); or
☐ [App.R. 4\(B\)](#) (time extended); or
☐ [App.R. 5](#) (delayed appeal)

A. PRAECIPE: REQUESTING THE RECORD

TO THE CLERK OF THE TRIAL COURT:

1. ☐ By checking this box, appellant requests that the clerk of the trial court immediately prepare and assemble the original papers and exhibits filed in the trial court and a certified copy of docket and journal entries under App.R. 9(A). **(If appellant only selects this box, appellant acknowledges that no transcript is required to be prepared.)**
2. ☐ Check this box if you seek the record in this appeal to include one of the following listed below that is necessary for the resolution of the appeal. **(Please select only one of the following below.)**
 - a. ☐ Complete transcript under [App.R. 9\(B\)](#). (Note: the appellant must instruct the court reporter to prepare the transcript.)
 - b. ☐ Partial transcript under [App.R. 9\(B\)](#). (Note: the appellant must instruct the court reporter to prepare the transcript.)
 - c. ☐ Statement of evidence or proceedings under [App.R. 9\(C\)](#).
 - d. ☐ Agreed statement under [App.R. 9\(D\)](#).

B. CALENDAR

Choose the appropriate calendar designation for this case. **Check only one of the following:**

☐ **Regular Calendar**

This is the appropriate selection if **any** of the following apply:

- Transcript and all other evidentiary materials are more than one hundred pages;
- A brief in excess of 15 pages is necessary to argue the issues adequately;
- Appeal concerns unique issues of law that will be of substantial precedential value in determining similar cases;
- Appeal concerns multiple or complex issues; or
- Do not want accelerated calendar.

☐ **Accelerated Calendar** (See [LocApp.R. 11.1](#))

An appeal may be assigned to the accelerated calendar if (1) no transcript is required, or (2) the transcript and all other evidentiary materials consist of 100 or fewer pages. If any of the criteria listed above for regular calendar applies, the appeal will not be assigned to the accelerated calendar.

☐ **Expedited Calendar** (See [App.R. 11.2](#))

This is the appropriate selection if any of the following apply. Please designate the specific category below:

- ☐ Abortion-related appeal from juvenile court
- ☐ Adoption or parental rights appeal (includes award of temporary custody to the agency)
- ☐ Dependent, abused, neglected, unruly or delinquent child appeal
- ☐ Prosecutorial appeal from suppression order
- ☐ Denial of a bail bond as provided in R.C. 2937.222(D)
- ☐ Election contests as provided in R.C. 3515.08

C. GENERAL INFORMATION

1. Was a stay requested in the trial court? ☐ Yes ☐ No (See [App.R. 7](#) and [App.R. 8](#))
If a stay was requested, how did the trial court rule?
☐ Granted ☐ Denied ☐ Pending
2. If this case has previously been before this court, list prior appellate case number(s):

3. List case names and numbers of cases pending in this court that involve the same transaction or controversy involved in this appeal: _____

4. Probable issues for appeal (if known): _____

5. Have you attached a time-stamped copy of the final judgment being appealed as required under [Loc.App.R. 3\(B\)](#)? ☐ Yes
6. Have you been declared a vexatious litigator? ☐ Yes ☐ No
If yes, did you comply with R.C. 2323.52(F)(2) and seek leave to file?
☐ Yes ☐ No

D. CRIMINAL CASE

(If this is an appeal from a civil case, skip ahead to SECTION E. If a criminal case, complete this section and then skip to the signature block.)

1. Does the sentencing order contain the following **four requirements**:
 - fact of conviction for **each** count;
 - separate sentence for **each** convicted count;
 - signature of trial court judge; and
 - file stamp of the clerk of court?☐ Yes ☐ No

2. If a co-defendant(s) was indicted and convicted under the same complaint, list the name(s) of co-defendant(s):

3. Type of Appeal (**Select only one of the following**):

- ☐ Defendant's Appeal as of Right ☐ State's Appeal as of Right
☐ Defendant's Delayed Appeal by Leave of Court (See [App.R. 5\(A\)](#))
☐ State's Appeal by Leave of Court (See [App.R. 5\(B\)](#))

E. CIVIL CASE

1. Specify the type of action in the trial court (e.g. administrative appeal; contract; declaratory judgment; domestic relations; juvenile; medical malpractice; personal injury; probate; etc.):

2. Is the order appealed from a final appealable order:

- a. Did the judgment dispose of all claims by and against all parties?

☐ Yes ☐ No

- b. If not, is there a determination that there is "no just reason for delay" per Civ.R. 54(B)?

☐ Yes ☐ No

- c. If you are appealing an interlocutory order, specify what authority (e.g. specific provision under R.C. 2505.02, other statute, or case law) that gives this court jurisdiction to hear the appeal: _____

3. Settlement discussions:

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

- ☐ None ☐ Minimal
☐ Moderate ☐ Extensive

b. Have settlement discussions taken place since the judgment or order appealed from was entered? ☐ Yes ☐ No

c. Would a mediation conference assist in the resolution of this matter?

- ☐ Yes ☐ No
☐ Maybe

I certify that the above information is accurate to the best of my knowledge. I also acknowledge that I must file the Notice of Appeal along with this Praecipe and Docketing Statement in the trial court.

Appellant or Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that a copy of this Praecipe and Docketing Statement was served upon

_____ on ____ / ____ / 20____ in the following

manner: _____.

(Signature)

No. 18-123456

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

In re A.B.

C.B.,
Appellee-Father

v.

M.D.,
Appellant-Mother

APPEAL FROM THE COMMON PLEAS, JUVENILE DIVISION
CUYAHOGA COUNTY, OHIO
CASE NO. SU 12345678

APPELLANT'S BRIEF

Jill Jones
Jones & Associates Co., L.P.A.
123 Fictitious Street
Cleveland, Ohio 44113
Telephone: (216) 123-4567
jjones@jonesassociates.com

Counsel for Appellee,
C.B. (Father)

M.D. (Mother)
123 Main St.
Cleveland, Ohio
Telephone: (216) 987-6543
fictitousemail123@gmail.com

Appellant, pro se

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SAMPLE

ASSIGNMENT OF ERROR

The trial court erred and abused its discretion in determining father's income and the amount of child support that father must pay for the minor child. (R. 45)

STATEMENT OF THE ISSUES

1. Did the trial court abuse its discretion in determining father's income based on an average of three years, which included an income figure that did not reflect an entire year's salary?
2. If the trial court relies on an incorrect amount for a parent's gross income for purposes of calculating child support, can the child support award stand?

STATEMENT OF THE CASE

On May 5, 2016, the Cuyahoga County Job and Family Services, Office of Child Support Services (“CJFS-OCSS”) issued an administrative child support order as to A.B. (child). (CJFS-OCSS Order, Exhibit 1 to Complaint, R. 1.) On June 3, 2016, mother filed a complaint in juvenile court objecting to CJFS-OCSS’s order, arguing that CJFS-OCSS did not properly determine father’s income. (Complaint, R. 1.)

The case proceeded to a hearing before the juvenile court magistrate in March 2017. Three days after the hearing, the magistrate issued a decision, finding that father had an average income of \$62,532 and ordered that he pay monthly child support in the amount of \$594.75 plus a two percent fee when health insurance is provided. (Magistrate’s Decision, dated March 6, 2017, R. 40.)

Mother filed timely objections to the magistrate’s decision, contesting the magistrate’s income determination for father. (Objections to Magistrate’s Decision, R. 41.) Additionally, after obtaining leave of court, mother supplemented her objections with the trial transcript, supporting her claim that the magistrate’s income determination was improper. (Supplemental Objections to Magistrate’s Decision, R. 42.)

The trial court subsequently overruled mother’s objections to the magistrate’s order and further adopted the magistrate’s order for child support.

(Trial Court Order, dated May 2, 2017, R. 45.) From this order, mother timely appealed.

STATEMENT OF THE FACTS

Mother and father were never married. They lived together from the time of A.B.'s birth until they separated on February 1, 2016. Father established paternity through an acknowledgment of paternity and mutual agreement.

Mother takes care of A.B. during the day and works at Belle's Boutique in the evening and weekends, earning an annual salary of approximately \$30,000. (Trial Transcript – "TT" at p. 15 and Exhibit 3, R. 43.) Unlike mother, father earns considerably more income but fails to provide adequate child support after the parties' separation.

Father works as a salesman for Party Systems, Inc., where he started in July 2014, and earns commissions. Father acknowledged that when he first started, he did not know much about sales and had a hard time earning commissions. (TT at 30.) During the half-year that he worked in 2014, father still managed to earn \$30,000. Since becoming more experienced, however, father's income has steadily increased over the years as a result of his increased customer base as well as his enhanced expertise in the industry. (TT at 31.) In 2015, father earned \$72,396. (TT at 31 and Exhibit G.) According to father's testimony and own 2016 tax return, he earned \$85,200 in 2016. (TT at 32 and Exhibit H.)

Despite the uncontested evidence of father's income in 2016, the magistrate decided to average father's annual income from 2014 through 2016. (Magistrate's Decision, R. 41.) Despite the obvious errors in the magistrate's determination, the trial court adopted the decision and this appeal follows.

ARGUMENT

Assignment of Error

The trial court erred and abused its discretion in determining father's income and the amount of child support that father must pay for the minor child. (R. 45)

A. Standard of review

This court reviews a juvenile court's child support order under an abuse of discretion standard of review. An abuse of discretion occurs when the trial court issues an order that is unreasonable, arbitrary, or unconscionable. *In re K.R.B.*, 8th Dist. Cuyahoga No. 105084, 2017-Ohio-7071, ¶ 16, citing *Booth v. Booth*, 44 Ohio St.3d 142, 541 N.E.2d 1028 (1989), and *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 5 Ohio B. 481, 450 N.E.2d 1140 (1983). An abuse of discretion also occurs when the trial court "applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact" or when it is unsupported by competent, credible evidence. *Thomas v. Cleveland*, 176 Ohio App.3d 401, 2008-Ohio-1720, 892 N.E.2d 454, ¶ 15 (8th Dist.).

Even applying this deferential standard of review, this court must overrule the trial court's child support calculation because it relied on an inaccurate and arbitrary number for father's income.

B. The trial court improperly calculated father's income by including a partial year's income.

The trial court wrongly calculated father's income. Instead of relying on father's actual annual income of \$85,200 in 2016 for purposes of calculating child support, the trial court improperly adopted the magistrate's approach of averaging his annual salary from 2014 through 2016.

Although R.C. 3119.05(H) authorizes a trial court to calculate a parent's gross income by averaging income earned over a reasonable period of years where appropriate, "it may only use income figures that reflect an entire year's salary for a particular job." *In re M.C.M.*, 8th Dist. Cuyahoga No. 106040, 2018-Ohio-1307, ¶ 41. Here, the trial court did not do this. The trial court relied on father's 2014 income at Party Systems, Inc. where he did not work for a full year. Father began working there in July 2014. The trial court should not have relied on this incomplete figure for purposes of determining father's income in relation to his commission-based salary.

Because father's income was erroneously calculated, the trial court in turn determined the wrong amount of child support owed under child support worksheet guidelines. The child support award should have been significantly higher based on father's 2016 income.

CONCLUSION

This court should sustain mother's sole assignment of error and reverse the trial court's determination of the amount of child support owed. Mother respectfully requests that this court remand this case for the trial court to utilize an equitable amount of income for father and recalculate the amount of child support owed. Mother specifically requests that this court order the juvenile court to utilize father's 2016 annual income as stated in his 2016 tax return for purposes of completing a new child support worksheet.

Respectfully submitted,

(Mother's signature)

123 Main St.
Cleveland, Ohio
Telephone: (216) 987-6543
fictitousemail123@gmail.com

Appellant, pro se

PROOF OF SERVICE

A copy of the foregoing Appellant's Brief was served upon the appellee-father by regular ordinary mail on November 16, 2017 and sent to him by email on the same date.

(Mother's signature)
123 Main St.
Cleveland, Ohio
Telephone: (216) 987-6543
fictitiousemail123@gmail.com

Appellant, pro se

SAMPLE