

# The Appellate Process and Local Practice

**1. NOTICE OF APPEAL:** (See **App R 3** and **App R 4**) The Notice of Appeal must be filed within 30 days of entry by the trial court of the final appealable order. (See **R.C. 2505.02** and **Crim.R. 32.**)

**2. DOCKET STATEMENT:** (See **Local R. 3.2**) The Docket Statement should be filed with the Notice of Appeal.

**NOTE:** The Conference-Attorney of the Court reviews all Docket Statements and makes the initial determination as to which track or course the case will take. If it is a civil case, it may be set for a settlement conference or placed on the Court's regular or accelerated calendar. If it is a criminal case, it is placed either on the regular or accelerated calendar.

Failure to file the Docket Statement timely will result in the Court issuing a Show Cause Order providing an additional seven days for filing. Failure to comply with the Show Cause Order may result in a dismissal of the appeal.

The Docket Statement must be completed, especially the section as to the type of record to be filed. If a transcript of proceedings is going to be filed, be sure to get the court reporter's certification and make the appropriate arrangements for filing.

**3. SCHEDULING ORDER:** (See **Local R. 3.2**) The Scheduling Order establishes the time frame for the appellate process and indicates to you whether the case is placed on the accelerated or regular calendar. The Scheduling Order normally will be issued in two or three weeks from the filing of the Notice of Appeal and the Docket Statement.

**4. RECORD:** (See **App R 9** and **App R 10**) The record may consist of two parts: (1) the transcript of the docket and journal from the trial court, and (2) a transcript of proceedings. Once the Scheduling Order has been issued the Court awaits the timely filing of the record. Remember: The appellate court is a review court. The Court only reviews the record that is transmitted and certified by the trial court and a transcript of proceedings, if one is filed. Failure to file the record may result in a dismissal of the appeal.

**A. DOCKET AND JOURNAL ENTRIES:** Normally the Clerk will file the docket and journal within the time frame originally established for filing the record in the Scheduling Order. When the docket and journal is filed, the Clerk will send a postcard to all counsel indicating that the record (either including or excluding a transcript of proceedings) has been filed. Caution: After counsel receives this notice, counsel should go to the Clerk's Office to verify that the complete docket and journal has been filed. Remember: The Clerk only transmits those papers that are filed and appear on the trial court docket.

**B. TRANSCRIPT OF PROCEEDINGS:** Do not rely on the Court Reporter to file the transcript. Prior to the deadline, check with the reporter to make sure the transcript will be timely filed. If additional time is needed to file the transcript of proceedings, counsel should obtain an affidavit from the Court Reporter as to why the transcript cannot be timely filed and file a motion to extend time. Attach the affidavit from the Court Reporter, as well as an entry granting the extension of time.

**NOTE:** Exhibits are most frequently retained by the trial court exhibit personnel and are presented to this Court upon request.

**NOTE:** It is counsel's duty to see to it that a record sufficient to exemplify the error is timely filed.

Always double-check to make sure everything is filed.

**5. BRIEFS:** (See **App R 16** and **Local R. 16.1**) The Court awaits the filing of the appellant's brief pursuant to the Scheduling Order.

**NOTE:** If an extension of time was granted for filing the record, there is not an automatic extension for the briefs. The Court anticipates that the briefs will be filed pursuant to the original Scheduling Order. If additional time is needed, a motion to extend time for the brief must be filed.

**A.** The Appellate Rules and the Local Rules have established guidelines as to the form and content of briefs. Be mindful of whether the case is on the accelerated or regular calendar because there are different rules relative to the length of the briefs. Accelerated cases are limited to 15 pages with no reply briefs, and regular cases are limited to 35 pages. Scheduling Orders do not provide specific dates for the filing of reply briefs. Reply briefs are due 10 days after service of the appellee's brief and are limited to 10 pages.

It should be noted that the rules require the appellant to state "assignments of error," not propositions of law, and require citations to the specific part of the record where the error occurred.

**NOTE: Local R. 16.1(A)(6)(a)** requires the appellant to append to its brief true and accurate copies of the final order(s) from which the appeal is taken, and if available, the trial court's opinion or findings of fact and conclusions of law. **Local R. 16(F)** requires the use of parallel citations to the Northeastern Reporter. If a brief exceeds the page limit, is not double-spaced, or otherwise violates the general or Local Rules, the Court will strike the brief and order an amended brief to be filed.

**NOTE:** An original and three copies must be filed with the Clerk and a copy must be sent to opposing counsel.

**6. ARGUMENT:** (See **Local R. 21.1**) The time between the filing of the Notice of Appeal and oral argument for is averaging 6 - 9 months. Normally the Court provides 60 days notice for merit hearings. Each side is permitted fifteen minutes for argument. Any requests to submit on briefs must be made in writing and submitted at least three days prior to argument.

**NOTE:** Do not assume your request to submit has been granted. You may verify that the appeal has been submitted by checking the calendar on the website: <http://www.hamilton-co.org/appealscourt/calendar>

**7. RELEASE OF DECISION:** The Court releases Judgment Entries, Decisions, and Opinions on Wednesdays and Fridays each week. It normally takes between 30 to 60 days from argument to release.

#### **8. SPECIAL REMINDERS:**

**A.** The administrative staff of the Court reviews Docket Statements and Notices of Appeal for timeliness, finality and/or appealability.

**B.** When completing the Docket Statement counsel should pay special attention to the boxes they are checking regarding the record. If you indicated that a transcript of proceedings, an **App R 9(C)** statement, or an agreed statement pursuant to **App R 9(D)** will be filed, the Court expects one and may dismiss the case if one is not timely filed.

**C.** The Court uses the Docket Statement to determine if the case is placed on the regular or accelerated

calendar. Read the Scheduling Order to find out which applies to your case.

**D.** Once the Court issues a Scheduling Order it is reluctant to grant extensions; however, if an extension is needed, counsel must file an original and 1 copy of the motion, as well as a proposed entry. If the complete record or the brief of the appellant is not timely filed, the Court will dismiss the appeal.

**E.** The Clerk sends a postcard providing notice that an entry has been placed of record and usually notes the date to which the time has been extended.

**F.** The rules require that applications for a stay of execution (see **App R 7** and **App R 8**) must be filed, in the first instance, in the trial court. If the trial court denies the motion it may then be filed in the Court of Appeals. When a motion for stay is filed in this Court, the Court will contact opposing counsel, and depending on the circumstances of the case, provide a date certain for a responsive memorandum. When the response is filed the motion and memo will be submitted to a three-judge panel for a determination. Make sure you say everything you want to say in the memorandum as the Court rarely has hearings on these motions.

**G.** Cross-appeals. (See **App R 3** and **App R 4**) This rule provides that any other party may file an appeal within the appeal time period or within 10 days of the filing of the first notice. The Court has ruled that cross-appeals should be given separate case numbers by the Clerk and that the appeals can then be consolidated. When there is a cross-appeal the Court usually consolidates the appeals and issues a Scheduling Order or an Amended Scheduling Order, providing that the original appellant file the first brief followed by one brief from the appellee/cross-appellant, then one brief from the appellant/cross-appellee. Using this procedure, we minimize the number of briefs to be filed.

**H.** Supplemental Records. There are occasions when counsel finds that the record transmitted and certified by the Clerk is incomplete, or perhaps the Court has remanded the appeal to the trial court for some limited purpose. Remember: Once the Clerk files the record in the Court of Appeals, nothing else from the trial court will be certified or transmitted unless a supplemental praecipe is filed with the Clerk. Remember also that **App R 9(E)** permits the trial court to correct the record. Normally the Court of Appeals will not order the correction or modification of records, because the Court believes that the trial court is in the best position to do this. If counsel finds that the appellate record needs to be supplemented, counsel should file a supplemental praecipe with the Clerk of the trial court and then walk it through the Clerk's Office to make sure the appropriate person receives it.