OHIO RULES OF APPELLATE PROCEDURE

Title I APPLICABILITY OF RULES

Rule

Title II APPEALS FROM JUDGMENTS AND ORDERS OF COURT OF RECORD

Title III GENERAL PROVISIONS

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 JUDGMENTS 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) **When notice of cross-appeal required.** Whether or not an appellee intends to defend an order on appeal, an appellee who seeks to change the order or, in the event the order is reversed or modified, an interlocutory ruling merged into the order, shall file a notice of cross appeal with the clerk of the trial court, and may also file a courtesy copy of the notice of cross-appeal with the clerk of the appellate court, within the time allowed by App.R. 4. The clerk of the trial court shall process the notice of cross-appeal in the same manner as the notice of appeal.

(2) **When notice of cross-appeal not required; cross-assignment of error never required**. A person who intends to defend an 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 order is not required to file a notice of cross-appeal or to raise a cross-assignment of error.

(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 apealed 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.

(1) When leave required. A party may amend a notice of appeal without leave if the time to appeal from the order that was the subject of the initial notice of appeal has not yet lapsed under App.R. 4. Thereafter, the court of appeals within its discretion and upon such terms as are just may allow the amendment of a notice of appeal, so long as the amendment does not seek to appeal from a trial court order beyond the time requirements of App.R. 4.

(2) Where filed. An amended notice of appeal shall be filed in both the trial court and the court of appeals.

(G) Docketing statement

(1) If a court of appeals has adopted an accelerated calendar by local rule pursuant to Rule 11.1, the appellant shall file a docketing statement 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:

(a) No transcript is required (e.g., summary judgment or judgment on the pleadings);

(b) The length of the transcript is such that its preparation time will not be a source of delay;

(c) An agreed statement is submitted in lieu of the record;

(d) The record was made in an administrative hearing and filed with the trial court;

(e) All parties to the appeal approve an assignment of the appeal to the accelerated calendar; or

(f) 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 a case is placed upon the accelerated calendar, 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

(2) If the appeal is expedited under App.R. 11.2, the appellant shall file a docketing statement with the clerk of the trial court with the notice of appeal indicating the category of case under App.R. 11.2 and the need for priority disposition.

[Effective: July 1, 1971; amended effective July 1, 1972; July 1, 1977; July 1, 1982; July 1, 1991; July 1, 1992; July 1, 1994; July 1, 2013; July 1, 2015; July 1, 2019; July 1, 2020.]

Staff Note (July 1, 2019 Amendment)

The amendment to App.R. 3(G) is designed to ensure that a party who wishes to challenge the assignment of an appeal to the accelerated calendar has adequate notice of the assignment before the seven-day deadline for moving to transfer to the regular calendar begins to run.

Staff Note (July 1, 2015 amendment)

App.R. 3(G) is amended by adding a new subsection requiring appellants in expedited cases under App.R. 11.2 to file a docketing statement with the notice of appeal, in order to alert the appellate court to the need for priority disposition.

Staff Notes (July 1, 2013 Amendments)

App.R. 3(C)(2) is amended to clarify that a party seeking to defend a judgment on a ground other than that relied on by the trial court need not file a cross-assignment of error to do so; instead, that party may simply raise the arguments in the appellate brief. The prior rule suggested as much, but some courts, relying on R.C. 2505.22, have refused to consider arguments in defense of a judgment in the absence of a cross-assignment of error. *See*, *e.g.*, *Justus v. Allstate Ins. Co.*, 10th Dist. No. 02AP-1222, 2003-Ohio-3913, ¶ 21; *Good v. Krohn*, 151 Ohio App.3d 832, 2002-Ohio-4001, 786 N.E.2d 480, ¶ 15 (3d Dist.); *Zotter v. United Servs. Auto. Assn.*, 11th Dist. No. 94-P-0001, 1994 WL 660838, *2 (Nov. 19, 1994). Other courts, by contrast, followed the "well established" rule "that 'a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as the basis thereof.'" *See, e.g.*, *Schaaf v. Schaaf*, 9th Dist. No. 05CA0060-M, 2006-Ohio-2983, ¶ 19, quoting *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 92, 637 N.E.2d 306 (1994). The language of the amendment to App.R. 3(C)(2) clarifies that the latter view is the correct one and confirms that the requirement of a cross-assignment of error in R.C. 2505.22 is abrogated by rule.

App.R. 3(F) is amended to clarify the procedure for amending a notice of appeal. Amending a notice of appeal is an efficient mechanism for appealing from a trial court order different from the order referenced in the initial notice of appeal without having to file a second notice of appeal and then seeking

to consolidate the two appellate cases. The amendment clarifies that no leave is required to amend a notice of appeal if the time to appeal from the order identified in the initial notice of appeal has not yet lapsed under App.R. 4; this resolves a perceived ambiguity in the former rule, *see Am. Chem. Soc. v. Leadscope*, 10th Dist. No. 08AP-1026, 2010-Ohio-2725, ¶ 22, and is consistent with the general practice of permitting amendments during that initial 30-day time frame. *See*, *e.g.*, *State v. West*, 2d Dist. No. 2000CA56, 2001 WL 43110, at *1 (Jan. 19, 2001). By contrast, leave is required if a party seeks timely to appeal from a subsequent trial court order after the time to appeal from the originally appealed order has expired under App.R. 4; the decision whether to grant leave at that point is discretionary, reflecting the general reluctance to permit such amendments, *see*, *e.g.*, *Rickard v. Trumbull Twp. Zoning Bd.*, 11th Dist. Nos. 2008-A-0024, 2008-A-0027, 2008-A-0025, 2008-A-0028, and 2008-A-0026, 2009-Ohio-2619, ¶ 42, but also recognizing the potential efficiencies of avoiding a second appeal if the orders in question are inter-related. In all events, however, an amended notice of appeal may not be used to appeal from a trial court order if the time to appeal from that order has already lapsed under App.R. 4. App.R. 3(F)(2) also clarifies that the party filing an amended notice of appeal must file the amendment in both the trial and appellate courts so that both courts are aware of the scope of the appeal.

RULE 4. Appeal as of Right--When Taken

(A) Time for appeal

(1) Appeal from order that is final upon its entry. Subject to the provisions of App.R. 4(A)(3), a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry.

(2) Appeal from order that is not final upon its entry. Subject to the provisions of App.R. 4(A)(3), a party who wishes to appeal from an order that is not final upon its entry but subsequently becomes final—such as an order that merges into a final order entered by the clerk or that becomes final upon dismissal of the action—shall file the notice of appeal required by App.R. 3 within 30 days of the date on which the order becomes final.

(3) Delay of clerk's service in civil case. In a civil case, if the clerk has not completed service of the order within the three-day period prescribed in Civ.R. 58(B), the 30-day periods referenced in App.R. 4(A)(1) and 4(A)(2) begin to run on the date when the clerk actually completes service.

(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 any of the following, if timely and appropriate:

(a) a motion for judgment under Civ.R. 50(B);

(b) a motion for a new trial under Civ.R. 59;

(c) objections to a magistrate's decision under Civ.R 53(D)(3)(b) or Juv. R. 40(D)(3)(b);

(d) a request for findings of fact and conclusions of law under Civ.R. 52, Juv.R. 29(F)(3), Civ.R. 53(D)(3)(a)(ii) or Juv.R. 40(D)(3)(a)(ii);

(e) a motion for attorney fees; or

(f) a motion for prejudgment interest,

then the time for filing a notice of appeal from the judgment or final order in question begins to run as to all parties when the trial court enters an order resolving the last of these post-judgment filings.

If a party files a notice of appeal from an otherwise final judgment but before the trial court has resolved one or more of the filings listed in this division, then the court of appeals, upon

suggestion of any of the parties, shall remand the matter to the trial court to resolve the post-judgment filings in question and shall stay appellate proceedings until the trial court has done so. After the trial court has ruled on the post-judgment filing on remand, any party who wishes to appeal from the trial court's orders or judgments on remand shall do so in the following manner: (i) by moving to amend a previously filed notice of appeal or cross-appeal under App.R. 3(F), for which leave shall be granted if sought within thirty days of the entry of the last of the trial court's judgments or orders on remand and if sought after thirty days of the entry, the motion may be granted at the discretion of the appellate court; or (ii) by filing a new notice of appeal in the trial court in accordance with App.R. 3 and 4(A). In the latter case, any new appeal shall be consolidated with the original appeal under App.R. 3(B).

(3) Criminal and traffic post-judgment motions

In a criminal or traffic case, if a party files any of the following, if timely and appropriate:

(a) a motion for arrest of judgment under Crim.R. 34;

(b) a motion for a new trial under Crim.R. 33 for a reason other than newly discovered evidence; or

(c) objections to a magistrate’s decision under Crim.R. 19(D)(3)(b) or Traf.R. 14; or

(d) a request for findings of fact and conclusions of law under Crim.R. 19(d)(3)(a)(ii),

then the time for filing a notice of appeal from the judgment or final order in question begins to run as to all parties when the trial court enters an order resolving the last of these post-judgment filings. A motion for a new trial under Crim.R. 33 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; but 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.

If a party files a notice of appeal from an otherwise final judgment but before the trial court has resolved one or more of the filings listed in (a), (b), or (c) of this division, then the court of appeals, upon suggestion of any of the parties, shall remand the matter to the trial court to resolve the motion in question and shall stay appellate proceedings until the trial court has done so.

After the trial court has ruled on the post-judgment filings on remand, any party who wishes to appeal from the trial court’s orders or judgments on remand shall do so in the following manner: (i) by moving to amend a previously filed notice of appeal or cross-appeal under App.R. 3(F), for which leave shall be granted if sought within thirty days of the entry of the last of the trial court’s judgments or orders on remand and if sought after thirty days of the entry, the motion may be granted in the discretion of the appellate court; or (ii) by filing a new notice of appeal in the trial court in accordance with App.R. 3 and 4(A). In the latter case, any new appeal shall be consolidated with the original appeal under App.R. 3(B).

(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).

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Staff Note (July 1, 2014 amendment)

The amendments to App.R. 4(A) are designed to clarify confusion that can arise when the trial court enters an order that is not final when entered but becomes final as a result of merging into a subsequently entered final order or because of the dismissal of the action (*e.g.*, under Civ.R. 41(A)). In these circumstances, the time to appeal begins to run when the previously non-final order becomes a final order. Not all interlocutory orders will survive the voluntary dismissal of the action, and the amendment is not intended to suggest otherwise. But it does provide guidance about the time to appeal in the event that a case terminates without a final order into which a prior order can merge. The amendments to App.R. 4(A) also remove the references to "judgment or order"; this change is not substantive but merely recognizes that there is no need to use both terms, since every judgment is also a final order. *See*, *e.g.*, Civ.R. 54(A); R.C. 2505.02(B)(1). The amendments also contain stylistic, non-substantive changes to accommodate the already-existing provision that extends the time to appeal when the clerk fails to complete service in a civil case under Civ.R. 58(B); that provision is now found in App.R. 4(A)(3).

The amendments to App.R. 4(B)(2)(e) and 4(B)(2)(f) clarify that a timely and appropriate motion for attorney fees or prejudgment interest suspends the time to appeal. The Supreme Court has held that the pendency of such a motion deprives a trial-court judgment of finality. *See Miller v. First Intl. Fid. & Trust Bldg., Ltd.*, 113 Ohio St.3d 474, 2007-Ohio-2457, 866 N.E.2d 1059 (prejudgment interest); *Intl. Bhd. of Elec. Workers, Loc. Union No. 8 v. Vaughn Indus., L.L.C.*, 116 Ohio St.3d 335, 2007-Ohio-6439, 879 N.E.2d 187 (attorney fees). But trial courts often enter judgment before parties file these types of post-trial motions, and during the window of time between the entry of that judgment and the filing of one of these motions, one of the parties may choose to appeal from an order that appears to be final at the time it was entered. The current amendments are designed to avoid the jurisdictional and procedural uncertainty that results from this situation. Now, the appellate court has the authority to remand the matter for a ruling on the post-judgment motion, rather than dismissing the appeal. Also, the reference to R.C. 2323.42 was

deleted from App.R. 4(B)(2)(3); that reference suggested that only motions for attorney fees made under that statute suspend the time to appeal. The current amendment provides that any timely and appropriate motion for attorney fees and prejudgment interest suspends the time to appeal, regardless of the legal authority for the motion.

Staff Notes (July 1, 2013 Amendments)

The amendments to App.R. 4(B)(2)(d) and App.R. 4(B)(3)(d) clarify that a proper and timely request to the trial court for findings of fact and conclusions of law defers the running of the time to appeal in all circumstances in which the rules permit such a request. That general concept was reflected in the prior rule, but the amendments reference additional provisions of the civil, juvenile, and criminal rules that authorize parties to request findings of fact and conclusions of law.

Staff Notes (July 1, 2012 Amendments)

The amendment to App.R. 4(B)(3) now provides that the pendency of timely objections to a magistrate's decision in a criminal or traffic case suspends the running of the time to appeal, just as they do in civil and juvenile cases under App.R. 4(B)(2). Note that in both cases the suspension matters only if the trial court has entered judgment before the objections to the magistrate's decision are filed; if the trial court has not yet entered judgment, then the 30-day period to appeal from that judgment obviously does not start to run in the first instance.

Staff Note (July 1, 2011 amendment)

Some of the amendments to App. R. 4(B)(2) are technical and grammatical, designed to accommodate the different kinds of post-judgment filings that serve as exceptions to the 30-day time to appeal that otherwise applies under App. R. 4(A). The references in App. R. 4(B)(2)(c), to Civ. R. 53(D)(3)(b) and Juv. R. 40(D)(3)(b), were changed to refer to the appropriate Civil Rule and Juvenile Rule provisions governing the timing of objections to magistrates' decisions in civil and juvenile cases.

The addition of subsection (e) to App. R. 4(B)(2) is designed to avoid the confusion that can result over the finality of a judgment in a civil action based upon a medical claim, dental claim, optometric claim, or chiropractic claim if a party subsequently files a timely motion for attorneys' fees under R.C. 2323.42. See, e.g., *Ricciardi v. D'Apolito*, 7th Dist. No. 09 MA 60, 2010-Ohio-1016, at ¶12-13; see, also, id. at ¶20 (DeGenaro, J., concurring).

New language has been added to both App. R. 4(B)(2) and App. R. 4(B)(3) to resolve confusion in the courts of appeals about the finality of a judgment and the proper disposition of an appeal if a party files a notice of appeal before all proper and timely post-trial filings are resolved or if a party makes a timely post-trial filing after the notice of appeal if filed. Some courts have held that the trial court judgment is not final while a proper post-judgment filing is pending and have, accordingly, dismissed the appeal. See, e.g., *Dragway 42, LLC v. Kokosing Constr. Co.*, 9th Dist. No. 09CA0008, 2009-Ohio-5630, at ¶6; *In re Talbert*, 5th Dist. No. CT2008-0031, 2009-Ohio-4237, at ¶20-22. Others have held that the judgment is final but that the case should be remanded to the trial court to rule on the motions. See, e.g., *Stewart v. Zone Cab of Cleveland*, 8th Dist. No. 79317, 2002-Ohio-335, at 6. The rule now adopts the latter view and also establishes a procedure for the parties to bring into the appeal the trial court's subsequent rulings on the post-judgment filings.

Staff Note (July 1, 2002 Amendment)

Appellate Rule 4 Appeal as of Right—How Taken
Appellate Rule 4(B)(4) Exceptions: Appeal by prosecution

The July 1, 2002, amendment to Appellate Rule 4 corrected two errors. First, in App. R. 4(B)(4), a cross-reference was changed from Criminal Rule 12(J) to Criminal Rule 12(K), which was necessitated by an amendment to Criminal Rule 12 that was effective July 1, 2001.

Second, in App. R. 4(D), a cross-reference was changed from Criminal Rule 32(B) to Criminal Rule 32(C), which was necessitated by an amendment to Criminal Rule 12 that was effective July 1, 1998.

No substantive amendment to Appellate Rule 4 was intended by either amendment.

[Effective: July 1, 1971; amended effective July 1, 1972; July 1, 1985; July 1, 1989; July 1, 1992; July 1, 1996; July 1, 2002; July 1, 2009; July 1, 2011; July 1, 2012; July 1, 2013; July 1, 2014.]

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 an 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 order sought to be appealed (or, if that order is not a final order, within thirty days of the final order into which it merges) 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 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 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.

[Effective: July 1, 1971; amended effective July 1, 1988; July 1, 1992; July 1, 1994; July 1, 1996; July 1, 2003; July 1, 2019.]

Staff Notes (July 1, 2019 Amendment)

The amendment to App.R. 5(C) regarding the prosecution's motion for leave to appeal an order that was not final when it was made, but subsequently merged into a final order, is intended to address only the required timing of such a motion. The amendment does not affect the threshold determination of whether an order is, in fact, a final order, which is determined with reference to the relevant Ohio statutes.

The additional amendments to App.R. 5(C) and 5(D)(1) remove references to a "judgment or order" and a "judgment and order," instead referring solely to an "order." These amendments bring the rules into conformity with the language of App.R. 4(A), which was similarly amended in 2014. As noted in the July 1, 2014 Staff Note to App.R. 4, these changes are not substantive.

Staff Note (July 1, 2003 Amendment)

Rule 5 Appeals by Leave of Court

The title of this rule was changed from Appeals by Leave of Court in Criminal Cases to Appeals by Leave of Court as a consequence of the amendment to division (A) described below.

Rule 5(A) Motion by defendant for delayed appeal.

The amendment to division (A) effective July 1, 2003, was in response to the Supreme Court's decision in *In re Anderson* (2001), 92 Ohio St. 3d 63, which held that adjudications of delinquency are not judgments to which App. R. 5(A) applies. The amendment made App. R. 5(A) apply to delinquency and serious youthful offender proceedings.

Rule 5(B) Motion to reopen appellate proceedings.

The addition of a new division (B) was to address state appellate proceedings following a federal court's granting of a conditional writ of habeas corpus that allows the prisoner to be freed if the state appellate court does not reopen appellate proceedings to address constitutional issues in the case. As a result of the addition of this new division (B), divisions (B) – (E) of the previous rule were relettered (C) – (F) respectively.

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.

[Effective: July 1, 1971; amended effective July 1, 1973; July 1, 2001.]

Staff Note (July 1, 2001 Amendment)

Appellate Rule 7 Stay or Injunction Pending Appeal—Civil and Juvenile Actions

Appellate Rule 7(B) Stay may be conditioned upon giving of bond; proceedings against sureties

Language in division (B) was changed to make it gender-neutral. No substantive change to this division was intended.

Appellate Rule 7(C) Stay in juvenile actions

The July 1, 2001 amendment eliminated the last sentence of App. R. 7(C) regarding appeals concerning a dependent, neglected, unruly, or delinquent child. This provision, to which was added appeals of cases concerning abused children, was placed in App. R. 11.2(D), which also was amended effective 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; recording of proceedings.

(1) 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.

(2) The trial court shall ensure that all proceedings of record are recorded by a reliable method, which may include a stenographic/shorthand reporter, audio-recording device, and/or video-recording device. The selection of the method in each case is in the sound discretion of the trial court, except that in all capital cases the proceedings shall be recorded by a stenographic/shorthand reporter in addition to any other recording device the trial court wishes to employ.

(B) The transcript of proceedings; discretion of trial court to select transcriber; duty of appellant to order; notice to appellee if partial transcript is ordered.

(1) Except as provided in App.R. 11.2(B)(3)(b), it is the obligation of the appellant to ensure that the proceedings the appellant considers necessary for inclusion in the record, however those proceedings were recorded, are transcribed in a form that meets the specifications of App. R. 9(B)(6).

(2) Any stenographic/shorthand reporter selected by the trial court to record the proceedings may also serve as the official transcriber of those proceedings without prior trial court approval. Otherwise, the transcriber of the proceedings must be approved by the trial court. A party may move to appoint a particular transcriber or the trial court may appoint a transcriber sua sponte; in either case, the selection of the transcriber is within the sound discretion of the trial court, so long as the trial court has a reasonable basis for determining that the transcriber has the necessary qualifications and training to produce a reliable transcript that conforms to the requirements of App.R. 9(B)(6).

(3) The appellant shall order the transcript in writing and shall file a copy of the transcript order with the clerk of the trial court.

(4) If no recording was made, or when a recording was made but is no longer available for transcription, App.R. 9(C) or 9(D) may be utilized. If the appellant intends to present an assignment of error 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 proceedings that includes all evidence relevant to the findings or conclusion.

(5) Unless the entire transcript of proceedings is to be included in the record, the appellant shall file with the notice of appeal a statement, as follows:

(a) If the proceedings were recorded by a stenographic/shorthand reporter, the statement shall list the assignments of error the appellant intends to present on the appeal and shall either describe the parts of the transcript that the appellant intends to include in the record or shall indicate that the appellant believes that no transcript is necessary.

(b) If the proceedings were not recorded by any means, or if the proceedings were recorded by non-stenographic means but the recording is no longer available for transcription, or if the stenographic record has become unavailable, then the statement shall list the assignments of error the appellant intends to present on appeal and shall indicate that a statement under App.R. 9(C) or 9(D) will be submitted.

The appellant shall file this statement with the clerk of the trial court and serve the statement on the appellee.

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 transcription of 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 of proceedings shall arrange for the payment to the transcriber of the cost of the transcript of proceedings.

(6) A transcript of proceedings under this rule shall be in the following form:

(a) The transcript of proceedings 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;

(b) The transcript of proceedings shall be firmly bound on the left side;

(c) 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;

(d) The transcript of proceedings 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;

(e) An index of witnesses shall be included in the front of the transcript of proceedings and shall contain page and line references to direct, cross, re-direct, and re-cross examination;

(f) 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;

(g) 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;

(h) No volume of a transcript of proceedings 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;

(i) An electronic copy of the written transcript of proceedings should be included if it is available;

(j) The transcriber shall certify the transcript of proceedings as correct and shall state whether it is a complete or partial transcript of proceedings, and, if partial, indicate the parts included and the parts excluded.

(7) 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 under App.R. 10(A).

(C) Statement of the evidence or proceedings when no recording was made, when the transcript of proceedings is unavailable, or when a recording was made but is no longer available for transcription.

(1) If no recording of the proceedings was made, if a transcript is unavailable, or if a recording was made but is no longer available for transcription, 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 and the appellee may serve on the appellant objections or propose amendments to the statement within ten days after service of the appellant's statement; these time periods may be extended by the court of appeals for good cause. 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.

(2) In cases initially heard in the trial court by a magistrate, a party may use a statement under this division in lieu of a transcript if the error assigned on appeal relates solely to a legal conclusion. If any part of the error assigned on appeal relates to a factual finding, the record on appeal shall include a transcript or affidavit previously filed with the trial court as set forth in Civ.R. 53(D)(3)(b)(iii), Juv.R. 40(D)(3)(b)(iii), and Crim.R. 19(D)(3)(b)(iii).

(D) Agreed statement as the record on appeal.

(1) 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 under App.R. 10, may prepare and sign a statement of the case showing how the issues raised in 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 in the appeal, shall be approved by the trial court prior to the time for transmission of the record under App.R. 10 and shall then be certified to the court of appeals as the record on appeal and transmitted to the court of appeals by the clerk of the trial court within the time provided by App.R. 10.

(2) In cases initially heard in the trial court by a magistrate, a party may use a statement under this division in lieu of a transcript if the error assigned on appeal relates to a legal conclusion. If the error assigned on appeal relates to a factual finding, the record on appeal shall include a transcript or affidavit previously filed with the trial court as set forth in Civ.R. 53(D)(3)(b)(iii), Juv.R. 40(D)(3)(b)(iii), and Crim.R. 19(D)(3)(b)(iii).

(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 the trial 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, 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 omission or misstatement be corrected, and if necessary that a supplemental record be certified, filed, and transmitted. All other questions as to the form and content of the record shall be presented to the court of appeals.

Staff Note (July 1, 2015 amendment)

App.R. 9(B)(1) is amended to recognize that in expedited abortion-related appeals from juvenile courts, there is no requirement of a written transcript if there is an audio recording of the trial court proceedings. *See* App.R. 11.2(B)(3)(b).

Staff Note (July 1, 2014 amendment)

App.R. 9(B)(1) is amended to clarify that the appellant's duty is to make reasonable arrangements for the transcription of recorded proceedings and that the appellant does not have the ability, and thus does not have the duty, to compel a court reporter or other transcriber to meet his or her transcription obligations. That is not to suggest that an appellate court may reverse a judgment without a proper record; it simply clarifies that the appellant should not be penalized for failing to produce a timely transcript if the deficiency is outside the appellant's control. *See*, *e.g.*, *Camp-Out, Inc. v. Adkins*, 6th Dist. No. WD-06-057, 2007-

Ohio-447 (denying motion to dismiss based on missing transcript). The amendment is necessary to avoid dismissals under App.R. 11(C) arising from the failure to produce a timely transcript if the dismissal is not of the appellant's making. *Cf. In re Efford*, 8th Dist. No. 77747, 2000 WL 1514100, *1 (Oct. 12, 2000) ("Appellant has the duty to ensure that the record or any portions thereof that are necessary to determine the appeal are filed with the reviewing court.").

Staff Notes (July 1, 2013 Amendments)

App.R. 9 is amended to clarify that a statement of the evidence or proceedings in lieu of an unavailable transcript (under App.R. 9(C)) or an agreed statement of the case (under App.R. 9(D)) is available only in limited circumstances in cases originally heard by a magistrate. One of the predicates for appealing from a factual finding in cases initially heard by a magistrate is that the trial judge must have had an adequate opportunity to conduct a full review of the factual finding. That full review is not possible unless the appellant provided the trial court with an adequate description of the evidence presented to the magistrate - either through a transcript or, if a transcript is unavailable, an affidavit describing that evidence. *See* Civ.R. 53(D)(3)(b)(iii) Crim.R. 19(D)(3)(b)(iii) Juv.R. 40(D)(3)(b)(iii) (same;) *see also Lesh v. Moloney*, 10th Dist. No. 11AP–353, 2011-Ohio-6565, ¶ 12 ("Absent a transcript, the trial court had no basis to disagree with the magistrate's findings of fact."); *Harris v. Transp. Outlet*, 11th Dist. No. 2007-L-188, 2008-Ohio-2917, ¶ 16. Case law already provides that an appellate court will not review factual findings on appeal unless the appellant provided the trial court with that description of the evidence and that a statement under App.R. 9(C) or App.R. 9(D) does not overcome this problem. *See*, *e.g.*, *Trammell v. McCortney*, 9th Dist. No. 25840, 2011-Ohio-6598, ¶ 9-10; *Swartz v. Swartz*, 9th Dist. No. 11CA0057-M, 2011-Ohio-6685, ¶ 10. But appellants nevertheless continue to attempt to use such statements in these circumstances, suggesting a need for more explicit guidance in the rule. On the other hand, the absence of a transcript or affidavit at the trial court level should not preclude appellate review of a legal determination, so long as the appellant complied with the objection requirements of the applicable magistrate rule. If there is a need for a record of what occurred at a hearing or trial, a statement under App.R. 9(C) or App.R. 9(D) is an acceptable record in an appeal in a case originally tried to a magistrate if the appellant does not intend to challenge factual findings and has properly objected below.

Staff Note (July 1, 2011 amendment)

The amendments to App. R. 9 are designed to strike a balance between the trial court's autonomy in determining how to record proceedings in the trial court and the appellate court's preference for official transcripts in lieu of video recordings transcribed by counsel or counsel's assistants. Under App. R. 9(A), trial courts may choose to record proceedings through the use of a stenographic/shorthand reporter, an audio-recording device, and/or a video-recording device, except in capital cases, in which a stenographic/shorthand reporter is required. Regardless of the method of recording the proceedings, a transcript is required for the record on appeal; a videotaped recording of the trial court proceedings is no longer adequate. For parties who cannot afford to have a transcript prepared, existing case law already authorizes the use of a statement of proceedings under App. R. 9(C). See *State ex rel. Motley v. Capers* (1986), 23 Ohio St.3d 56, 58, 23 OBR. 130, 491 N.E.2d 311.

An electronic version of the written transcript should also be included in the record under a new provision, App. R. 9(B)(6)(i).

App. R. 9(C) has been amended to reflect that the original recording of trial court proceedings may involve recording methods other than a stenographic/shorthand reporter.

[Effective: July 1, 1971; amended effective July 1, 1977; July 1, 1978; July 1, 1988; July 1, 1992; July 1, 2011; July 1, 2013; July 1, 2014; July 1, 2015.]

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 App.R. 9(B) and shall take any other action reasonably 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 App.R. 9(B) and this division, and a single record shall be transmitted when forty days have elapsed after the filing of the final notice of appeal. If the appellant has complied with the duty to make reasonable arrangements for transcription of the recorded proceedings under App.R. 9(B) and the duty to make reasonable arrangements to enable the clerk to assemble and transmit the record under this division, then the appellant is not responsible for any delay or failure to transmit the record.

(**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 App.R. 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 division (A) of this rule. 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 the clerk 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, and thus ready for transmission to the clerk of the court of appeals, under any of the following circumstances:

(1) When the transcript of proceedings is filed with the clerk of the trial court if the appellant has ordered one.

(2) When a statement of the evidence or proceedings, pursuant to App.R. 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 App.R. 9(B)(5)(a), 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 or a pending motion requesting the same in either the trial or the appellate court.

(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 or a pending motion requesting the same in either the trial or the appellate court.

(7) Where the appellant fails to file either the docketing statement or the statement required by App.R. 9(B)(5), within ten days of 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 App.R.41, 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. An appellant who moves under this division for an extension of time to transmit the record has good cause to do so if the appellant has reasonably complied with all applicable requirements of App.R. 9(B) and division (A) of this rule.

(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.

Staff Note (July 1, 2014 amendment)

App.R. 10(A) is amended to clarify that the appellant's duty is to make reasonable arrangements for the timely transmission of the record and that the appellant does not have the ability, and thus does not have the duty, to ensure that the record is transmitted once those reasonable arrangements have been made. That is not to suggest that an appellate court may reverse a judgment without a proper record; it simply clarifies that the appellant should not be penalized for any failure in transmitting the record (including any delay in producing a transcript of proceedings) if the deficiency is outside the appellant's control. *See*, *e.g.*, *Camp-Out, Inc. v. Adkins*, 6th Dist. No. WD-06-057, 2007-Ohio-447 (denying motion to dismiss based on missing transcript). *Cf. In re Efford*, 8th Dist. No. 77747, 2000 WL 1514100, *1 (Oct. 12, 2000) (dismissing appeal because of appellant's failure to ensure timely transmission of complete record).

Similarly, App.R. 10(C) is amended to clarify that an appellant will presumably have the requisite good cause for extending the time to transmit the record if the appellant has complied with all applicable requirements to arrange for both the transcribing of the recorded proceedings and transmission of the record. The reference in App.R. 10(C) to App.R. 30 is also corrected to App.R. 41.

Staff Notes (July 1, 2012 Amendments)

The amendments to App.R. 10(B) are largely stylistic, designed to clarify the prior rule language. Note that the additions to App.R. 10(B)(5) and 10(B)(6) now provide that the record is not complete, even after the standard time for preparing the record has expired, if there is a pending motion to extend that time.

[Effective: July 1, 1971; amended effective July 1, 1972; July 1, 1973; July 1, 1975; July 1, 1976; July 1, 1977; July 1, 1982; July 1, 2012; July 1, 2014.]

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 make reasonable arrangements to transmit the record timely, 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.

Staff Note (July 1, 2014 amendment)

App.R. 11(C) is amended to clarify that the appellant's duty is to make reasonable arrangements for the timely transmission of the record and that the appellant does not have the ability, and thus does not have the duty, to ensure that the record is transmitted once those reasonable arrangements have been made. That is not to suggest that an appellate court may reverse a judgment without a proper record; it simply clarifies that the appellant should not be penalized for any failure in transmitting the record (including any delay in producing a transcript of proceedings) if the deficiency is outside the appellant's control. *See*, *e.g.*, *Camp-Out, Inc. v. Adkins*, 6th Dist. No. WD-06-057, 2007-Ohio-447 (denying motion to dismiss based on missing transcript). *Cf. In re Efford*, 8th Dist. No. 77747, 2000 WL 1514100, *1 (Oct. 12, 2000) (dismissing appeal because of appellant's failure to ensure timely transmission of record).

[Effective: July 1, 1971; amended effective July 1, 1975; July 1, 1997; July 1, 2014.]

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.

In all capital cases, as defined in Crim.R. 42, the appeal of an order regarding appointment of experts shall, upon request by defense counsel, be under seal and conducted ex parte and shall be handled pursuant to an accelerated calendar under this rule and local rules adopting an accelerated calendar.

(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 appellant's brief within fifteen days after the date on which the clerk has mailed the notice required by App.R. 11(B). The appellee shall serve and file appellee's 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; July 1, 2013; July 1, 2017.]

Staff Notes (July 1, 2013 Amendments)

App.R.11.1(C) is amended to make the due date for the appellant's opening brief in accelerated calendar cases run from the date when the clerk has mailed the notice that the record is complete, as required by App.R. 11(B). This change brings the language of App.R. 11.1(C) into alignment with the corresponding language of App.R. 18(A), which governs the timing of the appellant's opening brief in regular calendar cases.

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) Prosecutorial appeals from suppression orders; appeals concerning dependent, abused, neglected, unruly, or delinquent children. Prosecutorial appeals under Crim.R. 12(K) and Juv.R. 22(F) and 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; July 1, 2001; July 1, 2015.]

Staff Note (July 1, 2015 amendment)

App.R. 11.2 lists various categories of expedited appeals that are entitled to priority over other appeals. The categories are amended to include prosecutorial appeals from suppression orders under Crim.R. 12(K) and Juv.R. 22(F), both of which provide for priority disposition.

Staff Note (July 1, 2001 Amendment)

Appellate Rule 11.2 Expedited Appeals

The amendment to App. R. 11.2 effective July 1, 2001 incorporated into one rule provisions for expedited appeals that previously had been in App. R. 7(C), App. R. 11.2, and Sup. R. 23(F) and 25. It provides that appeals in three categories of cases are to be expedited and given priority over all other civil, criminal, and administrative appeals. The first of the three categories includes cases concerning abortion-related appeals from juvenile courts. Sup. R. 23(F) and 25 address appeals of such cases. The second includes cases concerning adoption and termination of parental rights. App. R. 11.2 addressed appeals of such cases. The third includes cases concerning dependent, abused, neglected, unruly, or delinquent children. Prior to its amendment also effective July 1, 2001, App. R. 7(C) addressed appeals of such cases. To reflect the expanded scope of this rule, the title of the rule was changed from "Adoption and Parental Rights Appeals."

As amended, App. R. 11.2 also establishes a hierarchy among the three categories of cases. Abortion-related appeals from juvenile courts are to have the highest priority. Appeals of cases concerning adoption and termination of parental rights have priority over all cases except cases concerning abortion without parental consent. Appeals of cases concerning dependent, abused, neglected, unruly, or delinquent children are to have priority over all cases except cases concerning abortion without parental consent and cases concerning adoption and termination of parental rights.

App. R. 11.2(B)(1) – (8) generally recite the language of Sup. Rule 25(A) – (G) with two exceptions. The first exception is that the last sentence of App. R. 11.2(B)(3)(b) incorporates the last sentence of Sup. R. 23(F)(2). The second is that App. R. 11.2(B)(4) omits the last portion of Sup. R. 25(C), which states that papers and records in the appeal "are not public records under section 149.43 of the Revised Code."

Staff Note (July 1, 2000 Amendment)

Rule 11.2 Adoption and Parental Rights Appeals

In 1997, the federal government enacted the Adoption and Safe Families Act that reduces the length of time to find permanent homes for children who have been removed from their birth parents. In March 1999, Am. Sub. H.B. 484 of the 122nd General Assembly (Ohio's Adoption and Safe Families Act) became effective. The legislation was intended to accelerate the judicial process of finding permanent homes for children removed from their birth parents. It did not address the delays inherent in appeals of orders in that process.

This new rule addresses appeals of orders granting or denying adoptions of minors and terminations of parental rights, and provides for these cases to have priority in the courts of appeals.

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

(1) In any civil action or proceeding that 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 have not found any other prejudicial error of the trial court in any of the particulars assigned and argued in the appellant's brief, and have not found 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.

(2) In any civil action or proceeding that was tried to a jury, and when upon appeal all three judges hearing the appeal find that the judgment or final order rendered by the trial court on the jury's verdict is against the manifest weight of the evidence and have not found any other prejudicial error of the trial court in any of the particulars assigned and argued in the appellant's brief, and have not found 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 remand the case to the trial court for further proceedings.

(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.

Staff Note (July 1, 2015 amendment)

App.R. 12(C) is amended to avoid the implication of the former rule that a reversal on the manifest weight of the evidence was not available in civil cases tried to a jury. *See Eastley v. Volkman*, 4th Dist. Scioto Nos. 09CA3308, 09CA3309, 2010-Ohio-4771, ¶ 58 (Kline, J., dissenting), citing Painter & Pollis, Ohio Appellate Practice, Section 7:19 (2009-2010 Ed.), *rev'd*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517. The amendment clarifies that a manifest-weight reversal is available in civil cases tried to a jury, but there are distinctions. In a civil case tried to a court without a jury, a majority of the appellate court may reverse, and it may either remand the case for a new trial or enter judgment for the appellee. By contrast, in a case tried to a jury, a reversal on the manifest weight of the evidence must be unanimous, *see* Ohio Constitution, Article IV, Section 3(B)(3), and the trial court is permitted to reverse and remand, not to enter judgment for the appellee. *See Hanna v. Wagner*, 39 Ohio St.2d 64, 313 N.E.2d 842 (1974). In addition, the amendments remove the restriction in the current rule allowing an appellate court to reverse a judgment based on the manifest weight of the evidence only once in either instance.

[Effective: July 1, 1971; amended effective July 1, 1973; July 1, 1992; July 1, 2015.]

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, on or before the day of filing, be served by a party or person acting for the party on all other parties to the appeal as provided in division (C) of this rule, except that in expedited appeals under App.R. 11.2 and in original actions involving election issues, service of all documents (except the complaint filed to institute an original action) shall be in accordance with division (C)(1), (2), (5), or (6) at or before the time of filing. Service on a party represented by counsel shall be made on counsel.

(C) Manner of service. A document is served under this rule by:

(1) handing it to the person;

(2) leaving it:

(a) at the person’s office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(b) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(3) mailing it to the person's last known address by United States mail, in which event service is complete upon mailing;

(4) delivering it to a commercial carrier service for delivery to the person's last known address within three calendar days, in which event service is complete upon delivery to the carrier;

(5) leaving it with the clerk of court if the person has no known address; or

(6) sending it by electronic means to the most recent facsimile number or e-mail address listed by the intended recipient on a prior court filing (including a filing in the lower court) in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.

(D) Using court facilities. If a local rule so authorizes, a party may use the court's transmission facilities to make service under App.R. 13(C)(6).

(E) 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.

[Effective: July 1, 1971; July 1, 2001; July 1, 2012; July 1, 2015.]

Staff Note (July 1, 2015 amendment)

App.R. 13(B) is amended by correcting a typographical error. The reference to App.R. 11.1 has been changed to App.R. 11.2, as the need for immediate service applies in expedited appeals, not accelerated appeals.

App.R. 13 is also amended by adding a new division (D), permitting a party to use a court's transmission facilities to serve other parties by electronic means if so authorized by local rule, and the subsequent division of the rule is re-lettered accordingly. The amendment eliminates a duplication of effort resulting from the 2012 amendments to App.R. 13(C), which permitted a party to use electronic means to fulfill the party's App.R. 13 duty to serve all other parties but did not authorize the party to use the facilities of a local court's electronic filing system to perform that duty—even though, under local rules, the court's facilities nevertheless serve by electronic means all parties participating in the electronic filing system. The new provision is the same as Civ.R. 5(B)(3), as also adopted July 1, 2015.

Staff Note (July 1, 2001 Amendment)

Appellate Rule 13 Filing and Service
Appellate Rule 13(A) Filing

The amendments to this rule were part of a group of amendments that were submitted by the Ohio Courts Digital Signatures Task Force to establish minimum standards for the use of information systems, electronic signatures, and electronic filing. The substantive amendment to this rule was the addition of the last two sentences of division (A) and the addition of divisions (A)(1) – (3). Comparable amendments were made to Civil Rule 5, Civil Rule 73 (for probate courts), Criminal Rule 12, and Juvenile Rule 8.

As part of this electronic filing and signature project, the following rules were amended effective July 1, 2001: Civil Rules 5, 11, and 73; Criminal Rule 12; Juvenile Rule 8; and Appellate Rules 13 and 18. In addition, Rule 26 of the Rules of Superintendence for Courts of Ohio was amended and Rule of Superintendence 27 was added to complement the rules of procedure. Superintendence Rule 27 establishes a process by which minimum standards for information technology are promulgated, and requires that courts submit any local rule involving the use of information technology to a technology standards committee designated by the Supreme Court for approval.

Staff Notes (July 1, 2012 Amendments)

The amendment to App.R. 13(C) clarifies the various available methods of service and adds service by electronic means a permissible method. The language of the amendment largely tracks the language of the 2012 amendment to Civ.R. 5(B), so the rules are now linguistically consistent. App.R. 13(B) now also requires parties in expedited cases or original actions involving elections to use a method of service that ensures actual receipt of the filing on the day it is served.

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 for reconsideration or for en banc consideration pursuant to App. R. 26(A) shall not be granted except on a showing of extraordinary circumstances.

(C) Additional time after service by mail or commercial carrier service. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other document upon that party and the notice or paper is served upon the party by mail or commercial carrier service under App.R. 13(C)(4), three days shall be added to the prescribed period. This division does not apply to responses to service of summons in original actions.

[Effective: July 1, 1971; amended effective July 1, 1994; amended effective July 1, 2010; July 1, 2012.]

Staff Note (July 1, 2010 amendment)

The amendment is a technical amendment to reflect the procedure in App. R. 26.

Staff Notes (July 1, 2012 amendment)

The amendment to App.R. 14(C) now extends the “three-day rule” - traditionally available after service of a document by regular mail - to other service methods that do not provide same-day delivery to the recipient. The language of the amendment largely tracks the language of the 2012 amendment to Civ.R. 6(D).

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. Except as set forth in Rule 15(B), any party may file a response in opposition to a motion within ten days after service of the motion, and any party may file a reply in further support of a motion within seven days after service of the opposition, 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 a response or reply.

(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; amended effective July 1, 2010.]

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) Unnecessary attachments of legal authorities disfavored.

Parties are discouraged from attaching to briefs any legal authority generally accessible through online legal research databases. If determination of the assignments of error presented requires the consideration of legal authority not generally accessible through online legal research databases but available through another online resource, the citation in the brief to the authority should include the internet URL address where the authority is accessible. If determination of the assignments of error presented requires the consideration of legal authority not accessible through any online resource, 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; July 1, 2012; July 1, 2013.]

Staff Notes (July 1, 2013 Amendments)

Effective July 1, 2012, App.R. 16(E) was amended to make clear that parties need not attach to briefs any authority easily available on the Internet. Since adoption of the amendment, the Supreme Court Rules for the Reporting of Opinions have been amended to delete Rule 7(C) as referenced in App.R.16(E). Therefore, the current amendment deletes the superfluous language in the rule.

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.

[Effective: July 1, 1971; amended effective July 1, 1982; July 1, 2001.]

Staff Note (July 1, 2001 Amendment)

Appellate Rule 18 Filing and Service of Briefs
Appellate Rule 18(B) Number of copies to be filed and served

The amendments to this rule were part of a group of amendments that were submitted by the Ohio Courts Digital Signatures Task Force to establish minimum standards for the use of information systems, electronic signatures, and electronic filing. The substantive amendment to this rule was the addition of the last sentence of division (B).

As part of this electronic filing and signature project, the following rules were amended effective July 1, 2001: Civil Rules 5, 11, and 73; Criminal Rule 12; Juvenile Rule 8; and Appellate Rules 13 and 18. In addition, Rule 26 of the Rules of Superintendence for Courts of Ohio was amended and Rule of Superintendence 27 was added to complement the rules of procedure. Superintendence Rule 27 establishes a process by which minimum standards for information technology are promulgated, and requires that courts submit any local rule involving the use of information technology to a technology standards committee designated by the Supreme Court for approval.

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 contain more than 9,000 words, and no reply brief shall contain more than 4,500 words, exclusive of the cover page, table of contents, table of cases, statutes and other authorities cited, statement regarding oral argument, certificates of counsel, signature blocks, certificate of service, and appendices, if any. An initial brief and answer brief not exceeding 30 pages in length at 12-point font shall be presumed compliant with the 9,000 word limit, and a reply brief not exceeding 15 pages in length at 12-point font shall be presumed compliant with the 4,500 word limit. A court of appeals, by local rule, may adopt different word-count limitations, or page limitations, or both. In all proceedings involving post-conviction review of a capital case, as defined in Crim.R. 42, there shall be no word-count limitations. The signature of the attorney, or an unrepresented party, constitutes a certification that the document filed complies with the applicable word-count limitation. The person signing the document may rely on the word count of the word-processing system used to prepare the document.

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; July 1, 2017; July 1, 2020.]

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) Scheduling and requesting oral argument.

The court shall schedule oral argument in all cases, whether or not requested by a party, unless the court has adopted a local rule requiring a party to request oral argument. In the event of such a local rule, the court shall schedule oral argument at the request of any of the parties. Such a request shall be in the form of the words "ORAL ARGUMENT REQUESTED" displayed prominently on the cover page of the appellant's opening brief or the appellee's brief; no separate motion or other filing is necessary to secure oral argument. Notwithstanding any of the foregoing, the court is not required to schedule oral argument, even if requested, if any of the parties is both incarcerated and proceeding pro se.

(B) Notice of oral argument and of appellate panel.

(1) The court shall advise all parties of the time and place at which oral argument will be heard.

(2) No later than fourteen days prior to the date on which oral argument will be heard, the court of appeals shall make available to the parties the names of the judges assigned to the three-judge panel that will hear the case. If the case is submitted on briefs without oral argument, the court of appeals shall make available to the parties the names of the judges assigned to the three-judge panel that will hear the case no later than fourteen days prior to the date on which the case is submitted to the panel. If the membership of the panel changes after the names of the judges are made available to the parties pursuant to this rule, the court of appeals shall immediately make the new membership of the panel available to the parties.

(C) Time allowed for argument. Unless otherwise ordered, each side will be allowed fifteen minutes for argument. Either sua sponte or upon motion, the court may vary the time for oral argument permitted by this rule. Motions to vary the time for oral argument shall be filed at least fourteen days before the date scheduled for oral 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.

(D) Order and content of argument. The appellant is entitled to open and conclude the argument, except in the case of a cross appeal. 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.

(E) 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. Separate appellants or appellees shall share the fifteen minutes allowed to their side for argument unless pursuant to timely request the court grants additional time. Separate parties supporting the same side of an appeal may agree to divide their time however they choose.

(F) 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 appellee's counsel is present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

(G) 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.

(H) Motions.

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

(I) Citation of Additional Authorities. If counsel on oral argument intends to present authorities not cited in the brief, counsel shall, at least five days prior to oral argument, present in writing such authorities to the court and to opposing counsel, unless there is good cause for a later presentment.

[Effective: July 1, 1971; amended effective July 1, 1975; July 1, 1976; July 1, 2011; July 1, 2012; July 1, 2013; July 1, 2020.]

Staff Notes (July 1, 2013 Amendments)

The amendment to App.R. 21 requires that any additional authority must be presented at least five days before oral argument, unless there is good cause for later presentment, such as the unavailability of the authority until closer to the time of argument or thereafter.

Staff Note (July 1, 2011 amendment)

The amendment to App. R. 21(A) is designed to create a uniform state-wide practice for requesting oral argument for those districts that do not schedule it automatically.

RULE 22. Entry of Judgment

(A) Form. All judgments shall be in the form of a judgment signed by a judge or judges of the court which shall be prepared by the court and filed with the clerk for journalization. The clerk shall enter the judgment on the journal the day it is filed. A judgment is effective only when entered by the clerk upon the journal.

(B) Notice. Notice of the filing of judgment and its date of entry on the journal shall be made pursuant to App. R. 30.

(C) Filing. The filing of a judgment by the court with the clerk for journalization constitutes entry of the judgment.

[Effective: July 1, 1971; amended effective July 1, 1972; amended effective July 1, 2008]

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 no later than ten days after the clerk has both mailed to the parties the judgment or order of the court that creates a conflict with a judgment or order of another court of appeals and made note on the docket of the mailing, as required by App. R. 30(A). The filing of a motion to certify a conflict does not extend the time to appeal from the judgment of the court of appeals to the Ohio Supreme Court. 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 shall answer in writing within ten days of service of the motion. The moving party may file a reply brief within seven days after service of the answer brief in opposition. Copies of the motion, answer brief in opposition, and reply brief 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; amended effective July 1, 2010; July 1, 2011.]

Staff Note (July 1, 2010 amendment)

The amendment to division (A) is intended to ensure that the ten-day period for filing a motion to certify a conflict begins to run at the time the court of appeals first enters a judgment or order that creates an intra-district conflict. Subsequent motion practice under App. R. 26 does not extend that ten-day period if the conflict was already present in the court's original judgment. On the other hand, the ten days begin to run with the entry of a judgment or order ruling on an application for reconsideration or en banc consideration under App. R. 26(A) if the intra-district conflict first arises in the court's ruling on that application.

The amendment to division (B) ensures a responding party's full ten-day response period, even if that party does not receive the motion on the day it is filed. Because the ten-day response period now begins to run from the date of service, a party served by mail now has an extra three days to file an opposition. See App. R. 14(C). The amendment to division (B) also permits the moving party a reply in support of the motion within seven days of service of the opposition; this clarification avoids any ambiguity about the right to file a reply in support of a motion under App. R. 15(A).

Staff Note (July 1, 2011 amendment)

App. R. 25(A) has been amended in two ways. The first amendment changes the event that starts the running of the ten-day period for filing a motion to certify an inter-district conflict. Under the former rule, the motion was due within ten days of the entry of the judgment or order first creating the conflict; under the amended rule, the motion is due within ten days of the clerk's compliance with the mailing and docketing requirements of App. R. 30(A).

The second amendment is merely a clarification that any subsequent appeal, the time for which is not extended by a motion to certify a conflict, lies in the Ohio Supreme Court. No substantive change is intended by this clarification.

Rule 26. Application for reconsideration; Application for en banc consideration; Application for reopening.

(A) Application for reconsideration and en banc consideration.

(1) Reconsideration

(a) Application for reconsideration of any cause or motion submitted on appeal shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App. R. 30(A).

(b) Parties opposing the application shall answer in writing within ten days of service of the application. The party making the application may file a reply brief within seven days of service of the answer brief in opposition. Copies of the application, answer brief in opposition, and reply brief 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.

(c) The application for reconsideration shall be considered by the panel that issued the original decision.

(2) En banc consideration

(a) Upon a determination that two or more decisions of the court on which they sit are in conflict, a majority of the en banc court may order that an appeal or other proceeding be considered en banc. The en banc court shall consist of all full-time judges of the appellate district who have not recused themselves or otherwise been disqualified from the case. Consideration en banc is not favored and will not be ordered unless necessary to secure or maintain uniformity of decisions within the district on an issue that is dispositive in the case in which the application is filed.

(b) The en banc court may order en banc consideration sua sponte. A party may also make an application for en banc consideration. An application for en banc consideration must explain how the panel's decision conflicts with a prior panel's decision on a dispositive issue and why consideration by the court en banc is necessary to secure and maintain uniformity of the court's decisions.

(c) The rules applicable to applications for reconsideration set forth in division (A)(1) of this rule, including the timing requirements, govern applications for en banc consideration. Any sua sponte order designating a case for en banc consideration must be entered no later than ten days after the clerk has both mailed the judgment or order in question and made a note on the docket of the

mailing as required by App.R. 30(A). In addition, a party may file an application for en banc consideration, or the court may order it sua sponte, within ten days of the date the clerk has both mailed to the parties the judgment or order of the court ruling on a timely filed application for reconsideration under division (A)(1) of this rule if an intra-district conflict first arises as a result of that judgment or order and made a note on the docket of the mailing, as required by App.R. 30(A). A party filing both an application for reconsideration and an application for en banc consideration simultaneously shall do so in a single document.

(d) The decision of the en banc court shall become the decision of the court. In the event a majority of the full-time judges of the appellate district is unable to concur in a decision, the decision of the original panel shall remain the decision in the case unless vacated under App. R. 26(A)(2)(c) and, if so vacated, shall be reentered.

(e) Other procedures governing the initiation, filing, briefing, rehearing, reconsideration, and determination of en banc proceedings may be prescribed by local rule or as otherwise ordered by 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.

[Effective: July 1, 1971; amended effective July 1, 1975; July 1, 1993; July 1, 1994; July 1, 1997; July 1, 2010; July 1, 2011; July 1, 2012.]

Staff Note (July 1, 2010 amendment)

App. R. 26(A) has now been subdivided into two provisions: App. R. 26(A)(1) governs applications for reconsideration (former App. R. 26(A)), while App. R. 26(A)(2) is a new provision governing en banc consideration.

The amendment to former App. R. 26(A) (now App. R. 26(A)(1)) contemplates a future amendment to the Supreme Court Practice Rules that will extend the time to appeal to the Supreme Court if a party has filed a timely application for reconsideration in the court of appeals. It also ensures a responding party's full ten-day response period, even if that party does not receive the application on the day it is filed. Because the ten-day response period now begins to run from the date of service, a party served by mail now has an extra three days to file an opposition. See App. R. 14(C). Finally, the amendment permits the moving party a reply in support of the application within seven days of service of the opposition; this clarification avoids any ambiguity about the right to file a reply in support of a motion under App. R. 15(A).

The addition of App. R. 26(A)(2) is designed to address the Supreme Court's decision in *McFadden v. Cleveland State Univ.*, 120 Ohio St.3d 54, 2008-Ohio-4914, 896 N.E.2d 672 and, in particular, the holding that "if the judges of a court of appeals determine that two or more decisions of the court on which they sit are in conflict, they must convene en banc to resolve the conflict." Id., paragraph two of the syllabus. The new provision establishes a standard for parties to seek en banc consideration under the same procedures that govern applications for reconsideration under App. R. 26(A)(1), except that a party may also seek consideration en banc within ten days of a judgment or order ruling on an application for reconsideration if that ruling itself creates an intra-district conflict that did not appear from the panel's original decision. The new provision also allows courts of appeals to establish their own procedures to the extent consistent with the statewide rule.

Former App. R 26(C), which required courts of appeals to decide applications for reconsideration within 45 days, has been eliminated in anticipation of an amendment to the Supreme Court Rules of Practice that will toll the time to appeal to the Supreme Court if a party has filed a timely application for reconsideration or en banc consideration in the court of appeals.

Staff Note (July 1, 2011 amendment)

There are two amendments to App. R. 26(A)(1)(a). The first changes the event that starts the running of the ten-day period for filing an application for reconsideration. Under the former rule, the motion was due before the judgment or order of the court was approved by the court and filed by the court with the clerk for journalization or within ten days of the announcement of the court's decision, whichever was later. Under the amended rule, the motion is due within ten days after the clerk complies with the mailing and docketing requirements of App. R. 30(A). And because the timing requirements for applications for reconsideration under App. R. 26(A)(1)(a) also govern the timing for filing an application for en banc consideration under App. R. 26(A)(2), the clerk's compliance with the mailing and docketing requirements of App. R. 30(A) also now trigger the time to file an application for en banc consideration. The second amendment to App. R. 26(A)(1)(a) deletes language warning that an application for reconsideration did not extend the time to appeal to the Ohio Supreme Court; effective July 1, 2010, a timely filed application for reconsideration under App. R. 26(A)(1) or for en banc consideration under App. R. 26(A)(2) *does* extend the time to appeal to the Ohio Supreme Court under S.Ct. Prac. R. 2.2(A)(5) and (6).

There are also several amendments to App. R. 26(A)(2). Two of them are clarifications. The first clarification appears in App. R. 26(A)(2)(a) and is designed to clarify that a majority of the "en banc court", a defined term that does not include judges who have recused themselves or been disqualified, must agree to consider a case en banc. By contrast, under App. R. 26(A)(2)(d), in order to render an en banc decision, "a majority of the full-time judges of the appellate district" including those who do not actually participate in the en banc consideration, must agree. The second clarification appears in App. R.

26(A)(2)(b), which expressly permits the en banc court to decide sua sponte to consider a case en banc. No substantive changes are intended by either of these amendments.

Two substantive amendments to App. R. 26(A)(2)(c) govern the process for sua sponte en banc consideration. First, the rule now specifies that any sua sponte decision to consider a case en banc must be made within ten days of the date the clerk complies with the mailing and docketing requirements of App. R. 30(A). The former rule included no time limit for a sua sponte decision to consider a case en banc, and this addition was intended to ensure finality to the appellate process. Second, if the court decides sua sponte to consider a case en banc, it must vacate the judgments or orders in the case that will be considered en banc so that the time for a party to appeal to the Ohio Supreme Court does not run concurrently with the court's sua sponte en banc consideration. A recent amendment to the Supreme Court Practice Rules extends the time to appeal to the Ohio Supreme Court in the event that a *party* files a timely application for en banc consideration, but there is no such provision in the event the court of appeals decides sua sponte to consider a case en banc. See S.Ct. Prac. R. 2.2(a)(6).

Staff Notes (July 1, 2012 amendment)

The amendment to App.R. 26(A)(2)(c) removes language added in 2011 that required a court of appeals to vacate a panel decision in the event of a *sua sponte* decision to consider a case en banc. That language was added to ensure that a party's time to appeal to the Supreme Court would not begin to run while en banc consideration was pending. But the language is no longer necessary in light of a 2011 amendment to S.Ct.Prac.R. 2.2.

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.]

RULES 31-33. [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.]

RULES 35-40 [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.

(T) 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.

(U) Effective date of amendments. The amendments to Appellate 22 filed by the Supreme Court with the General Assembly on January 14, 2008 and refiled on April 28, 2008 shall take effect on July 1, 2008. 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.

(V) Effective date of amendments. The amendments to Appellate 4 filed by the Supreme Court with the General Assembly on January 14, 2009 and refiled on April 30, 2009 shall take effect on July 1, 2009. 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.

(W) Effective date of amendments. The amendments to Rules 14, 15, 25, and 26 filed by the Supreme Court with the General Assembly on January 14, 2010 and revised and refiled on April 28, 2010 shall take effect on July 1, 2010. 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.

(X) Effective date of amendments. The amendments to Rules 4, 9, 21, 25, and 26 filed by the Supreme Court with the General Assembly on January 5, 2011 and revised and refiled on April 21, 2011 shall take effect on July 1, 2011. 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.

(Y) Effective date of amendments. The amendments to Rules 4, 10, 13, 14, 16, 21, 26, and 43 filed by the Supreme Court with the General Assembly on January 13, 2012 and revised and refiled on April 30, 2012 shall take effect on July 1, 2012. 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.

(Z) Effective date of amendments. The amendments to Rules 3, 4, 9, 11.1, 16, 21, and 43 filed by the Supreme Court with the General Assembly on January 15, 2013 and revised and refiled on April 29, 2013 shall take effect on July 1, 2013. 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.

(AA) Effective date of amendments. The amendments to Rules 4, 9, 10, and 11, and 43 filed by the Supreme Court with the General Assembly on January 15, 2014 and revised and refiled on April 30, 2014 shall take effect on July 1, 2014. 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.

(BB) Effective date of amendments. The amendments to Rules 3, 9, 11.2, 12, 13, and 43 filed by the Supreme Court with the General Assembly on January 15, 2015 and revised and refiled on April 30, 2015 shall take effect on July 1, 2015. 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.

(CC) Effective date of amendments. The amendments to Rules 11.1 and 19 filed by the Supreme Court with the General Assembly on January 6, 2017 and revised and refiled on April 26, 2017 shall take effect on July 1, 2017. 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.

(DD) Effective date of amendments. The amendments to Rules 3 and 5 filed by the Supreme Court with the General Assembly on January 9, 2019 and revised and refiled on April 24, 2019 shall take effect on July 1, 2019. 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.

(EE) Effective date of amendments. The amendments to Appellate Rules 3, 19, and 21, filed by the Supreme Court with the General Assembly on January 15, 2020 and refiled on

March 12, 2020 and April 22, 2020 shall take effect on July 1, 2020. 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.

APPENDIX OF FORMS

INTRODUCTORY STATEMENT

The forms which follow are intended for illustration only.

Departures from the forms shall not void papers which are otherwise sufficient, and the forms may be varied when necessary to meet the facts of a particular case.

Where appropriate, the forms assume that the action was brought in the Court of Common Pleas, Franklin County, Ohio.

FORM 1. NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT OR APPEALABLE ORDER

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

A.B.	)	
221 E. West Street	)	
Columbus, Ohio 43215	)	NO. _____
Plaintiff	)	
v.	)	NOTICE OF APPEAL
C.D.	)	
122 W. East Street	)	
Columbus, Ohio 43214	)	
Defendant-Appellant	)	

Notice is hereby given that C.D., defendant, hereby appeals to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District (from the final judgment), from the order (describing it) entered in this action on the _____day of _____, 19_.

_____
(Attorney for Defendant)

_____
(Address)

NOTE: The above form is designed for use in courts of common pleas. Appropriate changes in the designation of the court are required when the form is used for other courts.

[Effective: July 1, 1971.]

FORM 2. DOCKETING STATEMENT

COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

A.B.	)	
221 East West Street	)	
Columbus, Ohio	)	
Plaintiff	)	
v.	)	NO. CV-1981-453
C.D.	)	
122 West East Street	)	
Columbus, Ohio	)	
Defendant	)	

DOCKETING STATEMENT

(Insert one of the following statements, as applicable):

(1) No transcript is required.

(2) The approximate number of pages of transcript ordered is __.

(3) An agreed statement will be 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 as shown by the attached statement approve assignment of the appeal to the accelerated calendar.

(6) The case is of a category designated for the accelerated calendar by local rule. (Specify category.)

_____
Attorney for Appellant

[Effective: July 1, 1982.]

FORM 3
JUDGMENT ENTRY - ACCELERATED CALENDAR

TENTH DISTRICT COURT OF APPEALS
FRANKLIN COUNTY

A.B., 221 East West Street, Columbus, Ohio,	:	
Plaintiff,	:	
v.	:	No. CV-1981-453
C.D., 122 West East Street, Columbus, Ohio,	:	
Defendant.	:	

JUDGMENT ENTRY

Assignment of error number one is overruled for the reason that the trial court's instruction on the burden of proof was correct. See Jones v. State (1980), 64 Ohio St. 2d 173.
Assignment of error number two is overruled as there was sufficient evidence presented (see testimony of Smith, R. 22) to support a factual finding of agency.
The judgment of the trial court is affirmed.

_____
Judge, Presiding Judge

_____
Judge

_____
Judge

[Effective: July 1, 1992].