

## **Appellate Procedure**

### ***Filing the notice of appeal***

An appeal as of right shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Appellate Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Appeals by leave of court shall be taken in the manner prescribed by Appellate Rule 5.

### ***Content of the notice of appeal***

The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. The title of the case shall be the same as in the trial court with the designation of the appellant added, as appropriate. Local appellate rules may require the submission of a copy of the appealed court order.

### ***Service of the notice of appeal***

The clerk of the trial court shall serve within three business days notice of the filing of a notice of appeal and, where required by local rule, a docketing statement, by mailing, or by facsimile transmission, a copy to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at the party's last known address. The clerk shall mail or otherwise forward a copy of the notice of appeal and of the docket entries, together with a copy of all filings by appellant pursuant to Appellate Rule 9(B), to the clerk of the court of appeals named in the notice. The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or a party's counsel. The clerk shall note in the docket the names of the parties served, the date served, and the means of service.

### ***Amendment of the notice of appeal***

The court of appeals within its discretion and upon such terms as are just may allow the amendment of a timely filed notice of appeal.

### ***Docketing statement***

If a court of appeals has adopted an accelerated calendar by local rule pursuant to Appellate Rule 11.1, a docketing statement shall be filed with the Clerk of the trial court with the notice of appeal.

The purpose of the docketing statement is to determine whether an appeal will be assigned to the accelerated or the regular calendar.

A case may be assigned to the accelerated calendar if any of the following apply:

1. No transcript is required (e.g., summary judgment or judgment on the pleadings);
2. The length of the transcript is such that its preparation time will not be a source of delay;
3. An agreed statement is submitted in lieu of the record;
4. The record was made in an administrative hearing and filed with the trial court;

5. All parties to the appeal approve an assignment of the appeal to the accelerated calendar;  
or
6. The case has been designated by local rule for the accelerated calendar.

The court of appeals by local rule may assign a case to the accelerated calendar at any stage of the proceeding. The court of appeals may provide by local rule for an oral hearing before a full panel in order to assist it in determining whether the appeal should be assigned to the accelerated calendar.

Upon motion of appellant or appellee for a procedural order pursuant to Appellate Rule 15(B) filed within seven days after the notice of appeal is filed with the clerk of the trial court, a case may be removed for good cause from the accelerated calendar and assigned to the regular calendar. Demonstration of a unique issue of law which will be of substantial precedential value in the determination of similar cases will ordinarily be good cause for transfer to the regular calendar.

***Procedures under O.R.C. § 2505.073***

Procedures in appeals to courts of appeals from juvenile courts pursuant to section 2505.073 of the Revised Code shall be as provided by that section, except that these rules govern to the extent that the rules do not conflict with that section.

*Time for appeal:* A party shall file the notice of appeal required by Appellate Rule 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.

*Exceptions:* The following are exceptions to the appeal time period in division (A) of this rule:

1. Multiple or cross appeals—If a notice of appeal is timely filed by a party, another party may file a notice of appeal within the appeal time period otherwise prescribed by this rule or within ten days of the filing of the first notice of appeal.
2. Civil or juvenile post-judgment motion—In a civil case or juvenile proceeding, if a party files a timely motion for judgment under Civ. R. 50(B), a new trial under Civ. R. 59(B), vacating or modifying a judgment by an objection to a magistrate's decision under Civ. R. 53(E)(4)(c) or Rule 40(E)(4)(c) of the Ohio Rules of Juvenile Procedure, or findings of fact and conclusions of law under Civ. R. 52, the time for filing a notice of appeal begins to run as to all parties when the order disposing of the motion is entered.
3. Criminal post-judgment motion—In a criminal case, if a party timely files a motion for arrest of judgment or a new trial for a reason other than newly discovered evidence, the time for filing a notice of appeal begins to run when the order denying the motion is entered. A motion for a new trial on the ground of newly discovered evidence made within the time for filing a motion for a new trial on other grounds extends the time for filing a notice of appeal from a judgment of conviction in the same manner as a motion on other grounds. If made after the expiration of the time for filing a motion on other grounds, the motion on the ground of newly discovered evidence does not extend the time for filing a notice of appeal.

4. Appeal by prosecution—In an appeal by the prosecution under Crim. R. 12(K) or Juv. R. 22(F), the prosecution shall file a notice of appeal within seven days of entry of the judgment or order appealed.
5. Partial final judgment or order—If an appeal is permitted from a judgment or order entered in a case in which the trial court has not disposed of all claims as to all parties, other than a judgment or order entered under Civ. R. 54(B), a party may file a notice of appeal within thirty days of entry of the judgment or order appealed or the judgment or order that disposes of the remaining claims. Division (A) of this rule applies to a judgment or order entered under Civ. R. 54(B).

Premature notice of appeal: A notice of appeal filed after the announcement of a decision, order, or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry.

Definition of "entry" or "entered": As used in this rule, "entry" or "entered" means when a judgment or order is entered under Civ. R. 58(A) or Crim. R. 32(C).

#### ***Stay in juvenile actions***

No order, judgment, or decree of a juvenile court concerning a dependent, neglected, unruly, or delinquent child shall be stayed upon appeal, unless suitable provision is made for the maintenance, care, and custody of the dependent, neglected, unruly, or delinquent child pending the appeal.

#### ***Composition of the record on appeal***

The original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases. A videotape recording of the proceedings constitutes the transcript of proceedings other than hereinafter provided, and, for purposes of filing, need not be transcribed into written form. Proceedings recorded by means other than videotape must be transcribed into written form. When the written form is certified by the reporter in accordance with Appellate Rule 9(B), such written form shall then constitute the transcript of proceedings. When the transcript of proceedings is in the videotape medium, counsel shall type or print those portions of such transcript necessary for the court to determine the questions presented, certify their accuracy, and append such copy of the portions of the transcripts to their briefs.

#### ***Correction or modification of the record***

If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is transmitted to the court of appeals, or the court of appeals, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and, if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the court of appeals.

***Time for transmission; duty of appellant***

The record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the clerk of the court of appeals when the record is complete for the purposes of appeal, or when forty days, which is reduced to twenty days for an accelerated calendar case, have elapsed after the filing of the notice of appeal and no order extending time has been granted under subdivision (C). After filing the notice of appeal the appellant shall comply with the provisions of Appellate Rule 9(B) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is taken, each appellant shall comply with the provisions of Appellate Rule 9(B) and this subdivision, and a single record shall be transmitted when forty days have elapsed after the filing of the final notice of appeal.

***Duty of clerk to transmit the record***

The clerk of the trial court shall prepare the certified copy of the docket and journal entries, assemble the original papers (or in the instance of an agreed statement of the case pursuant to Appellate Rule 9(D), the agreed statement of the case), and transmit the record upon appeal to the clerk of the court of appeals within the time stated in Subdivision (A).

The clerk of the trial court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless directed to do so by a party or by the clerk of the court of appeals. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the clerk of the court of appeals. The clerk of the trial court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the court of appeals and shall note the transmission on the appearance docket.

The record shall be deemed to be complete for the purposes of appeal under the following circumstances:

1. When the transcript of proceedings is filed with the clerk of the trial court;
2. When a statement of the evidence or proceedings, pursuant to Appellate Rule 9(C), is settled and approved by the trial court, and filed with the clerk of the trial court;
3. When an agreed statement in lieu of the record, pursuant to Appellate Rule 9(D), is approved by the trial court, and filed with the clerk of the trial court;
4. Where appellant, pursuant to Appellate Rule 9(B), designates that no part of the transcript of proceedings is to be included in the record or that no transcript is necessary for appeal, after the expiration of ten days following service of such designation upon appellee, unless appellee has within such time filed a designation of additional parts of the transcript to be included in the record;
5. When forty days have elapsed after filing of the last notice of appeal, and there is no extension of time for transmission of the record;
6. When twenty days have elapsed after filing of the last notice of appeal in an accelerated calendar case, and there is no extension of time for transmission of the record;
7. Where the appellant fails to file either the docketing statement or the statement required by Appellate Rule 9(B), ten days after filing the notice of appeal.

**Rule 11.2: Expedited appeals**

Applicability: Appeals in actions described in this rule shall be expedited and given calendar priority over all other cases, including criminal and administrative appeals. The Ohio Rules of Appellate Procedure shall apply with the modifications or exceptions set forth in this rule.

*Abortion-related appeals from juvenile courts:*

1. Appellate Rule 11.2(B) shall govern appeals pursuant to sections 2151.85, 2505.073, and 2919.121 of the Revised Code;
2. General rule of expedition. If an appellant files her notice of appeal on the same day as the dismissal of her complaint or petition by the juvenile court, the entire court process, including the juvenile court hearing, appeal, and decision, shall be completed in sixteen calendar days from the time the original complaint or petition was filed;
3. Processing appeal;
  - a. Immediately after the notice of appeal has been filed by the appellant, the clerk of the juvenile court shall notify the court of appeals. Within four days after the notice of appeal is filed in juvenile court, the clerk of the juvenile court shall deliver a copy of the notice of appeal and the record, except page two of the complaint or petition, to the clerk of the court of appeals who immediately shall place the appeal on the docket of the court of appeals;
  - b. Record of all testimony and other oral proceedings in actions pursuant to sections 2151.85 or 2919.121 of the Revised Code may be made by audio recording. If the testimony is on audiotape and a transcript cannot be prepared timely, the court of appeals shall accept the audiotape as the transcript in this case without prior transcription. The juvenile court shall ensure that the court of appeals has the necessary equipment to listen to the audiotape;
  - c. The appellant under division (B) of this rule shall file her brief within four days after the appeal is docketed. Unless waived, the oral argument shall be within five days after docketing. Oral arguments must be closed to the public and exclude all persons except the appellant, her attorney, her guardian *ad litem*, and essential court personnel;
  - d. Under division (B) of this rule, "days" means calendar days and includes any intervening Saturday, Sunday, or legal holiday. To provide full effect to the expedition provision of the statute, if the last day on which a judgment is required to be entered falls on a Saturday, Sunday, or legal holiday, the computation of days shall not be extended and judgment shall be made either on the last business day before the Saturday, Sunday, or legal holiday, or on the Saturday, Sunday, or legal holiday.
4. Confidentiality. All proceedings in appeals governed by Appellate Rule 11.2(B) shall be conducted in a manner that will preserve the anonymity of the appellant. Except as set forth in Appellate Rule 11.2(B)(6) and (7), all papers and records that pertain to the appeal shall be kept confidential;
5. Judgment entry. The court shall enter judgment immediately after conclusion of oral argument or, if oral argument is waived, within five days after the appeal is docketed;
6. Release of records. The public is entitled to secure all of the following from the records pertaining to appeals governed by Appellate Rule 11.2(B): (a) the docket number; (b) the name of the judge; (c) the judgment entry and, if appropriate, a

properly redacted opinion. Opinions shall set forth the reasoning in support of the decision in a way that does not directly or indirectly compromise the anonymity of the appellant. Opinions written in compliance with this requirement shall be considered public records available upon request. If, in the judgment of the court, it is impossible to release an opinion without compromising the anonymity of the appellant, the entry that journalizes the outcome of the case shall include a specific finding that no opinion can be written without disclosing the identity of the appellant. Such finding shall be a matter of public record. It is the obligation of the court to remove any and all information in its opinion that would directly or indirectly disclose the identity of the appellant;

7. Notice and hearing before release of opinion. After an opinion is written and before it is available for release to the public, the appellant must be notified and be given the option to appear and argue at a hearing if she believes the opinion may disclose her identity. Notice may be provided by including the following language in the opinion: If appellant believes that this opinion may disclose her identity, appellant has the right to appear and argue at a hearing before this court. Appellant may perfect this right to a hearing by filing a motion for a hearing within fourteen days of the date of this opinion. The clerk is instructed that this opinion is not to be made available for release until either of the following: (a) Twenty-one days have passed since the date of the opinion and appellant has not filed a motion; (b) If appellant has filed a motion, after this court has ruled on the motion. Notice shall be provided by mailing a copy of the opinion to the attorney for the appellant or, if she is not represented, to the address provided by appellant for receipt of notice;
8. Upon request of the appellant or her attorney, the clerk shall verify on Form 25-A, as provided in the Rules of Superintendence, the date the appeal was docketed and whether a judgment has been entered within five days of that date. The completed form shall include the case number from the juvenile court and the court of appeals, and shall be filed and included as part of the record. A file-stamped copy shall be provided to the appellant or her attorney.

*Adoption and parental rights appeals:*

1. Applicability. Appeals from orders granting or denying adoption of a minor child or from orders granting or denying termination of parental rights shall be given priority over all cases except those governed by Appellate Rule 11.2(B);
2. Record. Preparation of the record, including the transcripts and exhibits necessary for determination of the appeal, shall be given priority over the preparation and transmission of the records in all cases other than those governed by Appellate Rule 11.2(B);
3. Briefs. Extensions of time for filing briefs shall not be granted except in the most unusual circumstances and only for the most compelling reasons in the interest of justice;
4. Oral argument. After briefs have been filed, the case shall be considered submitted for immediate decision unless oral argument is requested or ordered. Any oral argument shall be heard within thirty days after the briefs have been filed;
5. Entry of judgment. The court shall enter judgment within thirty days of submission of the briefs, or of the oral argument, whichever is later, unless compelling reasons in the interest of justice require a longer time.

*Dependent, abused, neglected, unruly, or delinquent child appeals:*

Appeals concerning a dependent, abused, neglected, unruly, or delinquent child shall be expedited and given calendar priority over all cases other than those governed by Appellate Rule 11.2(B) and (C).