

# Additional Civil Appeals: Ohio

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A Q&A guide to appealing from an intermediate appellate court to the Supreme Court of 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 and arguing the appeal.

## 1. What types of rulings, if any, can a party appeal as of right?

A party can appeal to the Supreme Court of Ohio as of right from a Court of Appeals' decision in a case originating in the Court of Appeals that invokes the Supreme Court's jurisdiction (*Ohio S. Ct. Prac. R. 5.01(A)*).

## 2. What types of rulings can a party appeal by permission (for example, anything not appealable as of right, final judgments)?

### JURISDICTIONAL APPEALS

The Supreme Court of Ohio may hear an appeal from a Court of Appeals' decision in a civil case if it involves either a:

- Substantial constitutional question.
- Question of public or great general interest.

(*Ohio S. Ct. Prac. R. 5.02(A)*; *Ohio Const. art. IV, § 2(B)(2)*; *Williamson v. Rubich*, 168 N.E.2d 876, 876-77 (Ohio 1960).)

This type of appeal is known as a jurisdictional appeal (*Ohio S. Ct. Prac. R. 5.02(A)*).

### CERTIFIED CONFLICT APPEALS

A case may be appealed to the Supreme Court if the Court of Appeals certifies that its decision is in conflict with any other Court of Appeals decision on the same issue (*Ohio S. Ct. Prac. R. 8.01*; *Ohio Const. art.*

*IV, § 3(B)(4)*). If a Court of Appeals certifies a conflict and a party files a notice of appeal, the Supreme Court of Ohio determines whether a conflict actually exists. If the court determines a conflict does exist, the case is heard on the merits. (*Ohio S. Ct. Prac. R. 8.03*.)

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

In Ohio, there are no constitutional restrictions on the types of issues the Supreme Court can consider (*Ohio Const. art. IV, § 2*). In jurisdictional and certified conflict appeals, however, the Supreme Court of Ohio does accept an appeal only if the case presents a substantial constitutional question or other important legal issues.

## 4. Can the court of last resort consider the entire case (subject to any restrictions in Question 3) or is it limited to particular matters (for example, questions on which certiorari was granted)?

The Supreme Court of Ohio generally limits its review only to the propositions of law it accepted for review (*State v. Warren*, 887 N.E.2d 1145, 1155 (Ohio 2008); *Sexton v. Mason*, 883 N.E.2d 1013, 1015 n.1 (Ohio 2008)).

The Supreme Court also generally does not consider issues that were not first raised in the lower courts. If an issue is not raised but is implicit in another issue that was argued and presented on appeal, however, the Supreme Court may consider and resolve the implicit issue. (*Belvedere Condo. Unit Owners' Assn. v. R.E. Roark Cos., Inc.*, 617 N.E.2d 1075, 1079 (Ohio 1993).)

### STARTING AN APPEAL

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

A party generally must initiate an appeal to the Supreme Court of Ohio within 45 days of entry of the judgment being appealed (*Ohio S. Ct. Prac. R. 6.01(A)(1)* and *7.01(A)(1)(a)(i)*).



In a certified-conflict case, the notice of appeal must be filed within 30 days of the Court of Appeals' order certifying the conflict (see *Question 2*) (*Ohio S. Ct. Prac. R. 8.01(D)*).

If an appellant fails to file an appeal within the specified time, the Supreme Court cannot accept a notice of appeal or supporting memorandum (*Ohio S. Ct. Prac. R. 6.01(A)(3) and 7.01(A)(1)(b)*).

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

A party may extend the time to start a jurisdictional appeal only by filing a timely application for reconsideration or for consideration en banc in the Court of Appeals (see *State Q&A, Initial Civil Appeals: Ohio: Question 15* (<http://us.practicallaw.com/w-000-1664>)) (*Ohio S. Ct. Prac. R. 7.01(A)(1)(b), (5) and (6)*). Otherwise, the time provided in the rules is mandatory and failure to file a notice of appeal within the applicable time divests the Supreme Court of its jurisdiction (*Ohio S. Ct. Prac. R. 6.01(A)(3) and 7.01(A)(1)(b)*).

A party may not extend the time to start on appeal as of right or a certified conflict appeal.

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

A party starts an appeal as of right by filing a notice of appeal in the Supreme Court of Ohio (*Ohio S. Ct. Prac. R. 6.01(A)(1)*). The notice of appeal must contain:

- The name of the court from which the judgment is being appealed.
- The case name and number assigned by the court.
- The date of judgment entry.
- A statement that the case originated in either:
  - The Court of Appeals; or
  - The Court of Common Pleas and is an appeal of a contest of an election.

(*Ohio S. Ct. Prac. R. 6.01(B)(1)*.)

A date-stamped copy of the judgment entry being appealed must be attached to the notice of appeal (*Ohio S. Ct. Prac. R. 6.01(B)(2)*).

#### 8. How does a party start an appeal by permission (for example, motion to the court of last resort, motion to the intermediate appellate court)?

### JURISDICTIONAL APPEALS

A party starts a jurisdictional appeal by filing in the Supreme Court of Ohio a:

- Notice of appeal.
- Memorandum in support of jurisdiction.

(*Ohio S. Ct. Prac. R. 7.01(A)(1)(a)(ii)*.)

In a civil case, the notice of appeal must contain:

- The name of the court of appeals whose judgment is being appealed.
- The case name and number assigned by the court of appeals.

- The date of judgment entry.
- A statement that one or more of the following are applicable:
  - the case raises a substantial constitutional question;
  - the case is one of public or great general interest; or
  - the case involves termination of parental rights or adoption of a minor child, or both.

(*Ohio S. Ct. Prac. R. 7.02(C)*.)

The memorandum in support of jurisdiction must not exceed 15 pages and must include a:

- Table of contents.
- Statement of the case and relevant facts.
- Thorough explanation of why a substantial constitutional question is involved or why the case involves a question of public or great general interest.
- Brief and concise argument in support of each proposition of law the court is asked to adopt.

(*Ohio S. Ct. Prac. R. 7.02(C)*.)

A date-stamped copy of the Court of Appeals' opinion and judgment entry being appealed must be attached to the memorandum in support of jurisdiction (*Ohio S. Ct. Prac. R. 7.02(D)*).

### CERTIFIED CONFLICT APPEALS

A party starts a certified conflict appeal by filing a notice of certified conflict in the Supreme Court of Ohio (*Ohio S. Ct. Prac. R. 8.01(A)*). A notice of certified conflict must include:

- A copy of the Court of Appeals' order certifying a conflict.
- A copy of the certifying court's opinion.
- Copies of the conflicting Court of Appeals' opinions.

(*Ohio S. Ct. Prac. R. 8.01(B)*.)

### STAYS PENDING APPEAL

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

A party may attempt to obtain a stay of the lower court's decision by filing a motion in the Supreme Court of Ohio. The motion must include:

- Relevant information regarding bond.
- A copy of the lower court's decision.
- Any applicable opinion.

(*Ohio S. Ct. Prac. R. 4.01(A)(2)*.)

In a jurisdictional appeal, if the appellant seeks an immediate stay of the Court of Appeals' judgment, it may file a notice of appeal without an accompanying memorandum in support of jurisdiction if a:

- Motion for stay is filed along with the notice of appeal.
- Copy of the Court of Appeals' opinion and judgment entry being appealed are attached to the motion for stay.

(*Ohio S. Ct. Prac. R. 7.01(A)(3)(a)*.)

The party's memorandum in support of jurisdiction must then be filed within 45 days from the date of the entry of the Court of Appeals' judgment being appealed (*Ohio S. Ct. Prac. R. 7.01(A)(3)(b)*).

## PRELIMINARY MATTERS

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

There are no mandatory preliminary matters before the parties brief an appeal to the Supreme Court of Ohio. Any civil case may be referred to the court's mediator, however, either sua sponte by the Supreme Court or on motion by a party. (*Ohio S. Ct. Prac. R. 19.01(A)(1)*). The mediator may conduct mediation conferences at which the parties explore:

- Settling the case.
- Simplifying the issues.
- Expediting the procedure.
- Considering any other matter that might aid in resolving the case.

(*Ohio S. Ct. Prac. R. 19.01(A)(1)*.)

Referral to mediation stays all filing deadlines that are otherwise applicable in a case (*Ohio S. Ct. Prac. R. 19.01(A)(2)*) and see *Questions 11 and 12*. The Supreme Court may issue orders to supervise mediation and may enter an appropriate order at the mediation's conclusion (*Ohio S. Ct. Prac. R. 19.01(E)*).

## COURT SUBMISSIONS

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

The lower-court record is transferred to the Supreme Court of Ohio only if it has accepted jurisdiction to hear the case on the merits. The record consists of:

- The original papers and exhibits to those papers.
- Any transcript of proceedings and exhibits.
- Certified copies of the journal entries and the docket.

(*Ohio S. Ct. Prac. R. 15.01(A)(1)*.)

Where applicable, the record should consist of these items from both the lower court and the Court of Appeals (*Ohio S. Ct. Prac. R. 15.01(A)(2)*).

The Supreme Court is responsible for ordering the lower court clerk to transmit the record (*Ohio S. Ct. Prac. R. 15.02*). The record ordinarily must be transmitted within 20 days of the Supreme Court's order (*Ohio S. Ct. Prac. R. 15.03(A)*).

For the convenience of the court, the appellant may file a "supplement to the briefs that contains those portions of the record necessary to enable the Supreme Court to determine the questions presented." The parties are encouraged to agree on the contents of the supplement so that the appellee can avoid filing a separate supplement to its merit brief. The court may rely on any part of the record even if that part is not included in the supplement. (*Ohio S. Ct. Prac. R. 16.09(A)*).

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

#### FILING BRIEFS

In Ohio, appellants must submit the following briefs to the Supreme Court:

- The appellant's brief.
- The appellee's brief.
- The appellant's reply brief.

(*Ohio S. Ct. Prac. R. 16.02 to 16.04*.)

In a civil appeal, the appellant's brief is due within 40 days from the date the clerk files the record (*Ohio S. Ct. Prac. R. 16.02(A)(2)*). The appellee's brief is due within 30 days after the filing of the appellant's brief (*Ohio S. Ct. Prac. R. 16.03(A)(2)*). The appellant may file a reply brief within 20 days after the filing of the appellee's brief (*Ohio S. Ct. Prac. R. 16.04(A)(2)*).

#### BRIEFING AFTER CROSS-APPEAL

In a cross-appeal, each party is allowed to file two briefs (*Ohio S. Ct. Prac. R. 16.05(A)*).

The first brief is filed by the appellant/cross-appellee and is due 40 days from the date the clerk files the record (*Ohio S. Ct. Prac. R. 16.05(B)(1)(b)*).

The second brief, filed by the appellee/cross-appellant, is due 30 days after the filing of the first brief and is a combined brief containing both a response to the appellant/cross-appellee's brief and the propositions of law and arguments in support of the cross-appeal (*Ohio S. Ct. Prac. R. 16.05(C)(1)(b)*).

The appellant/cross-appellee must file the third brief within 30 days after the filing of the second brief. If the appellant/cross-appellee wishes to file a reply brief, the third brief must include its reply, as well as a response to the arguments in the cross-appeal. (*Ohio S. Ct. Prac. R. 16.05(D)(1)(b)*.)

The fourth brief is the appellee/cross-appellant's reply brief. It may be filed within 20 days after the filing of the third brief (*Ohio S. Ct. Prac. R. 16.05(E)(1)(b)*).

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

Parties may stipulate to extensions of time to file merit briefs, including reply briefs, if the stipulated extension of time:

- Is filed with the within the time required by the rules to submit the merit briefs.
- States the new date for filing agreed to by the parties.

(*Ohio S. Ct. Prac. R. 3.03(B)(2)(a)(i)*.)

Each party may obtain only one stipulated extension of time of no more than 20 days (*Ohio S. Ct. Prac. R. 3.03(B)(2)(a)(ii)*). If a stipulation cannot be obtained, a party may seek an extension of time by motion to the court. In expedited election cases, extensions of time must be obtained by motion. (*Ohio S. Ct. Prac. R. 3.03(B)(2)(b)(i)*.)

**14. 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**

The Supreme Court of Ohio imposes page limits on briefs in civil cases. The appellant's and appellee's principal briefs are limited to 50 pages each (*Ohio S. Ct. Prac. R. 16.02(C)(1) and 16.03(C)(1)*). The appellant's reply brief is limited to 20 pages (*Ohio S. Ct. Prac. R. 16.04(B)(1)*). The page count does not include:

- The table of contents.
- The table of authorities cited.
- The certificate of service.
- The appendix.

(*Ohio S. Ct. Prac. R. 16.02(C)(1), 16.03(C)(1) and 16.04(B)(1)*.)

In a cross-appeal, the appellant/cross-appellee's two briefs are limited to 50 pages each (*Ohio S. Ct. Prac. R. 16.05(B)(2)(a) and (D)(2)(a)*). The appellee/cross-appellant's first brief is limited to 50 pages and its reply brief is limited to 20 pages (*Ohio S. Ct. Prac. R. 16.05(C)(2)(a) and (E)(2)(a)*).

**OVERSIZED BRIEFS**

Under Ohio law, page limitations are mandatory. The Ohio Supreme Court Rules of Practice do not provide a mechanism for seeking permission for additional pages.

**ORAL ARGUMENTS****15. 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**

In civil appeals arising as jurisdictional appeals or certified conflicts, oral argument is scheduled by the Supreme Court (*Ohio S. Ct. Prac. R. 17.01(A)(2) and (3)*). In all other civil appeals, such as from cases that originated in a Court of Appeals, oral argument is scheduled by Supreme Court order or by a party's request (*Ohio S. Ct. Prac. R. 17.02(A)*).

**PARTY INVOLVEMENT IN DECISION**

Any party may waive oral argument and submit the case to the Supreme Court on the briefs (*Ohio S. Ct. Prac. R. 17.03(A)*). For a waiver to be effective, it must be:

- In writing.
- Filed at least seven days before the scheduled oral argument. If one party files the waiver on the seventh day before oral argument, any other party has until the day before oral argument to file a waiver.
- Agreed to by all the parties. Unless all the parties agree to waive oral argument, the court then hears oral argument from the parties not agreeing to the waiver.

(*Ohio S. Ct. Prac. R. 17.03(A) and (C)*.)

**LENGTH OF ORAL ARGUMENTS**

In civil cases, unless the Supreme Court grants additional time on its own or on the motion by a party, each side has 15 minutes for oral argument (*Ohio S. Ct. Prac. R. 17.05(A)(2) and (B)*). If there are multiple parties per side, the parties must share the allotted time per side (*Ohio S. Ct. Prac. R. 17.05(A)(2)*).

The appellant argues first and may reserve a portion of its allotted time for rebuttal. In a case involving a cross-appeal, the appellee/cross-appellant may reserve time for rebuttal of the appellant/cross-appellee's argument in response to the cross-appeal. (*Ohio S. Ct. Prac. R. 17.05(C)*.)

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