

ANATOMY OF A CLAIM – APPEAL

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Welcome to the fourth installment of Gallagher Sharp’s “Anatomy of a Claim” series. This article will provide an overview of an appeal from a trial court judgment and follows the first three articles which covered the initial steps in a claim from first notice to suit, the discovery process and exploring mediation, and trial.

In Ohio, the state court system is divided into three tiers, with the lowest being the trial court, including a court of common pleas in each of Ohio’s 88 counties. The intermediate level courts are Ohio’s district courts of appeals. Ohio is divided into twelve districts, and each of the twelve appellate districts has jurisdiction to hear appeals from the trial courts within its geographical boundaries. Ohio’s highest court is the Supreme Court of Ohio.

Final, Appealable Order and Notice of Appeal

The appellate process begins in the trial court with the entry of a final, appealable order. Generally, a final, appealable order disposes of all claims and issues and determines the rights of all parties, leaving nothing for further adjudication. Examples include the *granting* of a motion for summary judgment and a judgment entered after a trial on the merits.

A party dissatisfied with the trial court’s judgment may initiate an appeal as of right from a final, appealable order by filing a notice of appeal with the clerk of the trial court within 30 days of the entry of judgment.

District Court of Appeals

The brief of the appellant, the party who initiated the appeal, must be filed with the court of appeals within 20 days after the record is filed. The appellee’s brief is due within 20 days after filing of the appellant’s brief. The appellant may also file a reply brief within 10 days after the filing of appellee’s brief. App.R. 18(A).

The court of appeals will schedule oral argument in all cases, unless the court has adopted a local rule requiring a party to request oral argument. The parties must file all supplemental authorities at least five days prior to the date of oral argument. App.R. 21.

Each appeal is considered by a panel of three judges. One of the judges writes the opinion, which contains the ruling of the panel and the reasons underlying the panel’s decision. The panel will apply a different standard of review depending on the type of decision being reviewed.

This material has been prepared by professionals and should not be utilized as a substitute for legal guidance. Readers should not act upon information contained in these materials without professional legal guidance.

A party dissatisfied with the decision of the court of appeals may file an application for reconsideration,¹ an application for en banc consideration,² or a motion to certify a conflict within 10 days after the decision is issued.³

The Supreme Court of Ohio

A decision of a district court of appeals may also be appealed to the Supreme Court of Ohio. However, the Supreme Court of Ohio only considers certain appeals as of right. S.Ct.Prac.R. 5.01. The majority of appeals to the Supreme Court of Ohio are jurisdictional appeals that the Supreme Court has *discretion* to accept for review.

To initiate a jurisdictional appeal, a notice of appeal must be filed within 45 days from the entry of the judgment being appealed. S.Ct.Prac.R. 7.01(A)(1). A memorandum in support of jurisdiction must be filed with the notice of appeal. The memorandum in support of jurisdiction must establish: (1) that the case involves a substantial constitutional question; (2) that the case involves a felony; or (3) that the case involves a question of public or great general interest. S.Ct.Prac.R. 7.02. The appellee may file a memorandum in response within 30 days after the appellant's memorandum in support is filed. S.Ct.Prac.R. 7.03.

The odds of the Supreme Court actually accepting are minimal. In 2017, a total of 1,365 new jurisdictional appeals were filed in the Supreme Court of Ohio.⁴ Decisions in 33 jurisdictional appeals following full merit review were released that year.⁵

If the Supreme Court accepts the appeal for review on the merits and orders that the case be briefed, the appellant's brief is due within 40 days from the date the clerk files the record from the court of appeals. S.Ct.Prac.R. 16.02. The appellee's brief must be filed within 30 days after the filing of the appellant's brief. S.Ct.Prac.R. 16.03. The appellant may file a reply brief within 20 days of the filing of the appellee's brief. S.Ct.Prac.R. 16.04.

¹ The application must demonstrate an obvious error in the court's decision. App.R. 26(A)(1).

² The application must demonstrate that the panel's judgment conflicts with another panel's judgment in the same district. App.R. 26(A)(2).

³ A motion to certify a conflict is filed if a rule of law in the court's judgment conflicts with the judgment of a court of appeals of another district. App.R. 25.

⁴ The Supreme Court of Ohio, *Ohio Courts Statistical Summary 2017* (June 2018), p. 10.

⁵ *Id.* at p. 12.