

# Initial Civil Appeals: Ohio

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A Q&A guide to appealing from a trial court of general jurisdiction in Ohio. This Q&A addresses starting an appeal (as of right or by permission), obtaining a stay pending appeal, completing preliminary requirements (like mediation), submitting a factual record or appendix, briefing the appeal, arguing the appeal and requesting rehearing.

## OVERVIEW OF STATE APPEALS

### 1. What types of rulings can a party appeal as of right (for example, final judgments, preliminary injunctions, interlocutory orders)?

In Ohio, a party may appeal as of right a final judgment or order from the Court of Common Pleas, municipal and county courts to the Ohio Court of Appeals (Ohio's intermediate appellate court) (*Ohio Rev. Code Ann. §§ 2505.02 to 2505.03*). Although other discrete types of orders might be appealable as of right, the following generally qualify as final orders:

- Orders affecting a substantial right (which includes rights arising under the US Constitution, the Ohio Constitution, a statute, the common law or a rule of procedure) that are made:
  - in an action and that in effect determines the action and prevents a judgment;
  - in a special proceeding, which is an action or proceeding specially created by statute that did not exist before 1853, such as a declaratory judgment action; or
  - on a summary application in an action after judgment, for example an allocation of fees after judgment.
- Orders vacating or setting aside a judgment or granting a new trial.

- Orders granting or denying a provisional remedy (such as a preliminary injunction, attachment, discovery of privileged matter or suppression of evidence) if:
  - the order in effect determines the action regarding the provisional remedy and prevents a judgment in favor of the appealing party concerning the provisional remedy; and
  - the appealing party would not be afforded a meaningful or effective remedy if it were required to appeal after final judgment on all claims and issues.
- Orders determining whether an action may or may not be maintained as a class action.
- Certain orders in proceedings for government appropriation of real property.

(*Ohio Rev. Code Ann. § 2505.02(B)*.)

In cases involving multiple claims or multiple parties, however, a court may enter a final judgment on one or more, but less than all, of the claims or parties if it determines there is no just reason for delay (*Ohio R. Civ. P. 54(B)*). If the court enters a final judgment on less than all of the claims or parties, an appellant may appeal this judgment as of right if it otherwise qualifies as a final order under Section 2505.02 of the Ohio Revised Code Annotated. The judgment cannot be made final and appealable merely by stating there is no just reason for delay (*Noble v. Colwell*, 540 N.E.2d 1381, 1385 (Ohio 1989)).

### 2. What types of rulings, if any, can a party appeal by permission (for example, interlocutory orders)?

Under Ohio law, appeals by permission are not allowed.

### 3. Are there any restrictions on the types of issues the appellate court can consider (for example, only questions of law)?

There are no restrictions on the types of issues an appellate court may consider. The Ohio Court of Appeals is, however, limited to the record on appeal and considers only those issues that are raised by the appellant.

## STARTING AN APPEAL

### 4. When must a party start an appeal?

An appellant must appeal to the Court of Appeals within 30 days of either:

- The entry of judgment or order.
- Service of the notice of judgment and its entry if the party is not served within three days under Rule 58(B) of the Ohio Rules of Civil Procedure (*Ohio R. App. P. 4(A)*).

If the order is final at the time it is entered, the 30-day period generally begins to run from the date of entry. If the order is not final at the time it is entered but later becomes final, the 30-day period begins to run from the date the order became final. A party filing a cross-appeal may file its notice of appeal as provided above or within ten days after the first notice of appeal was filed (*Ohio R. App. P. 4(B)(1)*).

However, in an appeal involving an election contest, the time to appeal to the Supreme Court of Ohio is reduced to 20 days (*Ohio S. Ct. Prac. R. 6.01(A)(2)*). For more information about appeals to the Supreme Court of Ohio, see *State Q&A, Additional Civil Appeals: Ohio* (<http://us.practicallaw.com/w-000-1665>).

### 5. How, if at all, can a party extend the time to start an appeal?

The Court of Appeals may not extend the time for filing a notice of appeal (*Ohio R. App. P. 14(B)*). If a party timely and appropriately files a post-judgment motion, however, the time to appeal the judgment or order begins to run when the trial court enters an order resolving the last post-judgment motion. Post-judgment motions that may extend the time for an appeal include:

- Motions for a judgment notwithstanding the verdict.
- Motions for a new trial.
- Objections to a magistrate's decision.
- Requests for findings of fact and conclusions of law.
- Motions for attorneys' fees.
- Motions for prejudgment interest.

(*Ohio R. App. P. 4(B)(2)*.)

### 6. How does a party start an appeal as of right (for example, notice of appeal, petition)?

In Ohio, a party starts an appeal as of right to the Court of Appeals by filing a notice of appeal with the trial court clerk (*Ohio R. App. P. 3(A)*). The notice of appeal must designate:

- The party or parties taking the appeal.
- The judgment or order being appealed.
- The court from which the appeal is taken.

(*Ohio R. App. P. 3(D)*.)

The filing fee for a notice of appeal varies by district.

### 7. How does a party start an appeal by permission (for example, motion to the appellate court, motion to the trial court)?

In Ohio, appeals by permission are not allowed (see Question 2).

## STAYS PENDING APPEAL

### 8. How, if at all, can a party stay the lower court's ruling pending appeal (for example, posting a bond, making a motion, automatically by appealing)?

In Ohio, filing a notice of appeal does not automatically stay the underlying judgment being appealed. Parties may obtain a stay by making a motion.

A party generally must first attempt to obtain a stay of the judgment by filing a motion in the trial court and by giving an adequate supersedeas bond (*Ohio R. Civ. P. 62(B)*; *Ohio R. App. P. 7(A)*). A stay is effective when a supersedeas bond is approved by the trial court, however, at least one Ohio court has held that a supersedeas bond may not be necessary because an adequate bond may be defined to mean no bond (see *Irvine v. Akron Beacon J.*, 770 N.E.2d 1105, 1123 (*Ohio Ct. App. 2002*)).

If the trial court does not grant a stay under the terms requested by the appellant or a motion to the trial court is not practicable, the appellant may make an application for stay in the Court of Appeals (*Ohio R. App. P. 7(A)*). The application must:

- State:
  - the reasons for the relief requested; and
  - the facts relied on in requesting relief, supported by affidavits if these facts are in dispute.
- Be accompanied by the relevant parts of the trial court record, if reasonably available.

(*Ohio R. App. P. 7(A)*.)

A motion for a stay in the appellate court must be filed with the Court of Appeals clerk (*Ohio R. App. P. 7(A)*). The appellate court may require that the appellant file a bond or other appropriate security in the trial court (*Ohio R. App. P. 7(B)*).

### 9. What, if any, preliminary matters are required before the parties brief the appeal (for example, filing informational forms, participating in mediation or settlement conferences)?

In Ohio, preliminary matters vary among the 12 appellate districts. Therefore, counsel should review the local rules of the district in which the appeal is pending.

Every district, by local rule, requires an appealing party to file a docketing statement (see, for example, *Hamilton County Court of Appeals: R. 3.2* and *Second District Court of Appeals: R. 2.13*). Specific docketing statements vary by district, but they generally require the appealing party to provide basic information concerning the appeal, which allows the court to determine whether the case should be assigned to the regular or accelerated calendar (see Question 11: Filing Briefs).

Many districts have also adopted prehearing-conference procedures, which may require mediation or a discussion of substantive issues in some cases (see, for example, *Third Appellate Judicial District: R. 19* and *Fourth Appellate Judicial District: R. 22*).

## COURT SUBMISSIONS

### 10. What factual materials are submitted to the court (for example, the trial court record, excerpts of the record, an appendix)? When and by whom?

#### FACTUAL MATERIALS

The record on appeal includes:

- The original papers and exhibits filed in the trial court.
- Any transcript, with exhibits, of the proceedings.
- A certified copy of the docket and journal entries.

(*Ohio R. App. P. 9(A)*.)

The appellant may decide that it is unnecessary to include a transcript of some of the proceedings in the record. In that case, a transcript of those proceedings is not included in the factual materials submitted to the appellate court. The appellant must serve on the appellee and file with the trial court clerk a statement with the notice of appeal declaring that the proceedings were:

- Recorded and:
  - listing the assignments of error the appellant intends to present on appeal; and
  - describing either the parts of the transcript the appellant intends to include or indicating that no transcript is necessary.
- Not recorded or that the recording is not available and:
  - listing the assignments of error the appellant intends to present on appeal; and
  - indicating that either a statement of the evidence or an agreed statement of the record on appeal must be submitted.

(*Ohio R. App. P. 9(B)(5)*.)

If the appellee considers parts of the transcript necessary, the appellee has ten days from service of the statement to file and serve a transcript designation demanding that additional parts of the transcript be included.

If, within ten days after service of the appellee's statement, the appellant refuses to include the additional transcript portions, the appellee has five days to order the transcript portions from the transcriber or request a court order requiring the appellant to order the designated portions. (*Ohio R. App. P. 9(B)(5)*.)

#### TIMING

The trial court clerk must transmit the record to the Court of Appeals clerk within 40 days after filing the notice of appeal when the case is assigned to the regular calendar. The time is reduced to 20 days when the case is assigned to the accelerated calendar. (*Ohio R. App. P. 10(A)* and see *Question 11*.) A request for additional time may be granted if the request is made within the time originally prescribed by the rule or within an extension previously granted. The trial court, for cause shown, may extend the time and the trial court clerk must certify the order to the Court of Appeals. (*Ohio R. App. P. 10(C)*.)

#### RESPONSIBLE FOR FILING

The trial court clerk is responsible for:

- Preparing the docket.

- Assembling the original papers.
- Transmitting the record to the clerk of the Court of Appeals. (*Ohio R. App. P. 10(B)*.)

The appellant is responsible for:

- Ensuring that the proceedings the appellant considers necessary for inclusion in the record are transcribed (*Ohio R. App. P. 9(B)(1)*).
- Ordering the transcript in writing and filing a copy with the trial court clerk (*Ohio R. App. P. 9(B)(3)*).
- Ensuring that a transcript of all proceedings necessary for inclusion in the record are properly transcribed before the deadline by which the record must be transmitted to the Court of Appeals clerk (*Ohio R. App. P. 10(A)*).

### 11. What briefs are filed and when? Does this change when there is a cross-appeal?

#### FILING BRIEFS

In an appeal assigned to the regular calendar, the appellant must file its brief within 20 days after the clerk notifies the parties that the record has been transmitted from the trial court. The appellee must file its brief within 20 days of service of the appellant's brief. The appellant may file a reply brief within ten days after service of the appellee's brief. (*Ohio R. App. P. 18(A)*.)

The Court of Appeals may adopt an accelerated calendar by local rule. The accelerated calendar is designed to eliminate delay and unnecessary expense on appeal by recognizing that some cases do not require as extensive or time consuming procedure as others. (*Ohio R. App. P. 11.1(A)*.)

In an appeal assigned to the accelerated calendar, the appellant must file its brief within 15 days after the clerk notifies the parties that the record has been transmitted from the trial court. The appellee has 15 days after service of the appellant's brief to file its brief. In an accelerated appeal, a reply brief is typically not allowed. (*Ohio R. App. P. 18(C)*.)

The criteria for placing an appeal on the accelerated calendar vary among districts. One district provides these criteria:

- No transcript is required or the transcript consists of 50 or fewer pages.
- The parties have submitted an agreed statement in lieu of a record.
- The parties agree to an assignment to the accelerated calendar.

(*10th D. Ohio R. 6(E)*)

#### BRIEFING AFTER CROSS-APPEAL

There is no uniform rule concerning the order and timing of briefs when a cross-appeal is involved. Some appellate districts stagger the briefing schedule, while others require the parties to submit the appellant, appellee and reply briefs applicable to the separate appeals simultaneously. Counsel should check the appellate district's local rules to determine the schedule for cross-appeal briefs.

### 12. How, if at all, can a party extend the time to file a brief (for example, stipulation, so-ordered stipulation, motion)?

In Ohio, a party may seek an extension of time to file a brief by filing a motion to extend time under Ohio Rule of Appellate Procedure 14(B). The court grants motions only for good cause (*Ohio R. App. P. 14(B)*).

**13. Are there word or page limits for briefs? If so, please indicate:**

- The word or page limit for each type of brief (for example, appellant's brief, appellee's brief, reply brief).
- How, if at all, a party can obtain permission to exceed the usual limit (for example, stipulation, so-ordered stipulation, motion).

**WORD OR PAGE LIMITS**

Page limits vary depending on the appellate district in which the appeal is pending. For example, the Twelfth District allows only 20 pages for appellant and appellee briefs, while the Tenth District permits up to 60 pages for the parties' initial briefs. Most districts permit initial briefs of between 25 and 35 pages. Reply briefs typically are limited to ten to 15 pages. Page limits are typically reduced if a case is assigned to the accelerated calendar (see *Question 11: Filing Briefs*). Counsel should check the appellate district's local rules to determine the relevant page limits.

**OVERSIZED BRIEFS**

The local rules for each district govern how and when a party may obtain permission to file oversized briefs. Although the precise standard differs between each district, a motion is always required and the requesting party typically must demonstrate good cause for the request. Counsel should check the appellate district's local rules to determine the requirements for oversized briefs.

**ORAL ARGUMENTS****14. Is oral argument available? If so, please indicate:**

- Any restrictions on what types of cases may be argued.
- Whether the parties can request oral argument or submission on the papers.
- How much time each party or side typically receives for argument.

**TYPES OF CASES THAT MAY BE ARGUED**

Oral argument generally is available for all cases in Ohio. The court is not required to hold oral argument. Each appellate district may adopt its own local rule concerning oral argument, which may require a party to request oral argument. (*Ohio R. App. P. 21(A)*.)

**PARTY INVOLVEMENT IN DECISION**

Most districts require one or both parties to affirmatively request oral argument. If a party fails to make a request, the party usually forfeits the right to orally argue the case. Some districts, by local rule, reserve the right to decide cases without oral argument, even if the parties request it, if the court determines argument is unnecessary.

The parties can, by agreement, submit the case on the briefs without oral argument. Even with the parties' stipulation to submit, however, the court may order oral argument. (*Ohio R. App. P. 21(G)*.)

**LENGTH OF ORAL ARGUMENTS**

Most of the appellate districts allot 15 minutes to each side for argument. However, each party is allowed 30 minutes if the court does not set a shorter time (*Ohio R. App. P. 21(C)*).

**REHEARING FOR STATE APPEALS****15. Is there a mechanism for rehearing (panel or en banc)? If so, please describe:**

- The process for requesting rehearing (for example, petition, motion).
- The process for presenting the merits if the court grants rehearing (for example, decision on the existing papers, new argument, new briefing).

**REQUESTING REHEARING****Reconsideration**

Applications for reconsideration are appropriate in Ohio only when either:

- There is an obvious error in the court's decision.
- The application raises an issue that was either not considered at all or not fully considered by the court when it should have been. (*Columbus v. Hodge*, 523 N.E.2d 515, 516 (Ohio Ct. App. 1987).)

Applications for reconsideration are not appropriate if a party simply disagrees with the logic or conclusions of the appellate court.

Applications for reconsideration must be made by motion no later than ten days after the clerk has mailed a copy of the judgment to the parties (*Ohio R. App. P. 26(A)(1)(a)*).

The parties opposing the application have ten days to answer after the application is served. The movant has seven days to file a reply brief. Oral argument is not permitted unless the court requests it. (*Ohio R. App. P. 26(A)(1)(b)*.)

An application for reconsideration is considered by the panel that issued the original decision (*Ohio R. App. P. 26(A)(1)(c)*).

**En Banc Consideration**

A party may apply for en banc consideration if two or more decisions of the court are in conflict, however, en banc consideration is not favored. A majority vote of the en banc court is required for the case to proceed to en banc consideration. Applications for en banc consideration must be made no later than ten days after the clerk has mailed a copy of the judgment to the parties or, under certain circumstances, within ten days of a decision on a timely filed motion for reconsideration. A court may also order en banc consideration *sua sponte*. (*Ohio R. App. P. 26(A)(2)*.)

**REHEARING PROCEDURE**

The Ohio Rules of Appellate Procedure do not provide for a rehearing procedure that would apply in the event the court agrees to reconsider an appeal or consider it en banc. Therefore, unless the court orders additional briefing and argument, the court will likely rehear the appeal on the existing papers.

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