

**A GUIDE TO
SELF-REPRESENTATION
IN THE
FOURTH DISTRICT
COURT OF APPEALS
OF OHIO**

INTRODUCTION

The Fourth District Court of Appeals serves the parties and courts in the following counties: Adams; Athens; Gallia; Highland; Hocking; Jackson; Lawrence; Meigs; Pickaway; Pike; Ross; Scioto; Vinton; and Washington. The Court currently has offices located in Athens, Ross, and Scioto Counties.

This handbook is intended to assist those parties representing themselves in the Court of Appeals in both criminal and civil cases. The material provided is not legal advice and may not be used as legal authority. The handbook is merely a general summary of the applicable rules. Because the rules themselves are subject to change, parties should consult them directly. Parties appearing in the Court of Appeals should refer to the Ohio Rules of Appellate Procedure, which are available at local law libraries and the Supreme Court of Ohio's website, and the local rules of the Fourth District Court of Appeals, which are available at the Clerk of the Common Pleas Court and the Supreme Court of Ohio's website.

Individuals may appear in the Court of Appeals without a lawyer; however, most people find that retaining counsel is beneficial. Be aware that if you choose to pursue an appeal without the assistance of an attorney, you still must comply with the appellate rules and any order issued by the Court of Appeals. If you do not, the Court of Appeals may dismiss your case or impose other sanctions.

When hearing an appeal, the Court of Appeals does not retry a case, accept new evidence, or weigh the credibility of witnesses. Rather, the Court of Appeals merely reviews what happened in the trial court and determines whether (1) a mistake occurred and (2) if that mistake adversely affected the outcome. Because it cannot accept new evidence, the Court of Appeals is limited to the record transmitted from the trial court, the briefs of the parties, and oral argument, if requested.

To file a document in the Court of Appeals, you must present it to the clerk of the Common Pleas Court where the action originated because the clerk of the Common Pleas Court also acts as the clerk of the Court of Appeals.

Please note that the Code of Judicial Conduct prohibits judges from speaking with the parties outside of formal court proceedings. Furthermore, although no employee of the Court of Appeals can give you legal advice, the Court will help with procedural questions when possible. If you have any questions that this handbook does not answer, you may contact our court administrator in the Pickaway County office at (740) 420-5110.

DEFINITIONS

Appeal

A review by the Court of Appeals of the proceedings in the trial court to determine if mistakes occurred, and if so, whether the mistakes adversely affected the outcome.

Appellant

The party taking or prosecuting the appeal from a lower to a higher court.

Appellee

The party who was successful in the trial court and opposes a reversal or modification of the judgment.

Assignment of Error

A statement describing the error the appellant believes justifies the reversal or modification of the trial court's judgment.

Brief

A written argument by the parties in support of their claims in the case. The brief will address specific errors that the appellant asserts occurred in the trial court, or if filed by the appellee, inform the Court of Appeals why the trial court's judgment should be affirmed. [**App.R. 16; App.R. 19**]

Citation

A reference to legal authority, such as a case or statute, or a reference to the record.

Cross-Appeal

A second appeal filed by a party to the action whose interests are not the same as the first appellant's interests but who still wishes to reverse the trial court's judgment. [**App.R. 3(C)**]

Cross-Appellant

A party who files a cross-appeal. [**App.R. 3(C)(1)**]

Cross-Appellee

A party who opposes the cross-appellant's appeal, usually the original appellant. [**App.R. 3(C)(1)**]

Exhibit

A document or object formally presented to the trial court as evidence.

Interlocutory Order

An order that decides a particular issue in a case but not the entire case itself. Some interlocutory orders are immediately appealable. Most, however, cannot

be appealed until the entire case is finished.

Jurisdiction

The authority of a court to consider a case and take action. If a court does not have jurisdiction, it cannot proceed and must dismiss the case.

Motion

A written request asking the court to make a specific ruling or grant some form of relief. [**App.R. 15**]

Notice of Appeal

The paper filed with the clerk of the trial court giving notice that the person appealing is dissatisfied with the judgment of that court and is seeking review of the case by a higher court. [**App.R. 3(A)**]

Opinion

The final written decision of the Court of Appeals, including the reasons for that decision and the facts on which it is based.

Oral Argument

An in-court oral presentation by the parties giving the reasons the Court of Appeals should affirm, reverse, or modify a trial court's judgment. [**App.R. 21 and Loc.R. 12**]

Proof of Service/Service

When a party files a document other than the notice of appeal with the Court of Appeals, it must serve a copy of the document on the opposing party and provide "Proof of Service." The Court of Appeals cannot consider a document unless proof of service is endorsed on the document or filed separately. The proof of service must include the date of service, the manner of service, and the names of the persons served. [**App.R. 13(D)**] If a party is represented by counsel, service must be made on counsel. Service may be personal or by mail, and must be done at or before the time of filing the document with the clerk. [**App.R. 13(B) and (C)**]

Pro Se

A person who appears before the Court of Appeals without counsel.

Record

The record consists of (1) all original papers and any exhibits filed in the trial court, (2) the transcript of proceedings, and (3) a certified copy of the docket and journal entries prepared by the clerk of the trial court. [**App.R. 9**]

Standard of Review

The rules or guidelines the Court of Appeals uses to determine whether a trial court's judgment is erroneous. Most standards of review require the Court of

Appeals to give deference to the trial court's decision, rather than "second guess" the lower court.

Statement of the Case

The procedural history of the case on appeal.

Statement of Facts

The facts as found by a jury or the trial court.

Table of Authorities

A listing of all cases, statutes, and other authorities in a brief with the page number on which each was used.

Table of Contents

A listing of all sections of a brief by page number.

Transcript of Proceedings

The typewritten record of everything that occurred at a trial or hearing that is prepared by the court reporter. If a video tape recording is made of the proceedings, it shall, when properly certified, be considered a transcript of proceedings. However, the appellant is obligated to transcribe and append to its brief the necessary portions of the videotape to demonstrate an assignment of error.

Transmission of Record

The transfer by the trial court clerk of the papers defined as the record to the clerk of the Court of Appeals. [App.R. 10]

WHAT JUDGMENTS MAY BE APPEALED TO THE COURT OF APPEALS?

The Court of Appeals has jurisdiction to review final appealable orders issued by a trial court and some administrative agencies. An order generally is final and appealable if it disposes of a whole case and leaves nothing else to resolve. That means the Court of Appeals generally cannot review a case until it is over. And although there are some orders disposing of only part of a case that the Court of Appeals can consider, those situations are too complex to explain in this handbook.

In criminal cases, a party may file a notice of appeal following the imposition of sentence. The state also has a limited right to appeal adverse decisions, either immediately after the decision is made or following sentencing.

The Court of Appeals also has original jurisdiction over writs of habeas corpus, mandamus, procedendo, prohibition, and quo warranto. Original jurisdiction means the Court of Appeals acts as a trial court rather than a reviewing court.

HOW DO I FILE AN APPEAL?

You must file a timely notice of appeal with the clerk of the trial court. **[App.R. 3(A)]** You should provide the clerk of the trial court with the original notice, 4 copies for the Court, and a copy for every party to the appeal. If two or more persons are entitled to appeal from a judgment, and joinder is practicable, they may file a joint notice of appeal or may join in appeal after filing separate timely notices of appeal. The parties may then proceed on appeal as a single appellant. **[App.R. 3(B)]**

If another party already has filed a notice of appeal and you intend to not only defend that judgment but also ask the Court of Appeals to change parts of it as well, you must file a notice of cross-appeal. **[App.R. 3(C)]** A notice of cross-appeal is not necessary if you are just defending the judgment, even if your defense rests on reasons different from the trial court.

Once a party files a notice of appeal, the clerk will serve notice of the filing to the 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 also will forward a copy of the notice of appeal to the clerk of the Court of Appeals. **[App.R. 3(E)]**

WHEN MUST I FILE MY NOTICE OF APPEAL?

Generally, you must file a notice of appeal within 30 days of the entry of the judgment that you wish to appeal. That does not mean 30 days from the day you receive a copy of the judgment, but rather, 30 days from the date it was filed with the clerk. **[App.R. 4(A)]** If you are filing a cross-appeal, you must file your notice of appeal within 30 days of the entry of judgment or within 10 days after the filing of the first notice of appeal,

whichever is later. **[App.R. 4(B)(1)]** Exceptions to the general rule can be found in **App.R. 4(B)(1)-(5)**.

Neither the trial court nor the Court of Appeals can extend the time for filing a notice of appeal. **[App.R. 14(B)]** Moreover, a timely notice of appeal is jurisdictional. This means that if you do not file your appeal on time the Court of Appeals cannot hear it and must dismiss the case.

In criminal, delinquency, and serious youthful offender proceedings, a person may file a motion for leave to file a delayed appeal after the expiration of the 30-day period provided in **App.R. 4(A)**. **[App.R. 5(A)]** The person requesting leave to file a delayed appeal must file the motion with the clerk of the Court of Appeals. At the same time, the person also must file a notice of appeal with the clerk of the trial court and a copy of the notice of appeal with the clerk of the Court of Appeals. In the motion, the person must explain the reasons for the failure to file a timely notice of appeal. If the Court of Appeals grants the motion, the case will proceed as a timely filed appeal. There is no similar provision for seeking a delayed appeal in a civil case.

WHAT MUST I INCLUDE WITH MY NOTICE OF APPEAL?

The notice of appeal must specify the party taking the appeal, the judgment you are appealing, and the court to which you are appealing. The title of the case is the same as in the trial court. **[App.R. 3(D)]**

You must decide if you need a transcript of the proceedings to win your appeal. Generally, when you believe a mistake occurred during a hearing or at trial, you must provide the Court of Appeals with a transcript of that hearing or portion of the trial. Without a transcript of those proceedings, the Court of Appeals will have no way to review what happened. In that instance, the law requires the Court of Appeals to presume the trial court acted properly. Because the law also requires the appellant to identify both the mistake and where it occurred in the record, in most situations you cannot win an appeal without the transcript when you allege that the error occurred during a hearing or at trial. On the other hand, if the error you allege occurred solely on the basis of the trial court's action upon a document or written motion, such as summary judgment or a motion to dismiss, a transcript is not necessary; the document or motion and the exhibits will enable the Court of Appeals to review the decision.

If you need a transcript, you must order it from the court reporter at the time you file your notice of appeal. You order the transcript by filing a request, directed to the court reporter, with the clerk of the trial court. The court reporter may require you to provide a deposit for preparing the transcript.

Unless the appellant orders a full transcript, in addition to the notice of appeal you must file a designation in writing stating (1) if a partial transcript is ordered, what parts are ordered, (2) a transcript of proceedings will not be filed, or (3) an alternative to the

transcript (i.e., a statement of proceedings or an agreed statement pursuant to **App.R. 9**) will be filed. If you do not order a complete transcript, the appellant must also file proposed assignments of error on a document separate from the docket statement. You must serve both the designation and proposed assignments of error upon the appellee. If you request a full transcript, there is no need to file the designation or assignments of error. [**App.R. 9(B)**]

You must also file the following documents with the notice of appeal: (1) a civil or criminal docket statement [**Loc.R. 17**]; and (2) a copy of the judgment entry from which the appeal is taken [**Loc.R. 1**].

You must provide an \$85.00 cost deposit with the notice of appeal. [**Loc.R. 3**] However, the Court of Appeals may waive the cost deposit if you file an affidavit of indigency or suitable substitute affirming your inability to pay the deposit. Costs still will be awarded in favor of the prevailing party when the Court of Appeals renders its decision.

If you do not include everything required when you file your notice of appeal, the clerk of the trial court will send you a deficiency notice. The deficiency notice will tell you what is missing and advise you that the Court of Appeals may dismiss the case if you do not correct the deficiencies in a timely manner.

WHAT IS A STAY AND HOW DO I OBTAIN ONE?

A stay is an order to suspend a judicial proceeding or a judgment resulting from a judicial proceeding. Before asking the Court of Appeals to issue a stay or suspend the execution of sentence and admit a person to bail pending appeal, you must first make the request in the trial court. [**Loc.R. 15**] Only after the trial court denies the request, fails to act, or if application to the trial court would be impractical will the Court of Appeals consider the matter. A stay may be conditioned upon the filing of a bond or other appropriate security in the trial court.

WHAT IS THE RECORD ON APPEAL?

The record consists of (1) the original papers and exhibits filed in the trial court, (2) the transcript of proceedings, and (3) a certified copy of the docket and journal entries prepared by the clerk of the trial court. [**App.R. 9(A)**]

WHO IS RESPONSIBLE FOR OBTAINING THE RECORD?

It is the appellant's responsibility to order, in writing, a complete transcript, or a transcript of the parts of the proceedings the appellant considers necessary for inclusion in the record. The appellant must direct this request to the court reporter at the time of

filing the notice of appeal. [**App.R. 9(B)**] Unless the entire transcript is to be included, the appellant must file with the clerk of the trial court and serve on the appellee a description of the parts of the transcript the appellant intends to include in the record, a statement that no transcript is necessary, or a statement that an alternative to a transcript is necessary. If the appellant does not order a complete transcript, it must serve the appellee with a statement of your assignments of error at the time of filing the notice of appeal. This allows the appellee to decide if more of the transcript is needed to support its position.

If the appellee considers a transcript of other parts of the proceedings necessary, it may, within 10 days of the appellant's statement, file and serve the appellant a designation of additional parts to be included. If the appellant refuses to or does not order the additional parts within 10 days, the appellee must either order the parts from the court reporter or ask the Court of Appeals to require the appellant to do so.

WHEN WILL THE CLERK TRANSMIT THE RECORD?

Unless a court has granted an extension of time, the clerk of the trial court is required to transmit the record to the clerk for the Court of Appeals when the record is complete, or when 40 days have elapsed after the filing of the notice of appeal. [**App.R. 10(A)**] The appellant is responsible for causing timely transmission of the record and for obtaining any necessary extensions of time. [**Loc.R. 5(D)**] A motion for an extension of time to transmit the record because of the court reporter's inability to timely prepare the transcript must be accompanied by an affidavit from the court reporter explaining why an extension is needed and stating when the transcript can be completed. [**Loc.R. 5(B)**] A motion for an extension of time to transmit the record for any other reason must be supported by an affidavit setting forth facts showing good cause for the extension. [**Loc.R. 5(C)**] All parties will receive written notice of the date the clerk transmitted the record.

WHAT IS A BRIEF?

Every party is required to file a brief. The brief is a written submission that explains your position to the Court of Appeals. For example, the appellant's brief explains why it is appealing and what it thinks is wrong with the trial court's judgment. In contrast, the appellee's brief informs the Court of Appeals why the trial court's judgment is correct and should be affirmed.

WHEN MUST I FILE MY BRIEF?

The appellant must file and serve its brief within 20 days of when the clerk of the trial court transmits the record. The appellee must file and serve its brief within 20 days after service of the appellant's brief. If the appellant wants to file a reply brief, it must do

so within 10 days after service of the appellee's brief. [App.R. 18(A)] The Court of Appeals may extend those time limits. [App.R. 14(B)]. Accelerated deadlines apply to cases falling under App.R. 11.2, which involve abortions without parental consent, adoption and parental rights, and dependent, abused, neglected, unruly, or delinquent children.

You must file the original and four copies of every brief with the clerk of the Court of Appeals. In addition, a party must serve a copy of its brief on every other party. [App.R. 18(B)]

If the appellant fails to file a brief within the time provided, the Court of Appeals may dismiss the case. If the appellee fails to file a brief within the time provided, the appellee will not be permitted to participate at oral argument, except for good cause shown, and the Court of Appeals may accept the appellant's statement of the facts and issues as correct and reverse the judgment if justified. [App.R. 18(C)]

WHAT MUST BE INCLUDED IN A BRIEF?

The appellant's brief must include: (1) a table of contents with page references; (2) a table of authorities alphabetically arranged and with references to the pages of the brief where cited; (3) a statement of the assignments of error presented for review; (4) a statement of the issues presented for review; (5) a statement of the case; (6) a statement of the facts; (7) an argument; and (8) a conclusion. [App.R. 16(A)]

The appellee's brief must include the same things, except that a statement of the case or of the facts is not necessary if the appellee agrees with the appellant. [App.R. 16(B)]

The appellant may file a brief in reply to the appellee's brief. No other briefing is permitted without leave of the Court of Appeals. [App.R. 16(C)]

WHAT IS THE FORM OF A BRIEF?

A brief should be typewritten, but a handwritten brief may be accepted if legible. Keep in mind that if the Court of Appeals cannot read your brief, you have little chance of winning. Carbon copies of briefs will not be accepted without permission of the Court of Appeals, except for parties proceeding in forma pauperis. All printed matter must be in at least twelve point font and double spaced between each line. Without prior leave of court, neither the appellant's nor the appellee's brief may exceed 35 pages in length, exclusive of the table of contents, table of authorities, and appendices. [App.R. 19] No reply brief may exceed 10 pages in length, exclusive of the table of contents, table of authorities, and appendices. [Loc.R. 10]

All briefs must be stapled at the top of the left margin. The use of binder or spring clips is not permitted. If staples are used and they protrude from the back of a

brief they must be covered. [**Loc.R. 10**]

WHAT IS ORAL ARGUMENT?

Oral argument is an in-court oral presentation by the parties stating the reasons the Court of Appeals should affirm, reverse, or modify a trial court's judgment. Each party must request oral argument on the cover page of the opening brief by prominently stating "ORAL ARGUMENT REQUESTED." If the appellee requests oral argument on the cover of the appellee's brief, the appellant may request oral argument on the cover of the reply brief. If no party requests oral argument, the case will be submitted on the record and the briefs. [**Loc.R. 12(A)**]

The Court of Appeals will notify the parties or their attorneys of the date, time, and location of the oral argument. The Court of Appeals will not grant a continuance unless a party files a written motion establishing exceptional circumstances and good cause for the continuance. A party must file a motion for a continuance no later than 7 days after the written notice issued by the Court of Appeals. [**Loc.R. 12(B)**]

Each party will be given 15 minutes to present its case. The Court of Appeals, however, may extend this time at its discretion. [**Loc.R. 12(C)**]

The Court of Appeals is not required to schedule oral argument, even if requested, if any of the parties is both incarcerated and proceeding pro se. [**Loc.R. 12(A)b**]

WHEN WILL THE COURT OF APPEALS ISSUE A DECISION?

The Court of Appeals considers each case individually. Generally the Court will issue a decision within 3 months after a case has been submitted for consideration. Some cases may take longer. Some may take less time.

WHO IS RESPONSIBLE FOR THE COSTS OF AN APPEAL?

The Court of Appeals usually will assess costs as follows: (1) if an appeal is dismissed or the judgment is affirmed, the appellant will be responsible; (2) if the judgment is reversed, the appellee will be responsible; (3) if the judgment is affirmed or reversed in part or is vacated, as ordered by the Court of Appeals. [**App.R. 24(A)**] Costs include the expense in preparing the record, fees allowed by law, and the fee for filing the appeal. [**App.R. 24(B)**]

WHAT CAN I DO IF I LOSE MY APPEAL?

If you are not satisfied with a decision of the Court of Appeals you may file an application to reconsider. [**App.R. 26(A)**] The application must be in writing and filed

within 10 days after the decision is filed with the clerk of the Court of Appeals. The Court of Appeals will not extend the time for filing an application to reconsider unless a party demonstrates extraordinary circumstances. [App.R. 14(B)]

An application for reconsideration is not designed for use in instances where a party simply disagrees with a decision of the Court of Appeals. Instead, it is intended to provide a party with the opportunity to prevent a miscarriage of justice in the case where the Court of Appeals makes an obvious error or renders a decision that is unsupported by the law. Therefore, the Court of Appeals will limit its determination of an application for reconsideration to determining whether there is an obvious error in its decision or if the application raises an issue for consideration that was either not considered at all or was not fully considered when it should have been.

You may also appeal our decision to the Supreme Court of Ohio. Keep in mind that the rules for filing an appeal with the Supreme Court of Ohio are not the same as those when filing an appeal with the Court of Appeals. Therefore, you should read the Rules of Practice of the Supreme Court of Ohio and familiarize yourself with their requirements if you intend to appeal to that court.

WHAT IS AN ORIGINAL ACTION?

The Court of Appeals has jurisdiction over writs of habeas corpus, mandamus, procedendo, prohibition, and quo warranto. Original actions apply only when there is no other adequate remedy at law. Original actions may not be used as a substitute for appeal. Also, the appellate rules do not apply; instead, original actions proceed as any other civil action under the Ohio Rules of Civil Procedure. Original actions may be governed by statute, common law, or both. In any event, a person filing an original action must pay close attention to the various requirements for the different writs to avoid dismissal. See, generally, **Loc.R. 16**.

ARE FORMS AVAILABLE FOR ME TO USE?

This handbook contains examples of the principal forms you will need in pursuing your appeal. They are:

- (1) Notice of Appeal
- (2) Statement, Praecipe, and Notice to the Court Reporter
- (3) Civil Case Docket Statement
- (4) Criminal Case Docket Statement
- (5) Affidavit of Indigency
- (6) Motion to Extend the Time to File (Record, Transcript, Brief)
- (7) Sample Brief

Please note that the examples are designed for use in the court of common pleas and

name Scioto County as the county of origin. Therefore, appropriate changes in the designation of the court and county will be necessary when used for other courts and counties. Also, the Notice to the Court Reporter requests a complete transcript of proceedings. If a complete transcript is not required, however, you will need to indicate what portions you want transcribed. In addition, do not forget that if you do not order a complete transcript, you must file proposed assignments of error.

ARE THERE WEBSITES THAT MIGHT BE HELPFUL?

You can find useful information at both the Supreme Court of Ohio's website, www.sconet.state.oh.us, and the Fourth District Court of Appeals' website, www.4thdistrictappeals.com.

FORMS

IN THE COURT OF COMMON PLEAS
SCIOTO COUNTY, OHIO

A.B. : Case No.
22212 E. West Street :
Portsmouth, Ohio 45662 : **NOTICE OF APPEAL**

Plaintiff-Appellee, :

v. :

C.D. :
21845 W. East Street :
Portsmouth, Ohio 45662 :

Defendant-Appellant. :

Now comes the Defendant, C.D., and gives notice that he is appealing to the Fourth District Court of Appeals, Scioto County, Ohio, from the final judgment entered in this action on _____.

The party signing this notice certifies that the judgment appealed is final and appealable as defined in R.C. 2505.02 and Civ.R. 54(B).

C.D.
21845 W. East Street
Portsmouth, Ohio 45662

CERTIFICATE OF SERVICE

I, C.D., certify that this notice of appeal was sent by ordinary United States mail to _____, Counsel for Plaintiff, at _____, on _____.

C.D.

IN THE COURT OF COMMON PLEAS
SCIOTO COUNTY, OHIO

A.B. : Case No.
Plaintiff-Appellee, : **STATEMENT, PRAECIPE, AND**
v. : **NOTICE TO COURT REPORTER**
C.D. :
Defendant-Appellant. :

TO THE APPELLEE:

Defendant, C.D. hereby states that he intends to include in the record a complete transcript of the trial proceedings, including opening statements, evidence, and final arguments.

TO THE CLERK:

Immediately prepare and assemble the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries. As a complete transcript of proceedings will be included by the defendant as part of the record to support the assignment of error, do not transmit these documents to the clerk of the Court of Appeals of this county for filing in the Court until the complete transcript of proceedings has been delivered to you by the undersigned. At that time you will transmit the documents prepared and assembled by you and the complete transcript of proceedings delivered to you by the undersigned to the clerk of the Court of Appeals for filing as the record on appeal. In the event that the undersigned does not furnish you with the complete transcript of proceedings within 40 days after the filing of the notice of appeal, or within any proper extension of time for transmission of the record, as prescribed by the Ohio Rules of Appellate Procedure or the local rules of court for the

Court of Appeals, then upon such 40th day or upon the last day of any proper extension of time for transmission of the record, you shall transmit the documents prepared and assembled by you to the clerk of the Court of Appeals, without such transcripts or proceedings, for filing as the record on appeal.

TO THE COURT REPORTER:

Please prepare a transcript of the proceedings that were heard on _____, by Judge _____ in this case. Notify the undersigned when completed.

Respectfully submitted,

C.D.
21845 W. East Street
Portsmouth, Ohio 45662

CERTIFICATE OF SERVICE

I, C.D., certify that this Statement, Praecipe, and Notice to Court Reporter, was sent by ordinary United States mail to _____, Counsel for Plaintiff, at _____, on _____.

C.D.

CIVIL DOCKET STATEMENT

1. Counsel for the appellant, or the appellant if pro se, **must** complete, serve, and file this docket statement at the time of filing the notice of appeal.
2. A copy of the judgment entry or order which is being appealed **must** be attached to the notice of appeal.
3. A copy of the order for the transcript of proceedings **must** be filed with the clerk and served on the court reporter at the time of filing the notice of appeal.
4. If less than the entire transcript of proceedings is to be included in the record, appellant **must**, at the time of filing the notice of appeal, file a statement of the assignments of error appellant intends to present on appeal.

Court of Appeals Case No.: _____ County: _____

Case Caption: _____

Counsel for appellant or appellant pro se:

Name: _____ Address and Telephone: _____

Email Address: _____

Counsel for appellee or appellee pro se:

Name: _____ Address and Telephone: _____

Email Address: _____

Trial Judge: _____ Trial Court Case No.: _____

Date notice of appeal filed: _____

Date that judgment or order appealed from was filed: _____

Related Appeals Nos.: _____

Does this case involve multiple parties? Yes ___ No ___

Does this case involve multiple claims? Yes ___ No ___

Does Civ.R. 54(B) apply? Yes ___ No ___

Is there a "no just reason for delay" certification? Yes ___ No ___

Record (indicate type of record to be filed): _____

There will be a full ___ partial ___ transcript of the proceedings filed. If partial, designate parts: _____

There will be an App.R. 9(C) statement: _____

There will be an App.R. 9(D) agreed statement: _____

No transcript, statement, or agreed statement to be filed: _____

Has a notice of appeal been previously filed in this court concerning this case?

Yes ___ No ___

If yes, what was the previous appellate case number? _____

Nature of the case (for example, personal injury; administrative appeal; will contest; domestic relations; etc.): _____

Is appellate counsel different from trial counsel? Yes ___ No ___

Does this case turn upon an interpretation or application of a particular case(s) or statute(s)? Yes ___ No ___ If yes, please list the cases or

statutes: _____

How would you characterize the extent of your settlement discussions prior to judgment in the trial court? None ___ Minimal ___ Modest ___ Extensive ___

Have post-judgment settlement discussions occurred? Yes ___ No ___

Would a preliminary mediation conference be of any assistance in resolving this matter? (Note – the primary purpose of the mediation conference is to encourage the parties to explore any possibilities for the settlement of this case before incurring additional expenses, or, if settlement is not possible, to limit the issues on appeal.)

Yes ___ No ___ Please explain: _____

TRANSCRIPT INFORMATION [App.R. 9(B)]

___ I have ordered a complete transcript of proceedings from the court reporter.

___ I have ordered a partial transcript of proceedings from the court reporter.

___ A statement of the evidence pursuant to App.R. (C) or (D) is to be prepared in lieu of a transcript of proceedings.

___ No transcript of proceedings or statement of the evidence pursuant to either App.R. 9(C) or (D) is necessary and I have notified the court reporter of that fact in writing pursuant to App.R. 9(B).

___ The transcript of proceedings has been completed and already made part of the record.

Name: _____

Attorney for: _____

CRIMINAL DOCKET STATEMENT

1. Counsel for the appellant, or the appellant if pro se, **must** complete, serve, and file this docket statement at the time of filing the notice of appeal.
2. A copy of the judgment entry or order which is being appealed **must** be attached to the notice of appeal.
3. A copy of the order for the transcript of proceedings **must** be filed with the clerk and served on the court reporter at the time of filing the notice of appeal.
4. If less than the entire transcript of proceedings is to be included in the record, appellant **must**, at the time of filing the notice of appeal, file a statement of the assignments of error appellant intends to present on appeal.

Court of Appeals Case No.: _____ County: _____

Case Caption: _____

Counsel for appellant or appellant pro se:

Name: _____ Address and Telephone: _____

Email Address: _____

Counsel for appellee or appellee pro se:

Name: _____ Address and Telephone: _____

Email Address: _____

Trial Judge: _____ Trial Court Case No.: _____

Date notice of appeal filed: _____

Date that judgment or order appealed from was filed: _____

Related Appeals Nos.: _____

Was counsel appointed for trial? Yes ___ No ___

Is substitute counsel requested for appeal? Yes ___ No ___

Did the trial court stay execution of sentence? Yes ___ No ___

Is a stay of execution by the Court of Appeals requested? Yes ___ No ___

Nature of the case (check appropriate box and provide requested information):

Trial: Jury trial: _____ Bench trial: _____

Plea: Guilty plea: _____ No contest: _____

Misdemeanor: Charge _____ Sentence: _____

Felony: Charge: _____ Sentence: _____

Probation Revocation: Prior Charge: _____
Sentence: _____

Appeal by State: of right ___ by leave of court ___

Postconviction Relief (R.C. 2953.21): _____

Did the trial court hold a hearing on the petition?: Yes ___ No ___

App.R. 5(A) motion for leave to file a delayed appeal: _____

Record (indicate type of record to be filed): _____

There will be a full ___ partial ___ transcript of the proceedings filed. If partial,
designate parts: _____

There will be an App.R. 9(C) statement: _____

There will be an App.R. 9(D) agreed statement: _____

No transcript, statement, or agreed statement to be filed: _____

TRANSCRIPT INFORMATION [App.R. 9(B)]

___ I have ordered a complete transcript of proceedings from the court reporter.

___ I have ordered a partial transcript of proceedings from the court reporter.

___ A statement of the evidence pursuant to App.R. (C) or (D) is to be prepared in lieu of a transcript of proceedings.

___ No transcript of proceedings or statement of the evidence pursuant to either App.R. 9(C) or (D) is necessary and I have notified the court reporter of that fact in writing pursuant to App.R. 9(B).

___ The transcript of proceedings has been completed and already made part of the record.

Name: _____
Attorney for: _____

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

A.B. : Case No.
Plaintiff-Appellee, : **AFFIDAVIT OF INDIGENCY**
v. :
C.D. :
Defendant-Appellant. :

I, C.D., do solemnly swear that I have no means of financial support and assets of any value and therefore cannot afford to pay the costs in this case.

FURTHER AFFIANT SAYETH NAUGHT.

C.D.
21845 W. East Street
Portsmouth, Ohio 45662

Sworn to and subscribed in my presence this ____ day of ____, ____.

NOTARY PUBLIC

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

A.B. : Case No.
Plaintiff-Appellee, : **MOTION TO EXTEND THE**
v. : **TIME TO FILE (Record,**
C.D. : **Transcript, Brief)**
Defendant-Appellant. :

Appellant, C.D., requests an extension of time to file the (record, transcript, or brief) until _____. An extension of time is necessary because (please provide the reasons you need an extension of time).

Respectfully submitted,

C.D.
21845 W. East Street
Portsmouth, Ohio 45662

CERTIFICATE OF SERVICE

I, C.D., certify that this Motion to Extend the Time, was sent by ordinary United States mail to _____, Counsel for Plaintiff, at _____, on _____.

C.D.
21845 W. East Street
Portsmouth, Ohio 45662

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

A.B., Inc.,	:	Case No. _____
Plaintiff-Appellee,	:	
v.	:	On Appeal from the
	:	Scioto County Court of
C.D.,	:	Common Pleas,
	:	Case No. _____
Defendant-Appellant.	:	

BRIEF OF APPELLANT C.D.

Jill Jones, Esq.
111 E. Main St.
Portsmouth, Ohio 45662
740-882-2222
740-882-1111 (Fax)

Counsel for Appellee A.B., Inc.

C.D.
222 W. 1st St.
Portsmouth, Ohio 45662
740-987-6543

Pro se Appellant

Table of Contents

	<u>Page No.</u>
Table of Authorities.....	ii
Assignments of Error and Issues Presented for Review.....	iii
Statement of the Case and the Facts.....	1
Argument.....	2
Assignment of Error No. 1.....	2
Issue Presented for Review.....	2
Assignment of Error No. 2.....	3
Issue Presented for Review.....	3
Conclusion.....	4
Certificate of Service.....	4

Table of Authorities

Page No.

Cases:

Harper v. Lee, 100 Ohio St.3d 676, 2009-Ohio-321.....2

Jack v. Jill, 4th Dist. Ross No. 14CA3954, 2014-Ohio-210... 3

Rules:

Civ.Pro.R. 56..... 2

Statutes:

R.C. 2547.97..... 3

Assignments of Error and Issues Presented for Review

Assignment of Error No. 1:

The trial court erred in granting summary judgment to Appellee A.B., Inc.

Issue presented for review:

Did the deposition testimony of Joan Jett establish a genuine issue of material fact such that the trial court should have denied Appellee's motion for summary judgment?

Assignment of Error No. 2:

The trial court abused its discretion when it failed to allow Appellant C.D. additional time to complete discovery.

Issue presented for review:

Should the trial court have granted Appellant C.D.'s motion for an extension of time so he could submit additional evidence in opposition to the motion for summary judgment?

STATEMENT OF THE CASE

Appellee A.B., Inc. filed a complaint against Appellant C.D. in the Scioto County Court of Common Pleas on May 1, 2013 and C.D. filed a timely answer. The deadline for the completion of discovery was November 2, 2013. (Scheduling Order p. 2.) On November 13, 2013, A.B., Inc. filed a motion for summary judgment. C.D. asked the trial court for additional time to obtain further discovery but the court denied the motion. C.D. filed a memorandum in opposition to the motion for summary judgment, but the trial court granted the motion for summary judgment on January 15, 2014. The trial court awarded A.B., Inc. a total judgment of \$18,500 plus interest.

FACTS

On January 5, 2012, C.D. purchased a vehicle from A.B., Inc. for his daughter, Joan Jett. (Complaint p. 1.) To fund the purchase price of the vehicle, A.B., Inc. loaned C.D. \$15,000 to be re-paid in monthly installments over three years with an annual interest rate of 9%. (Id. p. 2.) Joan Jett drove the vehicle until April 2012 without incident. (Answer p. 6.) However, in mid-April 2012, the vehicle stopped working. (Id.) Joan Jett had the vehicle towed to Stan's Garage and the owner, Stan Mechanic, informed her that the car engine had been improperly re-built. (Jett Depo. p. 25.) Mr. Mechanic informed Ms. Jett that the engine needed to be replaced at a cost of \$10,000. (Id. p. 26.) Thereafter, C.D. contacted A.B., Inc. and informed it that he no longer wanted the car because it had been sold to him in a defective condition and he refused to make further payments. (Complaint p. 5.) A.B., Inc. told C.D. he had purchased the car "as is," did not accept the return of the car, and instead filed a lawsuit for breach of contract when C.D. refused to make any more car loan payments. (Complaint p. 7.)

ARGUMENT

Assignment of Error No. 1:

The trial court erred in granting summary judgment to Appellee A.B.

Issue presented for review:

Did the deposition testimony of Joan Jett demonstrate a genuine issue of material fact such that the trial court should have denied Appellee's motion for summary judgment?

An appellate court reviews the grant of summary judgment under a de novo standard of review. *Harper v. Lee*, 100 Ohio St.3d 676, 2009-Ohio-321, at ¶ 3. Accordingly, under Civ.R. 56(C), this Court should only uphold summary judgment when it is clear that: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor.

Here, Joan Jett testified at her deposition that she had not replaced the engine originally in the vehicle at the time of purchase. She also testified that the car stopped working when she was driving down the road in mid-April and that she immediately had the vehicle towed to Stan's Garage. Finally, Ms. Jett testified that Stan Mechanic informed her that the original car engine had been replaced with an improperly re-built engine and that is why the car was not running properly. (Jett Depo. pp. 25-30).

Because there is a genuine issue as to whether A.B., Inc. knowingly sold C.D. a defective vehicle and, therefore, fraudulently induced him into signing the contract, the trial court should not have granted summary judgment in A.B., Inc.'s favor.

Assignment of Error No. 2:

The trial court abused its discretion when it failed to allow Appellant C.D. additional time to complete discovery.

Issue presented for review:

Should the trial court have granted Appellant C.D.'s motion for an extension of time to submit evidence in opposition to the motion for summary judgment?

The decision to grant or deny a motion for an extension of time for additional discovery lies within the trial court's discretion. However, a trial court abuses that discretion when its actions are unreasonable, arbitrary or unconscionable. *Jack v. Jill*, 4th Dist. Ross No. 14CA3964-2014-Ohio-210. See, also, R.C. 2547.97.

C.D. attempted to depose Stan Mechanic during the discovery period scheduled by the trial court. However, C.D. learned that Stan Mechanic had sold Stan's Garage and retired to Florida. (Motion for Extension p. 2.) Although C.D. made several efforts to locate and depose Mr. Mechanic, he was unable to do so as of the discovery deadline. (Id.) Therefore, C.D. filed a motion for additional time to conduct discovery so he could hire a private investigator to locate Mr. Mechanic. Since this was C.D.'s first request for additional time to conduct discovery and he set forth a good reason for seeking the additional time, the trial court's decision to deny the motion was unreasonable and arbitrary.

CONCLUSION

This Court should reverse the trial court's grant of summary judgment in A.B., Inc.'s favor. First, the trial court did not properly consider evidence submitted in opposition to the motion. Second, the trial court abused its discretion by denying C.D.'s request for additional time to provide evidence that would further support his opposition to the motion.

Respectfully submitted,

C.D.
222 W. 1st St.
Portsmouth, Ohio 45662
740-987-6543

Pro se Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellant's brief was sent by regular U.S. mail, postage pre-paid to Jill Jones, Esq., 111 E. Main St., Portsmouth, Ohio 45662 on this 7th day of June, 2014.

C.D.
Pro se Appellant