

# Ohio Rules of Appellate Procedure

## Title I. Applicability of Rules

### Rule 1. Scope of Rules

- A. These rules govern procedure in appeals to courts of appeals from the trial courts of record in Ohio.
- B. Procedure in appeals to courts of appeals from the board of tax appeals shall be as provided by law, except that App. R. 13 to 33 shall be applicable to those appeals.
- C. 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.

[Effective: July 1, 1971; amended effective July 1, 1994.]

### Rule 2. Law and Fact Appeals Abolished

Appeals on questions of law and fact are abolished.

[Effective: July 1, 1971.]

## Title II. Appeals from Judgements and Orders of Court of Record

### Rule 3. Appeal as of Right - How Taken

**A. 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 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 ground 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 Rule 5.

**B. Joint or consolidated appeals.** If two or more persons are entitled to appeal from a judgment or order of a trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the court of appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

#### C. Cross appeal.

**1. Cross appeal required.** A person who intends to defend a judgment or order against an appeal taken by an appellant and who also seeks to change the judgment or order or, in the event the judgment or order may be reversed or modified, an interlocutory ruling merged into the judgment or order, shall file a notice of cross appeal within the time allowed by App. R. 4.

**2. Cross appeal not required.** A person who intends to defend a judgment or order appealed by an appellant on a ground other than that relied on by the trial court but who does not seek to change the judgment or order is not required to file a notice of cross appeal.

**D. 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. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

**E. Service of the notice of appeal.** The clerk of the trial court shall serve 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 App.R. 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.

**F. 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.

**G. Docketing statement.** If a court of appeals has adopted an accelerated calendar by local rule pursuant to Rule 11.1, a docketing statement shall be filed with the Clerk of the trial court with the notice of appeal. (See Form 2, Appendix of Forms.) 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;
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 App.R. 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.

**H. Procedures under Section 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.

[Effective: July 1, 1971; amended effective July 1, 1972; July 1, 1977; July 1, 1982; July 1, 1991; July 1, 1992; July 1, 1994.]

#### **Rule 4. Appeal as of Right--When Taken**

**A. Time for appeal.** A party shall file the notice of appeal required by App. R. 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.

**B. 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).

**C. 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.

**D. 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).

[Amended effective July 1, 1972; July 1, 1985; July 1, 1989; July 1, 1992; July 1, 1996; July 1, 2002.]

## **Rule 5. Appeals by Leave of Court in Criminal Cases**

### **A. Motion by defendant for delayed appeal.**

**1.** After the expiration of the thirty day period provided by App. R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in the following classes of cases:

- a. Criminal proceedings;
- b. Delinquency proceedings; and
- c. Serious youthful offender proceedings.

**2.** A motion for leave to appeal shall be filed with the court of appeals and shall set forth the reasons for the failure of the appellant to perfect an appeal as of right. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and shall file a copy of the notice of the appeal in the court of appeals. The movant also shall furnish an additional copy of the notice of appeal and a copy of the motion for leave to appeal to the clerk of the court of appeals who shall serve the notice of appeal and the motions upon the prosecuting attorney.

**B. Motion to reopen appellate proceedings.** If a federal court grants a conditional writ of habeas corpus upon a claim that a defendant's constitutional rights were violated during state appellate proceedings terminated by a final judgment, a motion filed by the defendant or on behalf of the state to reopen the appellate proceedings may be granted by leave of the court of appeals that entered the judgment. The motion shall be filed with the clerk of the court of appeals within forty-five days after the conditional writ is granted. A certified copy of the conditional writ and any supporting opinion shall be filed with the motion. The clerk shall serve a copy of a defendant's motion on the prosecuting attorney.

**C. Motion by prosecution for leave to appeal.** When leave is sought by the prosecution from the court of appeals to appeal a judgment or order of the trial court, a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the judgment and order sought to be appealed and shall set forth the errors that the movant claims occurred in the proceedings of the trial court. The motion shall be accompanied by affidavits, or by the parts of the record upon which the movant relies, to show the probability that the errors claimed did in fact occur, and by a brief or memorandum of law in support of the movant's claims. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the motion and a copy of the notice of appeal to the clerk of the court of appeals who shall serve the notice of appeal and a copy of the motion for leave to appeal upon the attorney for the defendant who, within thirty days from the filing of the motion, may file affidavits, parts of the record, and brief or memorandum of law to refute the claims of the movant.

**D.1. Motion by defendant for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C).** When leave is sought from the court of appeals for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C), a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the judgment and order sought to be appealed and shall set forth the reason why the consecutive sentences exceed the maximum prison term allowed. The motion shall be accompanied by a copy of the judgment and order stating the sentences imposed and stating the offense of which movant was found guilty or to which movant pled guilty. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App.R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the notice of appeal and a copy of the motion to the clerk of the court of appeals who shall serve the notice of appeal and the motion upon the prosecuting attorney.

**D.2. Leave to appeal consecutive sentences incorporated into appeal as of right.** When a criminal defendant has filed a notice of appeal pursuant to App.R. 4, the defendant may elect to incorporate in defendant's initial appellate brief an assignment of error pursuant to R.C. 2953.08(C), and this assignment of error shall be deemed to constitute a timely motion for leave to appeal pursuant to R.C. 2953.08(C).

**E. Determination of the motion.** Except when required by the court the motion shall be determined by the court of appeals on the documents filed without formal hearing or oral argument.

**F. Order and procedure following determination.** Upon determination of the motion, the court shall journalize its order and the order shall be filed with the clerk of the court of appeals, who shall certify a copy of the order and mail or otherwise forward the copy to the clerk of the trial court. If the motion for leave to appeal is overruled, except as to motions for leave to appeal filed by the prosecution, the clerk of the trial court shall collect the costs pertaining to the motion, in both the court of appeals and the trial court, from the movant. If the motion is sustained and leave to appeal is granted, the further procedure shall be the same as for appeals as of right in criminal cases, except as otherwise specifically provided in these rules.

[Amended effective July 1, 1988; July 1, 1992; July 1, 1994; July 1, 1996; July 1, 2003.]

## **Rule 6. Concurrent Jurisdiction in Criminal Actions**

**A.** Whenever a trial court and an appellate court are exercising concurrent jurisdiction to review a judgment of conviction, and the trial court files a written determination that grounds exist for granting a petition for post-conviction relief, the trial court shall notify the parties and the appellate court of that determination. On such notification, or pursuant to a party's motion in the court of appeals, the appellate court may remand the case to the trial court.

**B.** When an appellate court reverses, vacates, or modifies a judgment of conviction on direct appeal, the trial court may dismiss a petition for post-conviction relief to the extent that it is moot. The petition shall be reinstated pursuant to motion if the appellate court's judgment on direct appeal is reversed, vacated, or modified in such a manner that the petition is no longer moot.

**C.** Whenever a trial court's grant of post-conviction relief is reversed, vacated, or modified in such a manner that the direct appeal is no longer moot, the direct appeal shall be reinstated pursuant to statute. Upon knowledge that a statutory reinstatement of the appeal has occurred, the court of appeals shall enter an order journalizing the reinstatement and providing for resumption of the appellate process.

**D.** Whenever a direct appeal is pending concurrently with a petition for post-conviction relief or a review of the petition in any court, each party shall include, in any brief, memorandum, or motion filed, a list of case numbers of all actions and appeals, and the court in which they are pending, regarding the same judgment of conviction.

[Effective: July 1, 1997.]

### **Rule 7. Stay or Injunction Pending Appeal--Civil and Juvenile Actions**

**A.** Stay must ordinarily be sought in the first instance in trial court; motion for stay in court of appeals. Application for a stay of the judgment or order of a trial court pending appeal, or for the determination of the amount of and the approval of a supersedeas bond, must ordinarily be made in the first instance in the trial court. A motion for such relief or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal may be made to the court of appeals or to a judge thereof, but, except in cases of injunction pending appeal, the motion shall show that application to the trial court for the relief sought is not practicable, or that the trial court has, by journal entry, denied an application or failed to afford the relief which the applicant requested. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant and as are reasonably available at the time the motion is filed. Reasonable notice of the motion and the intention to apply to the court shall be given by the movant to all parties. The motion shall be filed with the clerk of the court of appeals and normally will be considered by at least two judges of the court, but in exceptional cases where the attendance of two judges of the court would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court on reasonable notice to the adverse party, provided, however, that when an injunction is appealed from it shall be suspended only by order of at least two of the judges of the court of appeals, on reasonable notice to the adverse party.

**B.** Stay may be conditioned upon giving of bond; proceedings against sureties. Relief available in the court of appeals under this rule may be conditioned upon the filing of a bond or other appropriate security in the trial court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself or herself to the jurisdiction of the trial court and irrevocably appoints the clerk of the trial court as the surety's agent upon whom any process affecting the surety's liability on the bond or undertaking may be served. Subject to the limits of its monetary jurisdiction, this liability may be enforced on motion in the trial court without the necessity of an independent action. The motion and such notice of the motion as the trial court prescribes may be served on the clerk of the trial court, who shall forthwith mail copies to the sureties if their addresses are known.

**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.

[Amended effective July 1, 1973; July 1, 2001.]

### **Rule 8. Bail and Suspension of Execution of Sentence in Criminal Cases**

**A.** Discretionary right of court to release pending appeal. The discretionary right of the trial court or the court of appeals to admit a defendant in a criminal action to bail and to suspend the execution of his sentence during the

pendency of his appeal is as prescribed by law.

**B.** Release on bail and suspension of execution of sentence pending appeal from a judgment of conviction. Application for release on bail and for suspension of execution of sentence after a judgment of conviction shall be made in the first instance in the trial court. Thereafter, if such application is denied, a motion for bail and suspension of execution of sentence pending review may be made to the court of appeals or to two judges thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee.

[Effective: July 1, 1971; amended effective July 1, 1975.]

## **Rule 9. The Record on Appeal**

**A.** 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 App.R. 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. In all capital cases the trial proceedings shall include a written transcript of the record made during the trial by stenographic means.

**B.** The transcript of proceedings; duty of appellant to order; notice to appellee if partial transcript is ordered. At the time of filing the notice of appeal the appellant, in writing, shall order from the reporter a complete transcript or a transcript of the parts of the proceedings not already on file as the appellant considers necessary for inclusion in the record and file a copy of the order with the clerk. The reporter is the person appointed by the court to transcribe the proceedings for the trial court whether by stenographic, phonographic, or photographic means, by the use of audio electronic recording devices, or by the use of video recording systems. If there is no officially appointed reporter, App. R. 9(C) or 9(D) may be utilized. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence, the appellant shall include in the record a transcript of all evidence relevant to the findings or conclusion. Unless the entire transcript is to be included, the appellant, with the notice of appeal, shall file with the clerk of the trial court and serve on the appellee a description of the parts of the transcript that the appellant intends to include in the record, a statement that no transcript is necessary, or a statement that a statement pursuant to either App. R. 9(C) or 9(D) will be submitted, and a statement of the assignments of error the appellant intends to present on the appeal. If the appellee considers a transcript of other parts of the proceedings necessary, the appellee, within ten days after the service of the statement of the appellant, shall file and serve on the appellant a designation of additional parts to be included. The clerk of the trial court shall forward a copy of this designation to the clerk of the court of appeals. If the appellant refuses or fails, within ten days after service on the appellant of appellee's designation, to order the additional parts, the appellee, within five days thereafter, shall either order the parts in writing from the reporter or apply to the court of appeals for an order requiring the appellant to do so. At the time of ordering, the party ordering the transcript shall arrange for the payment to the reporter of the cost of the transcript. A transcript prepared by a reporter under this rule shall be in the following form:

1. The transcript shall include a front and back cover; the front cover shall bear the title and number of the case and the name of the court in which the proceedings occurred;
2. The transcript shall be firmly bound on the left side;
3. The first page inside the front cover shall set forth the nature of the proceedings, the date or dates of the proceedings, and the judge or judges who presided;
4. The transcript shall be prepared on white paper eight and one-half inches by eleven inches in size with the lines of each page numbered and the pages sequentially numbered;

5. An index of witnesses shall be included in the front of the transcript and shall contain page and line references to direct, cross, re-direct, and re-cross examination;
6. An index to exhibits, whether admitted or rejected, briefly identifying each exhibit, shall be included following the index to witnesses reflecting the page and line references where the exhibit was identified and offered into evidence, was admitted or rejected, and if any objection was interposed;
7. Exhibits such as papers, maps, photographs, and similar items that were admitted shall be firmly attached, either directly or in an envelope to the inside rear cover, except as to exhibits whose size or bulk makes attachment impractical; documentary exhibits offered at trial whose admission was denied shall be included in a separate envelope with a notation that they were not admitted and also attached to the inside rear cover unless attachment is impractical;
8. No volume of a transcript shall exceed two hundred and fifty pages in length, except it may be enlarged to three hundred pages, if necessary, to complete a part of the voir dire, opening statements, closing arguments, or jury instructions; when it is necessary to prepare more than one volume, each volume shall contain the number and name of the case and be sequentially numbered, and the separate volumes shall be approximately equal in length.

The reporter shall certify the transcript as correct, whether in written or videotape form, and state whether it is a complete or partial transcript, and, if partial, indicate the parts included and the parts excluded.

If the proceedings were recorded in part by videotape and in part by other media, the appellant shall order the respective parts from the proper reporter. The record is complete for the purposes of appeal when the last part of the record is filed with the clerk of the trial court.

**C.** Statement of the evidence or proceedings when no report was made or when the transcript is unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee no later than twenty days prior to the time for transmission of the record pursuant to App. R. 10, who may serve objections or propose amendments to the statement within ten days after service. The statement and any objections or proposed amendments shall be forthwith submitted to the trial court for settlement and approval. The trial court shall act prior to the time for transmission of the record pursuant to App. R. 10, and, as settled and approved, the statement shall be included by the clerk of the trial court in the record on appeal.

**D.** Agreed statement as the record on appeal. In lieu of the record on appeal as defined in division (A) of this rule, the parties, no later than ten days prior to the time for transmission of the record pursuant to App. R. 10, may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with additions as the trial court may consider necessary to present fully the issues raised by the appeal, shall be approved by the trial court prior to the time for transmission of the record pursuant to App. R. 10 and shall then be certified to the court of appeals as the record on a ppeal and transmitted to the court of appeals by the clerk of the trial court within the time provided by App. R. 10.

**E.** 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.

[Effective: July 1, 1971; amended effective July 1, 1977; July 1, 1978; July 1, 1988; July 1, 1992.]

## **Rule 10. Transmission of the Record**

**A.** 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 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 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.

**B.** 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 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 he is 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 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 Rule 9(D), is approved by the trial court, and filed with the clerk of the trial court.
4. Where appellant, pursuant to 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 App.R. 9(B), ten days after filing the notice of appeal.

**C.** Extension of time for transmission of the record; reduction of time. Except as may be otherwise provided by local rule adopted by the court of appeals pursuant to Rule 30, the trial court for cause shown set forth in the order may extend the time for transmitting the record. The clerk shall certify the order of extension to the court of appeals. A request for extension to the trial court and a ruling by the trial court must be made within the time originally prescribed or within an extension previously granted. If the trial court is without authority to grant the relief sought, by operation of this rule or local rule, or has denied a request therefor, the court of appeals may on motion for cause shown extend the time for transmitting the record or may permit the record to be transmitted and

filed after the expiration of the time allowed or fixed. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given. The court of appeals may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

**D. Retention of the record in the trial court by order of court.** If the record or any part thereof is required in the trial court for use there pending the appeal, the trial court may make an order to that effect, and the clerk of the trial court shall retain the record or parts thereof subject to the request of the court of appeals, and shall transmit a copy of the order and of the docket and journal entries together with such parts of the original record as the trial court shall allow and copies of such parts as the parties may designate.

**E. Stipulation of parties that parts of the record be retained in the trial court.** The parties may agree by written stipulation filed in the trial court that designated parts of the record shall be retained in the trial court unless thereafter the court of appeals shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

**F. Record for preliminary hearing in the court of appeals.** If prior to the time the record is transmitted a party desires to make in the court of appeals a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the trial court at the request of any party shall transmit to the court of appeals such parts of the original record as any party shall designate.

**G. Transmission of the record when leave to appeal obtained.** In all cases where leave to appeal must first be obtained all time limits for the preparation and transmission of the record hereinbefore set forth shall run from the filing of the journal entry of the court of appeals granting such leave rather than from the filing of the notice of appeal.

[Effective: July 1, 1971; amended effective July 1, 1972; July 1, 1973; July 1, 1975; July 1, 1976; July 1, 1977; July 1, 1982.]

## **Rule 11. Docketing the Appeal; Filing of the Record**

**A. Docketing the appeal.** Upon receiving a copy of the notice of appeal, as provided in App. R. 3(D) and App. R. 5, the clerk of the court of appeals shall enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if the title does not contain the name of the appellant, the appellant's name, identified as appellant, shall be added parenthetically to the title.

**B. Filing of the record.** Upon receipt of the record, the clerk shall file the record, and shall immediately give notice to all parties of the date on which the record was filed. When a trial court is exercising concurrent jurisdiction to review a judgment of conviction pursuant to a petition for post-conviction relief, the clerk shall either make a duplicate record and send it to the clerk of the trial court or arrange for each court to have access to the original record.

**C. Dismissal for failure of appellant to cause timely transmission of record.** If the appellant fails to cause timely transmission of the record, any appellee may file a motion in the court of appeals to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the trial court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, the expiration date of any order extending the time for transmitting the record, and by proof of service. The appellant may respond within ten days of such service.

**D. Leave to appeal.** In all cases where leave to appeal must first be obtained the docketing of the appeal by the clerk of the court of appeals upon receiving a copy of the notice of appeal filed in the trial court shall be deemed conditional and subject to such leave being granted.

[Effective: July 1, 1971; amended effective July 1, 1975; July 1, 1997.]

## Rule 11.1. Accelerated Calendar

**A. Applicability.** If a court of appeals has adopted an accelerated calendar by local rule, cases designated by its rule shall be placed on an accelerated calendar. The Ohio Rules of Appellate Procedure shall apply with the modifications or exceptions set forth in this rule.

The accelerated calendar is designed to provide a means to eliminate delay and unnecessary expense in effecting a just decision on appeal by the recognition that some cases do not require as extensive or time consuming procedure as others.

**B. Record.** The record on appeal, including the transcripts and the exhibits necessary for the determination of the appeal, shall be transmitted to the clerk of the court of appeals as provided by App.R. 10.

**C. Briefs.** Briefs shall be in the form specified by App.R. 16. Appellant shall serve and file his brief within fifteen days after the date on which the record is filed. The appellee shall serve and file his brief within fifteen days after service of the brief of the appellant. Reply briefs shall not be filed unless ordered by the court.

**D. Oral argument.** Oral argument will apply as provided by App.R. 21. If oral argument is waived, the case will be submitted to the court for disposition upon filing of appellee's brief.

**E. Determination and judgment on appeal.** The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.

The decision may be by judgment entry in which case it will not be published in any form. (See Form 3, Appendix of Forms.)

[Effective: July 1, 1982.]

## Rule 11.2. Expedited Appeals

**A. 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.

### **B. Abortion-related appeals from juvenile courts.**

**1. Applicability.** App. R. 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 audio tape and a transcript cannot be prepared timely, the court of appeals shall accept the audio tape 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 audio tape.

**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 App. R. 11.2(B) shall be conducted in a manner that will preserve the anonymity of the appellant. Except as set forth in App. R. 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 App. R. 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. Form 25-A.** 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 date-stamped copy shall be provided to the appellant or her attorney.

### **C. 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 App. R. 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 App. R. 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.

**D. 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 App. R. 11.2(B) and (C).

[Effective July 1, 2000; amended effective July 1, 2001]

## **Rule 12. Determination and Judgment on Appeal**

### **A. Determination.**

**1.** On an undismissed appeal from a trial court, a court of appeals shall do all of the following:

**a.** Review and affirm, modify, or reverse the judgment or final order appealed;

**b.** Determine the appeal on its merits on the assignments of error set forth in the briefs under App. R. 16, the record on appeal under App. R. 9, and, unless waived, the oral argument under App. R. 21;

**c.** Unless an assignment of error is made moot by a ruling on another assignment of error, decide each assignment of error and give reasons in writing for its decision.

**2.** The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App. R. 16(A).

**B. Judgment as a matter of law.** When the court of appeals determines that the trial court committed no error prejudicial to the appellant in any of the particulars assigned and argued in appellant's brief and that the appellee is entitled to have the judgment or final order of the trial court affirmed as a matter of law, the court of appeals shall enter judgment accordingly. When the court of appeals determines that the trial court committed error prejudicial to the appellant and that the appellant is entitled to have judgment or final order rendered in his favor as a matter of law, the court of appeals shall reverse the judgment or final order of the trial court and render the judgment or final order that the trial court should have rendered, or remand the cause to the court with instructions to render such judgment or final order. In all other cases where the court of appeals determines that the judgment or final order of the trial court should be modified as a matter of law it shall enter its judgment accordingly.

**C. Judgment in civil action** or proceeding when sole prejudicial error found is that judgment of trial court is against the manifest weight of the evidence. In any civil action or proceeding which was tried to the trial court without the intervention of a jury, and when upon appeal a majority of the judges hearing the appeal find that the judgment or final order rendered by the trial court is against the manifest weight of the evidence and do not find any other prejudicial error of the trial court in any of the particulars assigned and argued in the appellant's brief, and do not find that the appellee is entitled to judgment or final order as a matter of law, the court of appeals shall reverse the judgment or final order of the trial court and either weigh the evidence in the record and render the judgment or final order that the trial court should have rendered on that evidence or remand the case to the trial court for further proceedings; provided further that a judgment shall be reversed only once on the manifest weight of the evidence.

**D. All other cases.** In all other cases where the court of appeals finds error prejudicial to the appellant, the judgment or final order of the trial court shall be reversed and the cause shall be remanded to the trial court for further proceedings.

[Effective: July 1, 1971; amended effective July 1, 1973; July 1, 1992.]

### **Title III. General Provisions**

#### **Rule 13. Filing and Service**

**A. Filing.** Documents required or permitted to be filed in a court of appeals shall be filed with the clerk. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the documents are received by the clerk within the time fixed for filing, except that briefs shall be deemed filed on the day of mailing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with the judge, in which event the judge shall note the filing date on the motion and transmit it to the clerk. A court may provide, by local rules adopted pursuant to the Rules of Superintendence, for the filing of documents by electronic means. If the court adopts such local rules, they shall include all of the following: (1) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall order the filing stricken. (2) A provision shall specify the days and hours during which electronically transmitted documents will be received by the court, and a provision shall specify when documents received electronically will be considered to have been filed. (3) Any document filed electronically that requires a filing fee may be rejected by the clerk of court unless the filer has complied with the mechanism established by the court for the payment of filing fees.

**B. Service of all documents required.** Copies of all documents filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for the party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

**C. Manner of service.** Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

**D. Proof of service.** Documents presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Documents filed with the court shall not be considered until proof of service is endorsed on the documents or separately filed.

[Amended effective July 1, 2001.]

#### **Rule 14. Computation and Extension of Time**

**A. Computation of time.** In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by an order of court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

**B. Enlargement or Reduction of Time.** For good cause shown, the court, upon motion, may enlarge or reduce the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of the prescribed time. The court may not enlarge or reduce the time for filing a notice of appeal or a motion to certify pursuant to App. R. 25. Enlargement of time to file an application to reconsider pursuant to App. R. 26(A) shall not be granted except on a showing of extraordinary circumstances.

**C. Additional time after service by mail.** Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, three days shall be added to

the prescribed period.

[Effective: July 1, 1971; amended effective July 1, 1994.]

## **Rule 15. Motions**

**A. Content of motions; response; reply.** Unless another form is prescribed by these rules, an application for an order or other relief shall be made by motion with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order [for which see subdivision (B)] within ten days after service of the motion, but motions authorized by Rule 7, Rule 8 and Rule 27 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.

**B. Determination of motions for procedural orders.** Motions for procedural orders, including any motion under Rule 14(B) may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

**C. Power of a single judge to entertain motions.** In addition to the authority expressly conferred by these rules or by law, and unless otherwise provided by rule or law, a single judge of a court of appeals may entertain and may grant or deny any request for relief, which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise determine an appeal or other proceeding, and except that a court of appeals may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single judge may be reviewed by the court.

**D. Number of copies.** Three copies of all papers relating to motions shall be filed with the original, but the court may require that additional copies be furnished.

[Effective: July 1, 1971.]

## **Rule 16. Briefs**

**A. Brief of the appellant.** The appellant shall include in its brief, under the headings and in the order indicated, all of the following:

1. A table of contents, with page references.
2. A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.
3. A statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.
4. A statement of the issues presented for review, with references to the assignments of error to which each issue relates.
5. A statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the court below.
6. A statement of facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with division (D) of this rule.
7. An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

8. A conclusion briefly stating the precise relief sought.

**B. Brief of the appellee.** The brief of the appellee shall conform to the requirements of divisions (A)(1) to (A)(8) of this rule, except that a statement of the case or of the facts relevant to the assignments of error need not be made unless the appellee is dissatisfied with the statement of the appellant.

**C. Reply brief.** The appellant may file a brief in reply to the brief of the appellee, and, if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the assignments of errors presented by the cross-appeal. No further briefs may be filed except with leave of court.

**D. References in briefs to the record.** References in the briefs to parts of the record shall be to the pages of the parts of the record involved; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. If reference is made to evidence, the admissibility of which is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected.

**E. Reproduction of statutes, rules, regulations.** If determination of the assignments of error presented requires the consideration of provisions of constitutions, statutes, ordinances, rules, or regulations, the relevant parts shall be reproduced in the brief or in an addendum at the end or may be supplied to the court in pamphlet form.

[Effective: July 1, 1971; amended effective July 1, 1972; July 1, 1992.]

#### **Rule 17. Brief of an Amicus Curiae**

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Unless all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

[Effective: July 1, 1971.]

#### **Rule 18. Filing and Service of Briefs**

**A. Time for serving and filing briefs.** Except as provided in App. R. 14(C), the appellant shall serve and file the appellant's brief within twenty days after the date on which the clerk has mailed the notice required by App. R. 11(B). The appellee shall serve and file the appellee's brief within twenty days after service of the brief of the appellant. The appellant may serve and file a reply brief within ten days after service of the brief of the appellee.

**B. Number of copies to be filed and served.** Four copies of each brief shall be filed with the clerk, unless the court by order in a particular case shall direct a different number, and one copy shall be served on counsel for each party separately represented. If the court by local rule adopted pursuant to App. R. 13 permits electronic filing of court documents, then the requirement for filing of copies with the clerk required in this division may be waived or modified by the local rule so adopted.

**C. Consequence of failure to file briefs.** If an appellant fails to file the appellant's brief within the time provided by this rule, or within the time as extended, the court may dismiss the appeal. If an appellee fails to file the appellee's brief within the time provided by this rule, or within the time as extended, the appellee will not be heard at oral argument except by permission of the court upon a showing of good cause submitted in writing prior to argument; and in determining the appeal, the court may accept the appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action.

[Amended effective July 1, 1982; July 1, 2001.]

## Rule 19. Form of Briefs and Other Papers

**A. Form of briefs.** Briefs may be typewritten or be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. Carbon copies of briefs may not be submitted without permission of the court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least a twelve point type on opaque, unglazed paper. Briefs produced by standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text except quoted matter which shall be single spaced. Where necessary, briefs may be of such size as required to utilize copies of pertinent documents.

Without prior leave of court, no initial brief of appellant or cross-appellant and no answer brief of appellee or cross-appellee shall exceed thirty-five pages in length, and no reply brief shall exceed fifteen pages in length, exclusive of the table of contents, table of cases, statutes and other authorities cited, and appendices, if any. A court of appeals, by local rule, may adopt shorter or longer page limitations.

The front covers of the briefs, if separately bound, shall contain: (1) the name of the court and the number of the case; (2) the title of the case [see App. R. 11(A)]; (3) the nature of the proceeding in the court (e.g., Appeal) and the name of the court below; (4) the title of the document (e.g., Brief for Appellant); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed.

**B. Form of other papers.** Applications for reconsideration shall be produced in a manner prescribed by subdivision (A). Motions and other papers may be produced in a like manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced except quoted matter which shall be single spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the case number and a brief descriptive title indicating the purpose of the paper.

[Effective: July 1, 1971; amended effective July 1, 1972; July 1, 1997.]

## Rule 20. Prehearing Conference

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

[Effective: July 1, 1971.]

## Rule 21. Oral Argument

**A. Notice of argument.** The court shall advise all parties of the time and place at which oral argument will be heard.

**B. Time allowed for argument.** Unless otherwise ordered, each side will be allowed thirty minutes for argument. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

**C. Order and content of argument.** The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

**D. Cross and separate appeals.** A cross-appeal or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If separate appellants support the same argument, they shall share the thirty minutes allowed to their side for argument unless pursuant to timely request the court grants additional time.

**E. Nonappearance of parties.** If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

**F. Submission on briefs.** By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

**G. Motions.** Oral argument will not be heard upon motions unless ordered by the court.

**H. Authorities in briefs.** If counsel on oral argument intends to present authorities not cited in his brief, he shall, prior to oral argument, present in writing such authorities to the court and to opposing counsel.

[Effective: July 1, 1971; amended effective July 1, 1975; July 1, 1976.]

## **Rule 22. Entry of Judgment**

**A. Form.** All judgments shall be in the form of a journal entry signed by a judge of the court and filed with the clerk.

**B. Notice.** When a decision is announced, the clerk shall give notice thereof by mail to counsel of record in the case.

**C. Time.** Unless further time is allowed by the court or a judge thereof, counsel for the party in whose favor an order, decree or judgment is announced shall, within five days, prepare the proper journal entry and submit the entry to counsel for the opposite party. Counsel for the opposite party shall within five days after receipt of the entry (1) approve or reject the entry and (2) forward the entry to counsel for the prevailing party for immediate submission to the court.

**D. Objections.** All objections to proposed journal entries shall be in writing, and may be answered in writing. Such entry as the court may deem proper shall be approved by the court, in writing, and filed with the clerk of the court for journalization. The provisions of this rule shall not be deemed to preclude the court from sua sponte preparing and filing with the clerk for journalization its own entry. No oral arguments will be heard in the settlement of journal entries.

**E. Filing.** The filing of a journal entry of judgment by the court with the clerk for journalization constitutes entry of the judgment.

[Effective: July 1, 1971; amended effective July 1, 1972.]

## **Rule 23. Damages for Delay**

If a court of appeals shall determine that an appeal is frivolous, it may require the appellant to pay reasonable expenses of the appellee including attorney fees and costs.

[Effective: July 1, 1971.]

## **Rule 24. Costs**

**A.** Except as otherwise provided by law or as the court may order, the party liable for costs is as follows:

1. If an appeal is dismissed, the appellant or as agreed by the parties.
2. If the judgment appealed is affirmed, the appellant.
3. If the judgment appealed is reversed, the appellee.
4. If the judgment appealed is affirmed or reversed in part or is vacated, as ordered by the court.

**B.** As used in this rule, "costs" means an expense incurred in preparation of the record including the transcript of proceedings, fees allowed by law, and the fee for filing the appeal. It does not mean the expense of printing or copying a brief or an appendix.

[Effective: July 1, 1971; July 1, 1992.]

## **Rule 25. Motion to Certify a Conflict**

**A.** A motion to certify a conflict under Article IV, Section 3(B)(4) of the Ohio Constitution shall be made in writing before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days after the announcement of the court's decision, whichever is the later. The filing of a motion to certify a conflict does not extend the time for filing a notice of appeal. A motion under this rule shall specify the issue proposed for certification and shall cite the judgment or judgments alleged to be in conflict with the judgment of the court in which the motion is filed.

**B.** Parties opposing the motion must answer in writing within ten days after the filing of the motion. Copies of the motion, brief, and opposing briefs shall be served as prescribed for the service and filing of briefs in the initial action. Oral argument of a motion to certify a conflict shall not be permitted except at the request of the court.

**C.** The court of appeals shall rule upon a motion to certify within sixty days of its filing.

[Effective: July 1, 1994.]

## **Rule 26. Application for Reconsideration; Application for Reopening**

**A.** Application for reconsideration. Application for reconsideration of any cause or motion submitted on appeal shall be made in writing before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days after the announcement of the court's decision, whichever is the later. The filing of an application for reconsideration shall not extend the time for filing a notice of appeal in the Supreme Court.

Parties opposing the application shall answer in writing within ten days after the filing of the application. Copies of the application, brief, and opposing briefs shall be served in the manner prescribed for the service and filing of briefs in the initial action. Oral argument of an application for reconsideration shall not be permitted except at the request of the court.

**B.** Application for reopening.

1. A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel. An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time.

2. An application for reopening shall contain all of the following:

- a. The appellate case number in which reopening is sought and the trial court case number or numbers from which the appeal was taken;

- b. A showing of good cause for untimely filing if the application is filed more than ninety days

after journalization of the appellate judgment.

- c.** One or more assignments of error or arguments in support of assignments of error that previously were not considered on the merits in the case by any appellate court or that were considered on an incomplete record because of appellate counsel's deficient representation;
- d.** A sworn statement of the basis for the claim that appellate counsel's representation was deficient with respect to the assignments of error or arguments raised pursuant to division (B)(2)(c) of this rule and the manner in which the deficiency prejudicially affected the outcome of the appeal, which may include citations to applicable authorities and references to the record;
- e.** Any parts of the record available to the applicant and all supplemental affidavits upon which the applicant relies.

**3.** The applicant shall furnish an additional copy of the application to the clerk of the court of appeals who shall serve it on the attorney for the prosecution. The attorney for the prosecution, within thirty days from the filing of the application, may file and serve affidavits, parts of the record, and a memorandum of law in opposition to the application.

**4.** An application for reopening and an opposing memorandum shall not exceed ten pages, exclusive of affidavits and parts of the record. Oral argument of an application for reopening shall not be permitted except at the request of the court.

**5.** An application for reopening shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal.

**6.** If the court denies the application, it shall state in the entry the reasons for denial. If the court grants the application, it shall do both of the following:

- a.** Appoint counsel to represent the applicant if the applicant is indigent and not currently represented;
- b.** Impose conditions, if any, necessary to preserve the status quo during pendency of the reopened appeal.

The clerk shall serve notice of journalization of the entry on the parties and, if the application is granted, on the clerk of the trial court.

**7.** If the application is granted, the case shall proceed as on an initial appeal in accordance with these rules except that the court may limit its review to those assignments of error and arguments not previously considered. The time limits for preparation and transmission of the record pursuant to App. R. 9 and 10 shall run from journalization of the entry granting the application. The parties shall address in their briefs the claim that representation by prior appellate counsel was deficient and that the applicant was prejudiced by that deficiency.

**8.** If the court of appeals determines that an evidentiary hearing is necessary, the evidentiary hearing may be conducted by the court or referred to a magistrate.

**9.** If the court finds that the performance of appellate counsel was deficient and the applicant was prejudiced by that deficiency, the court shall vacate its prior judgment and enter the appropriate judgment. If the court does not so find, the court shall issue an order confirming its prior judgment.

**C.** If an application for reconsideration under division (A) of this rule is filed with the court of appeals, the application shall be ruled upon within forty-five days of its filing.

[Effective: July 1, 1971; amended effective July 1, 1975; July 1, 1993; July 1, 1994; July 1, 1997.]

## **Rule 27. Execution, Mandate**

A court of appeals may remand its final decrees, judgments, or orders, in cases brought before it on appeal, to the court or agency below for specific or general execution thereof, or to the court below for further proceedings therein.

A certified copy of the judgment shall constitute the mandate. A stay of execution of the judgment mandate pending appeal may be granted upon motion, and a bond or other security may be required as a condition to the grant or continuance of the stay.

[Effective: July 1, 1971.]

## **Rule 28. Voluntary Dismissal**

If the parties to an appeal or other proceeding shall sign and file with the clerk of the court of appeals an agreement that the proceedings be dismissed and shall pay whatever costs are due, the court shall order the case dismissed.

An appeal may be dismissed on motion of the appellant upon such terms as may be fixed by the court.

[Effective: July 1, 1971.]

## **Rule 29. Substitution of Parties**

**A. Death of a party.** If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the court of appeals, the personal representative of the deceased party may be substituted as a party on motion filed by the representative, or by any party, with the clerk of the court of appeals. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 13. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the court of appeals may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the trial court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the court of appeals in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed, substitution shall be effected in the court of appeals in accordance with this subdivision.

**B. Substitution for other causes.** If substitution of a party in the court of appeals is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (A).

**C. Public officers;** death or separation from office.

**1.** When a public officer is a party to an appeal or other proceeding in the court of appeals in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

**2.** When a public officer is a party to an appeal or other proceeding in his official capacity, he may be described as a party by his official title rather than by name, but the court may require his name to be added.

[Effective: July 1, 1971.]

### **Rule 30. Duties of Clerks**

**A. Notice of orders or judgments.** Immediately upon the entry of an order or judgment, the clerk shall serve by mail a notice of entry upon each party to the proceeding and shall make a note in the docket of the mailing. Service on a party represented by counsel shall be made on counsel.

**B. Custody of records and papers.** The clerk shall have custody of the records and papers of the court. Papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court or agency from which they were received. The clerk shall preserve copies of briefs and other filings.

[Effective: July 1, 1971; amended effective July 1, 1972.]

### **Rule 31. [Reserved]**

### **Rule 32. [Reserved]**

### **Rule 33. [Reserved]**

### **Rule 34. Appointment of Magistrates**

**A. Original actions.** Original actions in the court of appeals may be referred to a magistrate pursuant to Civ. R. 53.

**B. Appeals.** When the court orders an evidentiary hearing in an appeal, the court may appoint a magistrate pursuant to Civ. R. 53 to conduct the hearing.

**C. Reference to magistrates.** In any matter referred to a magistrate, all proceedings shall be governed by Civ. R. 53 and the order of reference, except that the word "judge" in Civ. R. 53 shall mean the court of appeals. An order of reference shall be signed by at least two judges of the court. Where the court has entered a general order referring a category of actions, appeals, or motions to magistrates generally, a subsequent order referring a particular action, appeal, or motion to a specific magistrate pursuant to the general order may be signed by one judge.

[Effective: July 1, 1997.]

### **Rule 35. [Reserved]**

### **Rule 36. [Reserved]**

### **Rule 37. [Reserved]**

### **Rule 38. [Reserved]**

### **Rule 39. [Reserved]**

### **Rule 40. [Reserved]**

### **Rule 41. Rules of Courts of Appeals**

**A.** The courts of appeals may adopt rules concerning local practice in their respective courts that are not inconsistent with the rules promulgated by the Supreme Court. Local rules shall be filed with the Supreme Court.

**B.** Local rules shall be adopted only after the court gives appropriate notice and an opportunity for comment. If the court determines that there is an immediate need for a rule, the court may adopt the rule without prior notice and opportunity for comment, but promptly shall afford notice and opportunity for comment.

[Effective: July 1, 1971; amended effective July 1, 1994; July 1, 1997.]

## Rule 42. Title

These rules shall be known as the Ohio Rules of Appellate Procedure and may be cited as "Appellate Rules" or "App.R. ."

[Effective: July 1, 1971; amended effective July 1, 1997.]

## Rule 43. Effective Date

**A. Effective date of rules.** These rules shall take effect on the first day of July, 1971. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice in which event the former procedure applies.

**B. Effective date of amendments.** The amendments submitted by the supreme court to the general assembly on January 15, 1972, shall take effect on the first day of July, 1972. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

**C. Effective date of amendments.** The amendments submitted by the supreme court to the general assembly on January 12, 1973, and on April 30, 1973, shall take effect on July 1, 1973. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**D. Effective date of amendments.** The amendments submitted by the supreme court to the general assembly on January 10, 1975, and on April 29, 1975, shall take effect on July 1, 1975. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**E. Effective date of amendments.** The amendments submitted by the supreme court to the general assembly on January 9, 1976, shall take effect on July 1, 1976. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**F. Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 12, 1978 shall take effect on July 1, 1978. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**G. Effective date of amendments.** The amendments submitted by the Supreme court to the General Assembly on January 14, 1982 shall take effect on July 1, 1982. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**H. Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on December 24, 1984 and January 8, 1985 shall take effect on July 1, 1985. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**I. Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on

January 14, 1988, as amended, shall take effect on July 1, 1988. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**J. Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 6, 1989, shall take effect on July 1, 1989. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**K. Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 10, 1991 shall take effect on July 1, 1991. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**L. Effective date of amendments.** The amendments filed by the Supreme Court with the General Assembly on January 14, 1992 and further filed on April 30, 1992, shall take effect on July 1, 1992. They govern all proceedings in actions brought after they take effect and also all future proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**M. Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 8, 1993 and further revised and filed on April 30, 1993 shall take effect on July 1, 1993. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**N. Effective date of amendments.** The amendments submitted by the Supreme Court to the General Assembly on January 14, 1994 and further revised and filed on April 29, 1994 shall take effect on July 1, 1994. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**O. Effective date of amendments.** The amendments to Rules 4 and 5 filed by the Supreme Court with the General Assembly on January 5, 1996 and further revised and filed on April 26, 1996 shall take effect on July 1, 1996. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**P. Effective date of amendments.** The amendments to Rules 6, 11, 19, 26, 31, 32, 33, 34, 41, 42, and 43 filed by the Supreme Court with the General Assembly on January 10, 1997 and further revised and filed on April 24, 1997 shall take effect on July 1, 1997. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**Q. Effective date of amendments.** The amendments to Appellate Rule 11.2 filed by the Supreme Court with the General Assembly on January 13, 2000 and refiled on April 27, 2000 shall take effect on July 1, 2000. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**R. Effective date of amendments.** The amendments to Appellate Rules 7, 11.2, 13, and 18 filed by the Supreme

Court with the General Assembly on January 12, 2001, and revised and refiled on April 26, 2001, shall take effect on July 1, 2001. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**S. Effective date of amendments.** The amendments to Appellate Rule 4 filed by the Supreme Court with the General Assembly on January 11, 2002, and revised and refiled on April 18, 2002 shall take effect on July 1, 2002. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**S. Effective date of amendments.** The amendments to Appellate Rule 5 filed by the Supreme Court with the General Assembly on January 9, 2003 and refiled on April 28, 2003, shall take effect on July 1, 2003. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.