GOING IT ALONE

A Step-by-Step Guide to Representing Yourself on Appeal in Indiana

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Appellate Practice Section

Please send suggestions or corrections to this handbook to communication@inbar.org.

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INTRODUCTION

How to Use this Guide

The purpose of this guide

This guide is intended to give nonlawyers a basic step-by-step guide to filing an APPEAL in the Indiana COURT OF APPEALS and the Indiana SUPREME COURT. This guide is not legal advice. It cannot be cited as legal AUTHORITY. This guide is not intended to replace or be a substitute for the Indiana Rules of Appellate Procedure, http://www.in.gov/judiciary/rules/appellate/, and should be used with those rules.

Be sure you are using the most current version of the Appellate Rules. Generally, those rules are updated annually, with amendments and new rules becoming effective on January 1 of each year. The most up-to-date rules can be found on the Appellate Courts' website at http://www.in.gov/judiciary/rules/appellate/index.html.

This guide can be used in one of two ways. First, you can start on page one and work your way through the entire process of the APPEAL. Second, you can use the Table of Contents, Glossary, Index, and Table of Authorities (listing each Appellate Rule referred to in this guide and its page number) and reference specific steps of the APPEAL. To accommodate the second approach, some information may be repeated throughout the guide.

Before you go it alone

A word of caution before getting to the process of filing an APPEAL in Indiana:

Before trying to handle your own APPEAL, talk to a lawyer. Attorneys have legal training and are licensed to practice law. They know the law and the rules that must be followed. Attorneys regularly deal with fellow attorneys, judges, clerks, and other people who may be involved in your case. Most importantly, they know the law and how to argue your case on APPEAL. If

you represent yourself, you lose the knowledge and experience that only an attorney can offer. The Clerk's Office and the courts will not and cannot provide you with legal advice or assistance.

If you proceed on APPEAL without an attorney, you will be held to the same standards as attorneys. You will be expected to know, understand, and follow the rules governing your APPEAL.

Ask yourself the following: Do you have the time and skill to learn about the applicable law and the rules that you have to follow? Can you meet deadlines? Can you understand and complete technical forms? If you answered *no* to any of these questions, you should try to find an attorney.

If you need an attorney and don't have the money to hire one, there are many organizations that provide legal services for free to people who are unable to pay. Information about those organizations can be found on page C.2 of this guide. Additionally, in certain circumstances, the TRIAL COURT can appoint an attorney to represent a party on APPEAL. This is mostly limited to CRIMINAL CASES. A TRIAL COURT will not normally appoint an attorney to represent a party in a CIVIL CASE, with some exceptions involving parental rights. The COURT OF APPEALS and the SUPREME COURT will not appoint an attorney under any circumstances.

A MOTION can be filed in the TRIAL COURT asking for PAUPER STATUS or the appointment of counsel in a criminal case. See Step Five on Motions to Proceed *In Forma Pauperis*. Contact the TRIAL COURT to determine what is necessary for this procedure and if it is possible to obtain a court-appointed attorney in your particular kind of case.

Parts of this guide

Defined terms. This book contains a Glossary. Terms in the Glossary are generally in SMALL CAPS, except in the indented sections in a different typeface, where they are typically capitalized. Look for those and other terms in the Index to find pages on which terms appear.

Page numbers. Each section's pages are numbered separately. The preliminary sections (like this one) have continuous page numbers with romanettes (e.g., *i*, *ii*). Each of the main chapters, which describe different steps of an APPEAL, have page numbers preceded by the number of the step. So 1.2 and 1.3 are pages 2 and 3 of Step One, and 14.3, and 14.4 are

pages 3 and 4 of Step Fourteen. Finally, several reference guides are attached as appendices, and these are numbered with a letter before their respective page numbers. For instance, page numbers in the Glossary look like this: A.2, A.3. Page numbers of the Index look like this: E.1, E.4.

Other references. Also, there is a separate Table of Authorities, which collects the various court rules contained in this book.

At the end of this guide, you'll find other helpful resources, including websites, organizations, and a section with a list of sample forms and links to find them on the SUPREME COURT's website. For those of you using this guide as a PDF, the URLs of those forms are links to Microsoft Word versions that can be downloaded and edited. When those forms are referred to in the text, the name of the form contains the same links.

APPEALS IN INDIANA

Overview

When Hoosiers need help resolving disputes, they first call on Indiana's state TRIAL COURTS. All of Indiana's ninety-two counties have state TRIAL COURTS—ranging from a single TRIAL COURT in rural counties like Martin County to nearly fifty TRIAL COURTS in Marion County. Indiana also has many administrative-law judges who hear cases arising from the State's ADMINISTRATIVE AGENCIES. Most disputes end at the TRIAL COURT or ADMINISTRATIVE AGENCY. But not all do. When a party believes an error occurred at the TRIAL COURT, the party can ask Indiana's appellate courts to review the LOWER COURT's decision.

Indiana's Appellate Court System. Indiana's appellate courts are located in Indianapolis. The Indiana COURT OF APPEALS is comprised of fifteen judges, who hear cases as part of three-judge panels. The Indiana SUPREME COURT has five justices. APPEALS to the Indiana SUPREME COURT are typically heard by all five justices.

When a dispute ends at the TRIAL COURT, every LITIGANT has a right to file an APPEAL with the Indiana COURT OF APPEALS. With some rare exceptions, the COURT OF APPEALS is the first court to hear an appeal. The COURT ON APPEAL reviews what happened below and the parties' BRIEFS and decides cases with written OPINIONS. In those OPINIONS, the TRIAL COURTS' decisions are either affirmed, reversed, or something in between. LITIGANTS unhappy with the COURT OF APPEALS opinion may ask the Indiana SUPREME COURT to hear their case. Except in rare circumstances, there is no automatic right to have the Indiana SUPREME COURT review a case.

Some basic terminology and concepts. Before getting started, you should understand a few basic concepts. APPEALS involve preparing, filing and serving written documents (called BRIEFS). BRIEFS contain legal and factual arguments based on the legal arguments and evidence considered by the LOWER COURT. Appellate courts consider the parties' arguments in light of the materials considered by the LOWER COURT (the RECORD

ON APPEAL). As a general rule, APPEALS are not an opportunity to submit new evidence or make new arguments.

The person who lost and is appealing is called the APPELLANT. The person who is responding to the APPEAL and wants the LOWER COURT's decision to remain unchanged is called the APPELLEE. As a general rule, the APPELLANT files an opening BRIEF after the LOWER COURT's record has been sent to the COURT OF APPEALS. The APPELLEE then files a response BRIEF. The APPELLANT has an opportunity to respond to APPELLEE'S response BRIEF in an APPELLANT'S REPLYBRIEF. The COURT ON APPEAL then issues a written OPINION that decides the issues presented.

For appeals to the Indiana COURT OF APPEALS, it generally takes about four to six months from the time you start the APPEAL until all briefing is complete. The case can take less time if a TRANSCRIPT is not requested or if the RECORD ON APPEAL is small. Once all the BRIEFS have been filed with the Clerk's Office—it generally takes one to twelve months for an OPINION or MEMORANDUM DECISION to be issued by the Indiana COURT OF APPEALS. If the Indiana SUPREME COURT later hears the case, it may be an additional six to eighteen months before a final OPINION is issued.

NOTE

This guide does not cover every appellate scenario or describe every appellate rule. For the sake of clarity and to avoid overly complicating this guide, the focus is on a standard appeal—an appeal from a lower court involving a single appeal (not cross-appeals) where there was one plaintiff and one defendant at the lower court. As a general rule, when the term *trial court* is used, that term can be used interchangeably with *administrative agency*. This guide notes any difference between appeals from administrative agencies and trial courts, where any exist.

The Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court ("Clerk's Office"). All papers filed with Indiana's appellate courts are submitted either by electronic filing, U.S. mail, third-party

carrier (like FedEx or UPS), or hand-delivery in the office of the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court, located in the Indiana State House. The Clerk's Office is open 8:30 a.m. to 4:30 p.m., Monday through Friday, except on State holidays. The Clerk's Office does not accept filings by fax or e-mail. Although attorneys are required to file using the state courts' electronic-filing system, unrepresented litigants are not. But unrepresented litigants may use the electronic-filing system (see below). Documents may also be hand delivered after hours to a drop box located inside the State House's second-floor east entrance.

Electronic Filing

Electronic filing is permitted for unrepresented litigants in the appellate courts. Attorneys are required to e-file in the appellate courts. The e-filing system allows case documents to be filed online. This allows filers to avoid the costs associated with paper copies, postage, and trips to the Clerk's Office. Electronic filing is not the same as e-mail or fax. You must use a Court approved e-filing service provider. If you decide to electronically file your documents, you should familiarize yourself with the Court's e-filing website www.courts.in.gov/efile. This website includes numerous tutorials that will guide you through the e-filing process: https://www.in.gov/judiciary/4703.htm.

Notices of Defect

What is a Notice of Defect?

To do their work more efficiently, the appellate courts require the Appellate Clerk to screen for compliance with certain appellate rules. Appellate Rule 23(D) sets out the procedures for this process. Appendix B of the Appellate Rules sets out the rules that are subject to the defect process.

If a filer timely tenders a document that includes such an error, the Clerk will issue a "NOTICE OF DEFECT." This notice will inform the filer of the errors and set a deadline for those errors to be corrected or "cured." The submitted document will be "received" onto the DOCKET instead of "filed." The Clerk will mark the new filing as "received" and make an

entry on the CHRONOLOGICAL CASE SUMMARY showing it was received.

Appendix B should be consulted for the entire list of items that are subject to the NOTICE OF DEFECT process. Here are the most commonly defected items:

Certificates of Service. Sample CERTIFICATES OF SERVICE are available elsewhere in this guide. E-mail is not an appropriate means of service of filing and is not the same as using the Indiana E-Filing System. If different individuals are served by different methods, the certificate should specify how each person was served. If you are curing a NOTICE OF DEFECT, don't forget to update the CERTIFICATE OF SERVICE.

Page Numbering. Page numbering begins on the front page of a document and continues consecutively throughout the document.

Arrangement of the Appendix. Volume 1 of an APPENDIX should be a stand-alone table of contents, with no other documents in the volume. Other volumes should not include a table of contents.

How does a party cure a defect?

If the document is corrected by the deadline it will be deemed filed as of the date the cured document was sent to the Clerk's Office. The Clerk will note this on the CCS and a "NOTICE OF DEFECT Cured" will be sent to the parties. This notice does not replace or excuse proper service of the cured document on the other parties in the case.

It is important to serve the other parties with any document submitted to the court, including a document that cures a defective filing. It is very important that the CERTIFICATE OF SERVICE be updated when tendering and serving the cured document.

If the defective document is an APPENDIX, all volumes of the APPENDIX must be resubmitted. If your APPENDIX was defective because the page numbers were incorrect, you will likely need to seek LEAVE OF COURT to amend your BRIEF because the citations to the APPENDIX will likely need to be updated.

No substantive changes to a document are allowed when curing a defective document. This defect process is not meant to extend deadlines to provide an opportunity to improve the filing. If additional time is needed, a MOTION for Extension of Time should be filed as permitted by Appellate Rule 35.

How long does a party have to cure a defect

An incarcerated individual who is not represented by an attorney has twenty business days to cure a defect. A party who is incarcerated and is represented by an attorney and a party who is not incarcerated has ten business days to cure a defect. An unsuccessful attempt to cure the defect does not extend the deadline set by the original NOTICE OF DEFECT.

STEP ONE

What Trial-Court Actions Can Be Appealed?

OVERVIEW

If you received a Final Judgment from the Lower Court, you can appeal. If you want to appeal a Lower Court's action before the case ends, be sure to study the rules on Interlocutory Appeals. A few nonfinal orders can be appealed immediately. For most nonfinal orders, you must ask permission from both the Lower Court and the Court on Appeal before you can appeal.

Between the filing of a complaint and entry of the FINAL JUDGMENT, Indiana TRIAL COURTS issue many ORDERS. Some ORDERS may require a party to produce a specific document. Other ORDERS may prohibit a party's use of a piece of evidence. Still other ORDERS may deny or grant a party's summary-judgment motion.

Indiana Appellate Rules 2(H) and 14 describe which of these JUDGMENTS and ORDERS triggers the Indiana COURT OF APPEALS' jurisdiction. Rule 2(H) covers FINAL JUDGMENTS. Rule 14 covers INTERLOCUTORY APPEALS. Both are described below.

What are Final Judgments?

In most cases, a FINAL JUDGMENT triggers a party's right to appeal. Generally speaking, a FINAL JUDGMENT is a JUDGMENT that disposes of all claims as to all parties to a lawsuit. A FINAL JUDGMENT typically results in a favorable ruling for one party and an adverse ruling for the other party. It can come in the form of a jury verdict or a verdict following a bench trial, which is a trial decided by a judge instead of a jury. A FINAL JUDGMENT can also be a court's grant of a MOTION to dismiss or for summary judgment.

Appellate Rule 2(H) also includes some other specific instances where a JUDGMENT is considered final. These are not common, but generally involve JUDGMENTs that are "deemed final" by the Trial Rules.

If you want to appeal a FINAL JUDGMENT, go on to Step Two below. As described in Step Two, you need to act within thirty days of the FINAL JUDGMENT **or you lose the opportunity for an APPEAL.**

What are Interlocutory Appeals?

Interlocutory, or nonfinal, ORDERs can generally be described as ORDERs that do not end the litigation. APPEALs of interlocutory ORDERs are governed by Appellate Rule 14.

What are Interlocutory Appeals of Right?

There are a handful of nonfinal ORDERs that create an automatic right to an APPEAL. They are listed in Appellate Rule 14(A). The most common nonfinal ORDERs that can be appealed as a matter of right include the following:

1. ORDERS requiring the payment of money
2. ORDERs requiring the sale or delivery of property
3. ORDERs requiring the delivery or assignment of an item in dispute
4. ORDERs on PRELIMINARY INJUNCTIONs

If the nonfinal ORDER you would like to APPEAL falls into one of the categories listed in Rule 14(A), proceed on to Step Two below. In sum, you begin an interlocutory APPEAL as of right by filing a NOTICE OF APPEAL with the Clerk's Office within thirty days after the interlocutory ORDER is noted on the TRIAL COURT'S CHRONOLOGICAL CASE SUMMARY. As with FINAL JUDGMENTs, do not delay in starting your APPEAL, or you will lose your right to an APPEAL.

What are discretionary Interlocutory Appeals?

If a nonfinal ORDER doesn't fall under one of the categories in Rule 14(A), a party must ask the TRIAL COURT and COURT OF APPEALS for permission to APPEAL. Getting permission to APPEAL these other nonfinal ORDERs is a two-step process.

How to ask for Certification by the Trial Court

First, the TRIAL COURT must be asked to "certify" a nonfinal ORDER to allow an immediate APPEAL of that ORDER. The certification process is simply you asking the TRIAL COURT for permission to appeal a nonfinal ORDER. You ask for permission by filing a MOTION with the TRIAL COURT. You should file a MOTION with the TRIAL COURT no later than thirty days after the ORDER you want to appeal is entered. Explain in your MOTION why an immediate APPEAL of the nonfinal ORDER should be permitted. The primary grounds for getting an immediate APPEAL include (1) you will suffer substantial expense, damage, or injury if an APPEAL is not permitted immediately; and (2) the ORDER involves a substantial question of law.

You can ask the TRIAL COURT to appeal an interlocutory ORDER if more than thirty days have passed since the ORDER's entry by filing a BELATED MOTION. You will have to explain why your BELATED MOTION should be granted by showing good cause for your delay. Generally, good cause is something more than that you missed the deadline or that you did not know about the rule.

If the TRIAL COURT denies your certification request, you cannot pursue an APPEAL.

How to ask for acceptance by the Court of Appeals

If the TRIAL COURT certifies the APPEAL, you must also ask the COURT OF APPEALS to accept the APPEAL. A party must ask the COURT OF APPEALS to accept the case by filing a MOTION with the COURT OF APPEALS within thirty days of the TRIAL COURT's certification. Specific instructions about how to file MOTIONs are included elsewhere in this guide.

If filing on paper, the MOTION is filed with the Office of the Clerk of the Supreme Court, Court of Appeals, and Tax Court, located at

200 West Washington Street
216 State House
Indianapolis, IN 46204

The MOTION must include the following:

1. The date of the interlocutory ORDER;
2. The date the MOTION for certification was filed in the TRIAL COURT;
3. The date the TRIAL COURT'S certification of its interlocutory ORDER was noted in the CHRONOLOGICAL CASE SUMMARY (CCS);
4. The reasons the COURT OF APPEALS should accept the INTFERLOCUTORY APPEAL;
5. A copy of the interlocutory ORDER you wish to appeal; and
6. A copy of the TRIAL COURT's certification of the interlocutory ORDER for APPEAL.

You must also file an appearance with the MOTION to the COURT OF APPEALS as required by Appellate Rule 16(H).

If the COURT OF APPEALS denies the MOTION, you cannot pursue your APPEAL, even though the TRIAL COURT granted certification. If the COURT OF APPEALS grants your MOTION, you must file a NOTICE OF APPEAL no later than fifteen days after the COURT OF APPEALS grants the MOTION. The APPEAL then proceeds as a standard APPEAL.

STEP TWO

How Do You Start an Appeal?

So, you have an ORDER that can be appealed. Now what? The filing that starts an APPEAL is called the NOTICE OF APPEAL. An example is included in Appendix D to this guide. If you have access to the Internet, it is best to check the judiciary website (http://www.in.gov/judiciary/2708.htm) to download the most recent version of the NOTICE OF APPEAL form.

When must the Notice of Appeal be filed?

You must meet the deadline for filing the NOTICE OF APPEAL. Generally speaking, you lose your right to APPEAL if this deadline is missed.

The deadline for filing the NOTICE OF APPEAL varies depending on the type of ORDER being appealed.

Final Judgments and Interlocutory Appeals as of Right. If a FINAL JUDGMENT is being appealed, the NOTICE OF APPEAL must be filed no later than thirty days after the TRIAL COURT enters the JUDGMENT in the CHRONOLOGICAL CASE SUMMARY. The same deadline applies to the NOTICE OF APPEAL for an interlocutory ORDER that can be appealed as a matter of right under Rule 19(A).

Discretionary Interlocutory Appeals. If a discretionary interlocutory ORDER is being appealed, the NOTICE OF APPEAL must be filed no later than fifteen days after the COURT OF APPEALS grants the MOTION to accept the interlocutory APPEAL.

Where is the Notice of Appeal filed?

If filing the NOTICE OF APPEAL on paper, file it with the **Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court (*not* the**

TRIAL COURT's clerk) on or before the deadline. The Clerk's Office is located at

200 West Washington Street
216 State House
Indianapolis, IN 46204

You may file your NOTICE OF APPEAL electronically. If you file it on paper, only one copy of the NOTICE OF APPEAL should be filed with the Clerk's Office. If you need a file-stamped copy for your records, include an additional copy and a self-addressed stamped envelope.

Should the Notice of Appeal also be sent to others?

In addition to filing the NOTICE OF APPEAL, you must also provide a copy (called SERVICE copies) to all other parties involved in the APPEAL. If another party is represented by an attorney, you must send the copy to that attorney, not directly to the party. If another party is not represented by an attorney, send the copy directly to the party at the person's last known address. You must SERVE a copy of the NOTICE OF APPEAL on the other parties at the same time that you file the NOTICE OF APPEAL with the Clerk's Office.

NOTE

Service of filings is a concept that applies to all filings made during the Appeal. Everything that you file with the trial court, Court of Appeals, or Supreme Court must also be served on the other party. Make it a habit to send the other side everything you file. You can use the Indiana E-Filing Service to serve as well as file documents. Under Appellate Rule 24(C), the document is considered served when it is 1) personally delivered; 2) properly addressed and deposited in the United States Mail, postage prepaid; 3) deposited with any third-party commercial carrier for delivery within three calendar days, cost prepaid, and properly addressed; or electronically served. Appellate Rule 24(D) requires that when you file a document, you must (1) certify that you have served all required parties, (2) list the parties served, and (3)

specify the date and the method by which the document was served. This is called a Certificate of Service. **Place this Certificate of Service at the end of each of your filings. Here is a sample Certificate of Service**:

CERTIFICATE OF SERVICE

I certify that the foregoing document was served on the following by _____ [state specific means of service, such as "by U.S. mail, postage prepaid," "personal delivery," or "the Indiana E-Filing System" for example] on _____ [state date]:

[List address of all parties served]

[signature]_____

[Your name]

What information must the Notice of Appeal include?

The NOTICE OF APPEAL included in the **Sample Forms** section lays out all of the information you need to include in your NOTICE OF APPEAL. You will be asked to specify the following:

1. The title and date of the appealed JUDGMENT or ORDER
2. Whether the APPEAL is from a FINAL JUDGMENT or interlocutory ORDER (see Step One)
3. The court to which you are appealing (this will usually be the Indiana COURT OF APPEALS)
4. A request that the TRIAL COURT's clerk assemble the CLERK'S RECORD
5. A request to transcribe specified hearings that happened at the TRIAL COURT.

How much will the appeal cost?

The filing fee to start a new APPEAL in the COURT OF APPEALS is $250 and is paid by the APPELLANT. This filing fee is due when the NOTICE OF APPEAL is filed. The filing fee can be paid through the Indiana E-Filing System. Appellants in cases coming from certain ADMINISTRATIVE AGENCIES or parties that have been granted PAUPER STATUS by the TRIAL COURT or ADMINISTRATIVE AGENCY do not have to pay the filing fee.

In addition to the filing fee, appeals can cost hundreds or even thousands of dollars more, even without paying an attorney. Besides the filing fee, the costs an APPELLANT may have to pay include costs to prepare the CLERK'S RECORD and TRANSCRIPT, and copying costs for appellate-court filings. There also can be other costs (discussed below) throughout the process.

If a TRANSCRIPT is requested, there are fees that the COURT REPORTER will charge to prepare the TRANSCRIPT. Even if a party is granted PAUPER STATUS, the COURT REPORTER, in some circumstances, can still charge the APPELLANT to prepare the TRANSCRIPT. The TRIAL COURT or the COURT REPORTER can explain those costs. There are also costs involved with preparing documents for the COURT OF APPEALS as well as getting copies made.

STEP THREE

How is the Record on Appeal Assembled?

OVERVIEW

The Appellant requests the Clerk's Record and Transcript in the Notice of Appeal. The trial-court clerk and Court Reporter are responsible for preparing the Clerk's Record and the Transcript. The Appellant must monitor their progress. Once the Clerk's Record and Transcript are complete, the Appellant can check them out from the trial court to prepare the Appellant's brief.

The NOTICE OF APPEAL (described in Step Two) includes two specific instructions—one instruction for the TRIAL COURT clerk and one instruction for the COURT REPORTER of the TRIAL COURT. This step describes each instruction and what you need to know about it.

What is the Clerk's Record?

The APPELLANT'S NOTICE OF APPEAL must include a direction to the TRIAL COURT clerk to assemble the CLERK'S RECORD. The CLERK'S RECORD is the record maintained by the clerk of the TRIAL COURT. It includes the CHRONOLOGICAL CASE SUMMARY (CCS) and all papers, pleadings, documents, ORDERS, JUDGMENTS, and other materials filed in the TRIAL COURT or ADMINISTRATIVE AGENCY or listed in the CCS.

The TRIAL COURT's clerk has thirty days from the filing of the NOTICE OF APPEAL to assemble the CLERK'S RECORD. Appellate Rule 10(E) allows the TRIAL COURT's clerk to seek an extension of time to complete assembly of the CLERK'S RECORD. When the clerk completes assembly of the CLERK'S RECORD, the clerk must file a NOTICE OF COMPLETION OF CLERK'S RECORD with the Clerk's Office. You will receive a copy of that notice.

If you are the APPELLANT, **you must make sure that the TRIAL COURT'S clerk files the NOTICE OF COMPLETION OF CLERK'S RECORD before the established deadline**. If the TRIAL COURT's clerk does not file that notice, you must file a MOTION with the COURT OF APPEALS asking the court to compel the clerk to complete the CLERK'S RECORD. If the APPELLANT does not file a MOTION to compel the filing of the CLERK'S RECORD within fifteen days after the deadline expires, the COURT OF APPEALS can dismiss the appeal. Review Appellate Rule 10 for more specifics.

What is the Transcript?

The NOTICE OF APPEAL must also include a direction to the COURT REPORTER to transcribe certain hearings that you identify in the NOTICE OF APPEAL. A COURT REPORTER records matters that happened "on the record" at the TRIAL COURT. Often, the COURT REPORTER keeps an audio recording of hearings before the TRIAL COURT. When you request the TRANSCRIPT in the NOTICE OF APPEAL, the COURT REPORTER types out a word-for-word record of these audio recordings. The NOTICE OF APPEAL should specify which hearings the APPELLANT is requesting and the dates on which they occurred. The APPELLANT can obtain dates of hearings from the CHRONOLOGICAL CASE SUMMARY.

Generally speaking, only the hearings relevant to the issues presented to the appellate court for review need to be transcribed. These TRANSCRIPTS will include the EXHIBITS used at the hearing. Usually, there is a charge to prepare the TRANSCRIPT, which must be paid to the COURT REPORTER. Depending on the length of the TRANSCRIPT, these costs can be hundreds of dollars. TRANSCRIPTS should always be requested, except in the rare case where nothing said at the trial or hearing relates to the issues you are arguing on APPEAL. Make sure to ask how much the TRANSCRIPT will cost when you ask for it. A COURT REPORTER may require a 50-percent deposit based on the estimated cost of the TRANSCRIPT. A party has ten days after filing the NOTICE OF APPEAL to enter into an agreement with the COURT REPORTER for payment of the balance of the cost of the TRANSCRIPT.

NOTE

If the Appellant intends to argue insufficiency of the evidence (either that a finding of fact or conclusion of law is unsupported by the evidence or is contrary to the evidence) in civil appeals, Appellate Rule 9(F)(4) requires that the Appellant must request a transcript of all the evidence. For criminal appeals, the Appellant must also request a Transcript of the entire trial or evidentiary hearing unless the Appellant intends to limit the Appeal to an issue requiring no Transcript.

The COURT REPORTER has forty-five days after the APPELLANT files the NOTICE OF APPEAL to file a NOTICE OF COMPLETION OF TRANSCRIPT. The COURT REPORTER may ask for an extension of time to complete the TRANSCRIPT.

If you are the APPELLANT, you must make sure that the COURT REPORTER files the NOTICE OF COMPLETION OF TRANSCRIPT before the established deadline. If the COURT REPORTER does not file that notice, you must file a MOTION with the COURT OF APPEALS compelling the COURT REPORTER to complete the TRANSCRIPT. If you wait more than seven days after the deadline expires, your APPEAL can be dismissed. Review Appellate Rule 11 for more specifics.

NOTE

Sometimes the Transcript is completed at or around the time the Clerk's Record is complete. In those instances, the Notice of Completion of Clerk's Record will indicate that the Transcript is complete, and no separate Notice of Completion of Transcript will be filed.

How can you get a copy of the Clerk's Record or Transcript?

When you start working on your BRIEF, you will likely need access to either the CLERK'S RECORD or the TRANSCRIPT.

Clerk's Record

The CLERK'S RECORD stays with the TRIAL COURT at all times during the APPEAL. Appellate Rule 12(A) allows you to request a copy of the CLERK'S RECORD (or a portion of it) from the TRIAL COURT's clerk. The clerk has seven days to provide you with a copy. You will have to pay normal copying charges. Make sure to ask how much your request will cost when you ask for a copy.

Transcripts

In civil APPEALS, the TRIAL COURT's clerk keeps the TRANSCRIPT until the Clerk's Office notifies the TRIAL COURT clerk that all BRIEFS to the COURT OF APPEALS have been filed. If you need a copy of the TRANSCRIPT before briefing is complete in civil APPEALS, you will need to request a copy or check out the TRANSCRIPT from the TRIAL COURT's clerk. If you check the TRANSCRIPT out, you will need to return it to the TRIAL COURT by the time your BRIEF is due. Once briefing is complete, the TRIAL COURT's clerk sends the TRANSCRIPT to the Clerk's Office. You can also contact the COURT REPORTER directly for a copy, but you may have to pay for a copy. As always, ask about how much a copy will cost before you request it.

In criminal appeals, except those where the APPELLANT is represented by the State Public Defender, the TRIAL COURT's clerk sends the TRANSCRIPT to the Clerk's Office after the APPELLANT files the opening BRIEF. The TRIAL COURT's clerk may require the APPELLANT to pay for the cost of sending the TRANSCRIPT. Any party may check out the TRANSCRIPT from the TRIAL COURT during briefing at no extra cost.

How long does it normally take to complete the Clerk's Record or Transcript?

It varies, but normally it takes longer for a COURT REPORTER to complete the TRANSCRIPT than it takes a TRIAL COURT's clerk to complete the CLERK'S RECORD. It is not unusual for it to take months

for the COURT REPORTER to complete the TRANSCRIPT and file the NOTICE OF COMPLETION OF TRANSCRIPT.

It is vital that you keep tabs on the notices filed by the TRIAL COURT's clerk and the COURT REPORTER. As discussed above, the APPELLANT responsible for ensuring the trial court's officials file the notices when due. And as discussed in Step Six, the filing of these notices trigger the due date for APPELLANT'S opening BRIEF.

STEP FOUR

How Do Parties Make Requests of the Court During the Appeal (Motion Practice)?

OVERVIEW

A Motion is a written submission asking the court for assistance. A party "moves" the court to act. The opposing party can respond and oppose a Motion. A moving party can file a reply in support of a Motion only with Leave of Court. If the facts cited in the motion are not in the Record on Appeal, the Motion must be verified. The Court's response to the Motion is called an Order.

During the course of an APPEAL, there may come a time when one or both of the parties need to ask the court for something. For instance, either the APPELLANT or APPELLEE might need to ask for more time to finish a BRIEF. Or, as discussed earlier, the APPELLANT might need to ask the COURT OF APPEALS to require the TRIAL COURT's clerk to complete the CLERK'S RECORD. When you ask the court to do something, lawyers call this "moving" the court. Lawyers "move" the court for assistance by filing MOTIONS.

This step explains the basics of MOTION practice and then describes some of the more common MOTIONS filed during an APPEAL.

How is a motion filed with the appellate court?

MOTIONS are written submissions filed with the Clerk's Office. The thing you are asking for is typically stated in the title of your MOTION. For instance, if you need more time to file a BRIEF, you would caption your MOTION as *Motion to Extend Time.* Appellate Rule 34 contains the general rules regarding MOTION practice. Appellate Rules 35 through 42 discuss specific types of MOTIONS and rules specific to them.

What must be included in a motion?

Appellate Rule 34 requires certain content in all MOTIONS:

Statement of Grounds. A statement describing the reasons you are seeking the reasons for the MOTION, response, or reply;

Statement of Supporting Facts. The specific facts supporting the grounds of the MOTION, including page citation to the CLERK'S RECORD or TRANSCRIPT or other supporting material, where appropriate;

Statement of Supporting Law. All supporting legal arguments, including citation to AUTHORITY;

Other Required Matters. Any matter specifically required by a rule governing the MOTION; and

Request for Relief. A specific and clear statement of the RELIEF SOUGHT.

The MOTION does not have to include this content in separate sections set off by headings; rather, it must simply include the information described.

How long can a motion be?

Appellate Rule 34(G) limits a MOTION to ten pages or 4,200 words unless the court allows otherwise. If the MOTION is longer than ten pages, it must contain a word-count certificate stating either (1) "I verify that this MOTION contains no more than 4,200 words"; or (2) "I verify that this MOTION contains [insert actual number, not exceeding 4,200] words."

What is a verified motion?

The Appellate Rules require that some MOTIONS and other papers be "verified." Verified MOTIONS are MOTIONS that contain facts not contained in the materials that have been filed with the Clerk's Office. Verified MOTIONS include an affirmation that these new facts are true. If you are attaching documents to your MOTION that aren't in the RECORD ON APPEAL, you should attach an affidavit affirming their authenticity or

attach certified copies showing they were filed with the TRIAL COURT or ADMINISTRATIVE AGENCY.

NOTE

If you need to file a verified motion, include the following statement. Generally, this statement would appear just before the Certificate of Service at the end of your filing:

VERIFICATION

I affirm under the penalties for perjury that the foregoing representations are true.

_____

[Sign your name]

Where do I file a motion?

You will file your MOTION with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court. The Clerk's Office is located at

200 West Washington Street
216 State House
Indianapolis, IN 46204

You may file your MOTION electronically. You will also need to provide a copy to all other parties in the appeal. Your MOTION should have a CERTIFICATE OF SERVICE to show that SERVICE was made to all other parties. (See Step Two for an example.) Remember, a copy should be sent to the party's attorney if the party is represented by counsel, and to the party directly if not.

How many copies of a Motion are filed?

If you file on paper, only one copy of the MOTION should be filed with the Clerk's Office. If you need a file stamped copy for your records, include an additional copy and a self-addressed stamped envelope.

Can a party respond to a motion?

Yes. A party has fifteen days after the SERVICE of the MOTION to file a response. Note that if a MOTION is SERVED by U.S. Mail or third-party carrier, then three additional days are added to the deadline as stated in Rule 25(C).

You do not have to respond to a MOTION and should only do so if you oppose the relief being sought by the moving party or if you believe the court should know additional facts before ruling on the MOTION. Responses should have the same content as explained under **What must be included in a motion**? A response is limited to ten pages or 4,200 words. The same word-count certificate is required in the response, if the response exceeds ten pages.

There are certain MOTIONS in which the appellate court may not wait for a response before ruling. These include

1. MOTIONS to extend time;
2. MOTIONS to file an oversized petition, BRIEF, or MOTION;
3. MOTIONS to substitute a party; and
4. MOTIONS to withdraw the record.

Although the court may not wait for a response, it will consider a response if it is given to the court before it rules on the MOTION. In addition, the court will accept a MOTION to reconsider if it is filed no later than ten days after the ruling. A response filed within the response deadline but after the court rules on the motion will be treated as a MOTION to reconsider the court's ruling.

Responses must be SERVED on all other parties to the APPEAL (on the parties' attorneys if they are represented by counsel and on the parties directly if not).

Can a party reply to a response?

Only if the court grants permission to file the reply. This is called LEAVE OF COURT. The party who filed the MOTION may not file a reply to the response without permission from the court. This MOTION is called a *Motion for Leave to File*, and the filing party attaches the reply to the Motion for Leave. Any MOTION asking the court for permission to file a reply, and the reply itself, must be submitted to the court no later than **five days** after SERVICE of the response, see App. R. 34(D), and in this particular instance, any intervening weekend days or holidays are *not* counted when counting the five days, see App. R. 25(B). Three days can be added to this deadline if SERVICE was made by U.S. mail or third-party carrier.

Replies must be SERVED on all other parties to the APPEAL.

A reply is limited to five pages or 2,100 words. If the reply is longer than five pages, it must be accompanied by a word-count certificate (as described above).

What are common motions filed with the appellate court?

Here are some frequently filed MOTIONS with the appellate court (For MOTIONS to proceed *IN FORMA PAUPERIS*, see Step Five.)

Motion for Extension of Time

A MOTION for extension of time is the most common MOTION filed. Every MOTION for extension of time must be verified, and, generally, must be filed **at least seven days before the deadline**. So, if your deadline is April 8, you must file an extension MOTION no later than April 1. No MOTION for extension of time may be filed after the original deadline has expired. The MOTION must include

1. the date of the JUDGMENT or ORDER being appealed
2. the date any MOTION to correct errors was ruled on or deemed denied
3. the date the NOTICE OF APPEAL was filed
4. the time that is sought to be extended and the event that triggered it

5. the current deadline sought to be extended, how that deadline was established, and whether the current deadline was the result of a previous extension of time
6. the new due date being requested (make sure that the new due date you are requesting is not on a weekend or a legal holiday)
7. the reason, despite your best efforts to be timely, that you need an extension of time.

NOTE

A party can seek an extension of time if less than seven days remains before a due date, but only if the moving party was not previously aware of the facts on which the motion is based. For instance, if a recent illness or death in the family prevents you from meeting a deadline, you can still move for additional time, even if the deadline is only three or four days away. If you are moving for reasons like these, you must include in your verified Motion a description of these reasons.

The Appellate Rules forbid parties from seeking to extend the deadlines for the following: Petitions for Rehearing, Petitions to Transfer, any brief supporting or responding to these petitions, or briefs filed in Appeals involving termination of parental rights.

Finally, Motions for extension of time will only be granted in extraordinary circumstances in Appeals involving workers' compensation, child custody, child support, child visitation, paternity, adoption, and a determination that a child is a Child in Need of Services (also known as a *CHINS* case).

Motion for Leave to File

This MOTION was described earlier with respect to replies in support of MOTIONS. Replies to MOTIONS and other types of filings that parties are not automatically allowed to file require LEAVE OF COURT A party should file a "motion for leave to file" when the Appellate Rules do not

explicitly authorize the filing of the thing you wish to file, or when you are trying to file something after a deadline has passed. A MOTION for LEAVE OF COURT to file should be verified and should describe in as much detail as possible the good cause for the filing. In other words, describe why the court should allow you to file the papers attached to the MOTION for leave to file.

Motion to Compel Completion

Described earlier, this MOTION is filed if the TRIAL COURT's clerk or COURT REPORTER fails to file the NOTICE OF COMPLETION OF THE CLERK'S RECORD or the NOTICE OF COMPLETION OF TRANSCRIPT. **It is the APPELLANT'S responsibility to file a Motion to Compel Completion when necessary.** Under Appellate Rules 10 and 11, this MOTION is due no later than seven days after the due date for the NOTICE OF COMPLETION OF THE CLERK'S RECORD or NOTICE OF COMPLETION OF TRANSCRIPT.

Motion to Transmit Record from Prior Appeal

Sometimes a party would like the record or a TRANSCRIPT from a previous APPEAL transferred to the new APPEAL for use as an EXHIBIT. This normally occurs in postconviction cases.

Motion to File Oversized Document or Brief

The Appellate Rules set out page limits and word limits for most all filings. Many of these are found in Appellate Rule 44(D) and (E). If you want to file a document that is longer than the page and word limits established by the Rules, you must first ask permission to do so. For BRIEFS, this MOTION must be filed with the Clerk at least fifteen days before the BRIEF's due date.

Motion to Stay

The filing of an APPEAL does not affect or automatically stop the TRIAL COURT'S ORDER or JUDGMENT from being enforced. A MOTION to STAY is sometimes filed when a party wants enforcement of the ORDER or JUDGMENT of the TRIAL COURT temporarily suspended. Except in

extraordinary circumstances, you must first ask the TRIAL COURT to STAY its ORDER. If the TRIAL COURT denies the request, this MOTION can be filed with the COURT ON APPEAL. A list of the following documents will need to be included with this MOTION:

1. The JUDGMENT or ORDER you wish to have stayed
2. The TRIAL COURT'S ORDER denying the MOTION to STAY, or a verified demonstration that the TRIAL COURT has failed to rule on the MOTION to STAY within a reasonable time
3. Other parts of the CLERK'S RECORD or TRANSCRIPT that are relevant
4. A certification from you stating the date, time, place, and method of SERVICE made on all other parties
5. A certification from you stating detailed reasons all other parties should not have a chance to respond to the MOTION before the court grants the MOTION

If an Emergency MOTION to STAY without notice is requested, refer to Appellate Rule 39(D).

STEP FIVE

Motions to Proceed *In Forma Pauperis* (or in Other Words, How to Proceed without Having to Pay Certain Fees)

OVERVIEW

By proceeding *In Forma Pauperis*, you can avoid paying appellate filing fees. You must first ask the Trial Court to give you Pauper Status. If the Trial Court rejects your request, you can also ask the Court of Appeals.

If you are unable to afford the cost of the appellate filing fee, you can move the court to proceed *IN FORMA PAUPERIS*, meaning that, if granted, you will be allowed to proceed without paying for such things (and, in a criminal appeal, the cost of the TRANSCRIPT).

Appellate Rule 40 states the rules, and this step describes how to proceed *IN FORMA PAUPERIS* or to obtain PAUPER STATUS.

What if the Trial Court previously granted you *in forma pauperis* status?

A party who was granted *IN FORMA PAUPERIS* standing in the TRIAL COURT may proceed *IN FORMA PAUPERIS* on APPEAL without further authorization from the TRIAL COURT or COURT OF APPEALS. See **What is filed with the Court of Appeals** to proceed *in forma pauperis*? on page 5.3 of this Step for further information.

What if the Trial Court did not previously grant you *in forma pauperis* status?

If you want to proceed *IN FORMA PAUPERIS* on APPEAL and the TRIAL COURT has not previously given you that status, you will need to file a MOTION with the TRIAL COURT asking it to grant you that status. If the TRIAL COURT grants your MOTION, you can proceed *IN FORMA PAUPERIS* in the COURT OF APPEALS. If the TRIAL COURT denies your MOTION, the TRIAL COURT must state in a written ORDER the reasons for the denial.

The MOTION for LEAVE OF COURT to proceed *IN FORMA PAUPERIS* consists of (1) the MOTION itself and (2) an affidavit to proceed *IN FORMA PAUPERIS*. You will file these papers with the TRIAL COURT's clerk. There is a sample motion (Form 40-1) and a sample affidavit (Form 40-2) included in the Appellate Rules' sample forms.

Motion to proceed *in forma pauperis* filed with the trial court

In addition to the general content required of all MOTIONS (see Step Four of this guide), the MOTION for leave to proceed *IN FORMA PAUPERIS* should also contain the following information:

1. a statement showing in detail your inability to pay fees or costs;
2. a statement showing in detail your belief that you are entitled to redress; and
3. a statement showing in detail the issues you intend to present on APPEAL in your BRIEF(s).

Affidavit to proceed *in forma pauperis*

With your MOTION to proceed IN FORMA PAUPERIS, you must also file an affidavit. The affidavit must set forth facts concerning your financial status. Included within the **Sample Forms** section of this guide is a sample affidavit to proceed *IN FORMA PAUPERIS*. Use that sample form as a guide and supply the information indicated in the form. The form can also be found at the end of the Indiana Rules of Appellate Procedure as Form

40-1, as well as on the Supreme Court's website at http://www.in.gov/judiciary/2708.htm.

What if the trial court denies the motion to proceed *in forma pauperis?*

If the TRIAL COURT denies your MOTION to proceed *IN FORMA PAUPERIS*, you may file a similar MOTION with the COURT OF APPEALS within thirty days of SERVICE of the TRIAL COURT'S ORDER. As in the TRIAL COURT, you must file a MOTION and attach an affidavit to proceed *IN FORMA PAUPERIS*. Your MOTION to the COURT OF APPEALS should also attach a copy of the TRIAL COURT'S ORDER denying you *IN FORMA PAUPERIS* status.

If you are appealing a decision of an ADMINISTRATIVE AGENCY, you must file a MOTION with the COURT ON APPEAL and an affidavit that contains the same information as described above.

What is filed with the Court of Appeals to proceed *in forma pauperis?*

Together with the first papers you file in your APPEAL, you must file one of the following:

1. the TRIAL COURT'S authorization to proceed *IN FORMA PAUPERIS*;
2. an affidavit stating that you were permitted to proceed *IN FORMA PAUPERIS* in the TRIAL COURT and that the TRIAL COURT has not changed or altered that permission; or
3. a MOTION to the COURT OF APPEALS asking to proceed *IN FORMA PAUPERIS*.

NOTE

At any time, the Trial Court has the power to change its mind and either revoke or grant *In Forma Pauperis* status. If it does, the Trial Court must state in a written order the reasons for the change. In the event this happens and your status changes,

What if the Trial Court did not previously grant you in forma pauperis status?

you are required by Appellate Rule 40 to promptly file the Trial Court's Order with the Clerk's Office.

STEP SIX

When is the Appellant's Opening Brief due?

OVERVIEW

The Appellant's opening Brief is due no later than thirty days after the Notice of Completion of the Clerk's Record is filed if the Transcript is already complete or no Transcript has been requested. If the Transcript is not complete when the Clerk's Record is completed, the Appellant's opening Brief is due thirty days after the Court Reporter serves the Notice of Completion of Transcript.

Appellate Rule 45 establishes the rules and deadlines for when BRIEFS are due and should be filed with the Clerk's Office.

The APPELLANT'S opening BRIEF is due no later than thirty days after the TRIAL COURT clerk SERVES the NOTICE OF COMPLETION OF THE CLERK'S RECORD if the TRANSCRIPT is complete or no TRANSCRIPT has been requested.

If the TRANSCRIPT is not complete when the TRIAL COURT clerk SERVES the NOTICE OF COMPLETION OF CLERK'S RECORD, the APPELLANT'S BRIEF is due no later than thirty days after the court reporter SERVES the NOTICE OF COMPLETION OF TRANSCRIPT.

NOTE

Appellant does not receive additional days for service by mail of either the Notice of Completion of Clerk's Record or Notice of Completion of Transcript. In other words, if the Court Reporter files the Notice of Completion of Transcript on September 1, but you do not receive it by mail until September 4, Appellant's thirty-day deadline for filing Appellant's Brief begins to run from September 1, not September 4.

What if the Trial Court did not previously grant you in forma pauperis status?

When is the Appellant's Opening Brief due?

NOTE

Calculating deadlines can be difficult. Study Appellate Rule 25 for all the specifics, but you generally calculate deadlines as follows:

1. The day of the act from which time begins to run is not included in calculating a deadline.
   Illustration: If you have fifteen days to respond to something filed on August 1, count fifteen days starting with August 2. In that situation, your due date would be August 16.

2. But what if August 16 falls on a weekend or on a State holiday? Your response would then be due on the next business day. In other words, (from the above illustration) if August 16 is a Sunday, your deadline would be Monday, August 17.

3. When your filing deadline is determined by when you were served with another party's motion, brief, or other paper, and if service of that other party's document is by mail or third-party carrier, then the deadline for filing any answer, response, or brief in response to the other party's filing is automatically extended by three additional days beyond the deadline specified for the filing in the Appellate Rules.

4. As an illustration, take the above example. You have fifteen days to respond to something served on you by another party on August 1. Normally, you would have until August 16 to respond. But, if the party served you by mail, then your response deadline is extended by three days to August 19 (unless August 19 is a

weekend, in which case your response would be due the next business day after August 19).

NOTE

Appellate Rule 25 does **not** extend the time for filing documents when a deadline is counted from the date on which the trial court clerk or an appellate court files a document or when filing electronically. Three common examples of when a deadline is not extended are the Appellant's Brief, a petition for rehearing, and a petition to transfer. The filing deadline for the Appellant's Brief is counted from the date the Trial Court's clerk serves the Notice of Completion of Transcript (or the Notice of Completion of Clerk's Record if no transcript was requested in the Notice of Appeal) on the Appellant. The Petition for Rehearing and Petition to Transfer filing deadlines are counted from the date the Court on Appeal files its opinion or final order resolving the appeal.

As a general rule, when in doubt, file earlier. Nothing prevents you from filing before the last date of a deadline. Missing a deadline can put your APPEAL in jeopardy of dismissal. There is no harm or downside to filing early.

STEP SEVEN

Filing the Appellant's Brief

OVERVIEW

An Appellant must make all factual and legal arguments in the Appellant's Brief. This brief should contain your reasons, written in a clear, easy-to-understand manner, the Trial Court made an error in your case that justifies the Court on Appeal overturning the Trial Court's decision. The required contents of an Appellant's Brief are set out in Appellate Rule 46. The brief should not exceed **thirty pages or 14,000 words**.

We've now reached the heart of the APPEAL. The next several steps describe the process by which the APPELLANT and the APPELLEE submit their BRIEFS to the COURT OF APPEALS. **These BRIEFS are the main way that parties make their legal arguments to the COURT ON APPEAL.** First up is the APPELLANT'S BRIEF.

What is the purpose of the Appellant's Brief?

The purpose of the APPELLANT'S BRIEF is to tell the COURT ON APPEAL the legal reasons the APPELLANTbelieves the TRIAL COURT or ADMINISTRATIVE AGENCY made a reversible error, along with facts supporting those reasons. The APPELLANTmust convince the COURT ON APPEAL that the TRIAL COURT or ADMINISTRATIVE AGENCY made a specific error (or errors) of law, fact, or procedure and that the error was so serious that the TRIAL COURT's or ADMINISTRATIVE AGENCY's decision should be overturned. The APPELLANT should make all arguments in the appellant's brief. Generally speaking, arguments not made in the opening BRIEF are waived and cannot be raised later. APPELLANT'S BRIEF should never be used to personally attack a judge or opposing party.

NOTE

Not every error made at the Trial Court will result in a reversal or remand. A "reversible error" is an error made by the Trial Court that is so significant that the Judgment must be reversed by the Court on Appeal. A reversible error results in an improper Judgment. A reversible error can be distinguished from other errors, which are minor and do not affect the ultimate outcome of the case.

When must I file the Appellant's Brief?

Step Six above describes how to calculate when the APPELLANT'S BRIEF is due.

Where do I file the Appellant's Brief and how many copies are filed?

You must file your APPELLANT'S BRIEF with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court. The Clerk's Office is located at

200 West Washington Street
216 State House
Indianapolis, IN 46204

You may file your BRIEF electronically. Make sure to SERVE a copy of your BRIEF on all the parties to the APPEAL (you provide a copy to the party's attorney if the party is represented by counsel, and to the party directly if not). An APPENDIX (see Step Eight below), if any, must be filed *with* the APPELLANT'S BRIEF. If you file on paper, only one copy of the BRIEF should be filed with the Clerk's Office. If you need a file-stamped copy for your records, include an additional copy and a self-addressed stamped envelope.

The nuts and bolts of an Appellant's Brief

Before listing the required content of an APPELLANT'S BRIEF, here are some nuts-and-bolts requirements for all BRIEFS (with citation to the applicable Appellate Rule):

Page size. 8 ½ × 11 inches, white paper. Appellate Rule 43(B).

Production. Typewritten, printed or produced by a word processing system using black print. Appellate Rule43(C). If handwritten, black ink must be used and the handwriting must be neat and legible. Although not required, if you handwrite your BRIEF, then you should be sure to print it, rather than write it in cursive because print is almost always more legible.

Typeface. Typeface must be 12-point or larger. See Appellate Rule 43(D) for the required font style. Fifteen typefaces are acceptable, including Century, Century Schoolbook, Georgia, and Times New Roman.

Line spacing. All text must be double-spaced, even if your brief is hand-written, except for long quotations and footnotes, which must be single-spaced. Appellate Rule 43(E).

Single sided. Use only one side of the paper (not double-sided). Appellate Rule 43(C).

Numbering. All pages must contain page numbers at the bottom of the page. Appellate Rule 43(F). Page numbering begins with number 1 on the front page of the document.

Binding. Conventionally filed documents shall be bound by a single staple, not in booklet form. Appellate Rule 43(J).

Party references. Refer to the parties by name (such as *Joe Smith* or *XYZ Company*) rather than by APPELLANT or APPELLEE. See Appellate Rule 22(D).

Service. SERVE a copy of the BRIEF, any addendum, and any APPENDIX on all other parties to the APPEAL. (If a party is represented by an attorney, then the *attorney* must be SERVED with the copy. If a party is not represented by an attorney, then the SERVICE copy is sent directly to the party.)

What must be included in the Appellant's Brief?

The APPELLANT'S BRIEF must conform to the Appellate Rules and should be as organized as possible. The content required in all APPELLANT'S BRIEFS is set out in Appellate Rule 46. An APPELLANT'S BRIEF submitted to the COURT ON APPEAL must be divided into the following sections in the following order:

Front Page Content. The front page must have the information contained in Form 43-1, including the case number, the names and designations of the parties, the information from the TRIAL COURT, the title (i.e., APPELLANT'S BRIEF), and your contact information.

Table of Contents. Lists the sections of the BRIEF, including the headings and subheadings of each section and the page number on which they begin. It is generally considered helpful to the court to use headings and subheadings within the BRIEF. Headings and subheadings provide a roadmap for the court when it is reading the BRIEF.

Table of Authorities. Lists each case, statute, rule, and other AUTHORITY cited in the BRIEF, with references to each page on which it is cited. The AUTHORITY cited should be grouped in the following order in the TABLE OF AUTHORITIES:

a. cases, listed in alphabetical order

b. constitutional citations

c. statutes, listed in order by number from lowest to highest

d. other secondary AUTHORITY in alphabetical order

NOTE

An Appellant may, but is not required to, cite to *all* four types of Authority in the opening Brief.

Statement of the Issues. The statement of issues describes, in a short, summary fashion, each legal issue presented for the appellate court's review. For instance, if the APPELLANT believes the TRIAL COURT erred in three ways, those three ways, or issues, should be separately and concisely described. If you can, describe each issue presented in one sentence and in the form of a question. For instance, "Did the trial court misinterpret the parties' contract and incorrectly require Joe Smith to repay Jane Johnson's deposit when the contract explicitly states the deposit is nonrefundable?"

Statement of the Case. The statement of the case briefly describes the nature of the case, the proceedings before the TRIAL COURT relevant to the issues presented, and the TRIAL COURT'S rulings. Page references to the RECORD ON APPEAL or the APPENDIX are required. You can think of this as the procedural history of the case.

Statement of the Facts. The statement of facts describes the facts relevant to the issues presented for review for each factual assertion made. Facts already described in the statement of the case should not be repeated. Page references to the RECORD ON APPEAL or the APPENDIX are required for each factual assertion made. The statement of facts must be in a narrative form, rather than a witness-by-witness summary of testimony. For APPEALS challenging a ruling on a postconviction petition for relief, the statement of facts can focus on facts from the postconviction proceeding rather than on facts relating to the criminal conviction.

NOTE

You must include citations to the Record on Appeal or Transcript in both the Statement of the Case and the Statement of Facts. Study Appellate Rule 22 for more information. If you make a factual assertion—for instance, "The parties divorced on July 24, 2019"—you must provide a citation to the page number of the Transcript, Exhibits to the Transcript, or Appendix that supports that factual assertion. It would look something like this in your Brief: "The parties divorced on July 24, 2011. Appellant's App. 57." By doing this, you are telling the court what evidence in the Appendix supports this fact.

Why is this important? Basically, the Court on Appeal must make its decision based on the evidence presented to the Trial Court. To do so, the Court on Appeal cannot simply "take your word" concerning that evidence—it must see that evidence for itself, to ensure you are summarizing that evidence correctly. Because this is so important, the failure to provide citations to the record can be considered "procedural bad faith" and result in the Court on Appeal assessing damages, including the other side's attorney fees. See Appellate Rule 66(E). Indiana's appellate courts have held that procedural bad faith can occur "when a party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates relevant facts appearing in the record, and files briefs written in a manner calculated to require the maximum expenditure of time both by the opposing party and the reviewing court." *Watson v. Thibodeau*, 559 N.E.2d 1205, 1211 (Ind. Ct. App. 1990).

Summary of the Argument. This section is a summary of the argument you plan on making in the argument section. This section gives the court a quick overview of your arguments in a few sentences or paragraphs. The court should be able to figure out the main points of your legal arguments by reading this section.

Argument. This section, which is the heart of an APPELLANT'S BRIEF, contains a detailed discussion of why APPELLANT believes the TRIAL COURT made a reversible error. The arguments about each issue must be presented in a logical, easy-to-follow fashion and supported by citations to legal authorities, the APPENDIX, TRANSCRIPT, and EXHIBITS to the TRANSCRIPT. Each argument must include a short, plain statement of the STANDARD OF REVIEW for each issue presented.

Each issue presented must also include a short statement of the procedural and substantive facts necessary for the court to understand the issue. The APPELLANT should include a statement describing how these issues were raised and resolved by the TRIAL COURT. Each argument should have an argument heading. If the APPELLANTis arguing about the admissibility of evidence, citation must be made to the pages of the TRANSCRIPT where the evidence was identified, offered, and received or rejected by the TRIAL COURT. If the APPELLANT is arguing about the TRIAL COURT's decision to give or refuse a jury instruction, the instruction must be written out, word for word, in the argument section, together with the exact objections, if any, made to the instruction at trial, and citations to the relevant pages in the TRANSCRIPT where the objections were made.

NOTE

It is vital that you understand what the applicable *standard of review* is for the issues presented on appeal. The Standard of Review is the rule that will govern the Court on Appeal's review of the Trial Court's actions. For instance, if you argue that the Trial Court misinterpreted a statute, that is typically a question of law subject to *de novo* standard of review, meaning that the appellate court can review the legal question without being required to give any deference to the Trial Court's interpretation. On the other hand, an *abuse-of-discretion* standard of review requires the appellate court to give significant deference to the Trial Court's decision. Make sure you understand the applicable Standard of Review and take it into account in your argument.

Conclusion. This section should be a precise statement of the RELIEF SOUGHT (meaning what you want the appellate court to do if it agrees with your arguments). APPELLANT must also sign the BRIEF in a signature block immediately following the Conclusion.

Word-Count Certificate. If the APPELLANT'S BRIEF is **longer than thirty pages**, it cannot exceed 14,000 words and must include one of the following word-count certificates:

1. "I verify under penalties of perjury that this brief contains no more than 14,000 words"
2. "I verify under penalties of perjury that this brief contains [insert actual number] words."

The word-count certificate should appear at the end of the brief but before the CERTIFICATE OF SERVICE.

Certificate of Service. This certifies that a copy was provided to all other parties to the APPEAL (or to their attorneys if they are represented by counsel). It must list each party or attorney who was SERVED, including their addresses, along with the method of SERVICE and date of SERVICE. It must be at the end of the BRIEF and not separately filed. See Appellate Rule 24(D). (See Step Two for an example.)

Trial Court's Order or Judgment. A copy of the ORDER or JUDGMENT being appealed must be filed with the APPELLANT'S BRIEF. If filing electronically, the ORDER or JUDGMENT should be filed as an attachment to the APPELLANT'S BRIEF. If filing on paper, staple the ORDER or JUDGMENT to the back of the APPELLANT'S BRIEF. When a criminal sentence is at issue in a criminal APPEAL, the APPELLANT'S BRIEF must also contain a copy of the sentencing ORDER just inside the back cover.

How long can the Appellant's brief be?

Appellate Rule 44 establishes how long the APPELLANT'S BRIEF can be. An APPELLANT'S BRIEF cannot exceed thirty pages unless it is accompanied by a word-count certificate (see below) certifying that the BRIEF does not exceed 14,000 words. Using today's standard word-processing software, it is not unusual for a thirty-page, double-spaced BRIEF written in 12-point font to contain substantially fewer than 14,000 words.

Words that appear on the cover, table of contents, TABLE OF AUTHORITIES, signature block, CERTIFICATE OF SERVICE, word-count certificate, or the appealed JUDGMENT or ORDER do not count toward the word limit. Appellate Rule 44(C). In other words, everything listed under **What must be included in the Appellant's Brief? above**

from the Statement of Issues through and including the Conclusion *is* included in the word limit.

Headings and footnotes are also included in the length limits. If you use word-processing software to verify the word count, be sure it includes the footnotes in the word count. For instance, Microsoft Word is set not to count footnotes by default, but this can be changed within its word-count settings.

NOTE

Just because you have up to 14,000 words doesn't mean you have to use them. It is generally considered best practice to select your two or three best arguments about why an error occurred and argue just those. Arguing everything is generally disfavored and usually ineffective. Instead, focus the court's attention on your strongest points.

Citation Reference

Under Appellate Rule22(C), any factual statement made in the APPELLANT'S BRIEF (like the Statement of Facts section) must be supported by a citation to the page where it appears in the APPENDIX. If it is not in the APPENDIX, cite to the page it appears in the TRANSCRIPT or the EXHIBITS to the TRANSCRIPT. Any record material cited in an APPELLANT'S BRIEF must be reproduced in an APPENDIX or the TRANSCRIPT or EXHIBITS. Any material from the RECORD ON APPEAL cited in an APPELLANT'S BRIEF that is also included in an addendum to the BRIEF should include a citation to the APPENDIX or TRANSCRIPT and to the addendum to the BRIEF. Appellate Rule 22(B) shows sample citations to Indiana statutes, regulations, court rules, and local courts' rules. Rule 22(E) also lists abbreviations that can be used without explanation in citations and references.

STEP EIGHT

Filing the Appendix

OVERVIEW

The Appendix contains all the materials cited in the Brief for factual or procedural history, other than the Transcript. The Appellant files an Appendix with the Appellant's Brief. Appellee may also file an Appendix with the Appellee's Brief if Appellee believes relevant materials were not included in Appellant's Appendix. Appellate Rule 50 spells out what is required for inclusion in the Appendix and how it should be organized.

An APPENDIX is a compilation of documents filed in the TRIAL COURT that relate to the issues raised in the BRIEF. Appellate Rules 49 to 51 govern the filing and contents of an APPENDIX.

There are general requirements pertaining to all appendices filed with the court on appeal. There are also specific requirements for the APPENDIX that depend on whether the case being appealed is a CIVIL CASE or a CRIMINAL CASE. The general requirements applicable to any APPENDIX are described below.

When is the Appendix filed?

Any party may file its APPENDIX on or before the date on which the party's brief is filed. If the APPELLANT'S APPENDIX contains all of the relevant materials and the APPELLEE does not believe additional materials are necessary, then the APPELLEE does not need to file an APPENDIX. Any party may file a supplemental APPENDIX without LEAVE OF COURT at any time until the APPELLANT'S REPLY BRIEF is filed.

How many copies of an Appendix are filed?

If filing on paper, only the original of the APPENDIX is filed with the Clerk's Office—no copies are required or desired. Remember to SERVE a copy of the APPENDIX on all parties to the APPEAL (namely, on the parties directly if they are not represented by counsel, or on their attorneys if they are represented by counsel).

What are the general requirements of all appendices?

Format Requirements

An APPENDIX must have page numbers at the bottom that do not cover any content on the original document. Each volume shall begin with the number one on its front page. See Appellate Rule 51(C). An APPENDIX should be copied on 8 ½ × 11 inch white paper. The APPENDIX should be printed on one side of the paper, not double-sided.

Front Page. Each APPENDIX should have more than one volume, and each volume's front page should list how many volumes there are and which of the volumes that particular volume is. An example would be to for the cover to state "Appellant's Appendix Volume 1 of 3." A link to a sample APPENDIX cover page is included in the Sample Forms section.

Page limits. Each volume of the APPENDIX can have no more than 250 (if filed electronically, each volume must contain either 250 page or no more than 50MB) pages bound into one volume. If the APPENDIX has more than 250 pages, the next volume shall begin with the front page marked as page one.

Table of Contents

The APPENDIX must have a stand-alone table of contents volume. See Appellate Rule 50(C). As such, each Appendix should have at least two volumes. The table of contents needs to list the documents in the

APPENDIX, the page and volume numbers on which those documents start, and the documents' dates.

Verification of Accuracy

The APPENDIX must contain a VERIFICATION OF ACCURACY. The VERIFICATION OF ACCURACY is a statement by the party that the documents in the APPENDIX are the accurate copies of documents from the TRIAL COURT. The VERIFICATION OF ACCURACY should state as follows:

> "I verify under penalties of perjury that the documents in this APPENDIX are accurate copies of parts of the RECORD ON APPEAL."

After the VERIFICATION OF ACCURACY, the party preparing the document should sign the party's name. The VERIFICATION OF ACCURACY should be the end of the APPENDIX, immediately *before* the CERTIFICATE OF SERVICE.

What are the specific requirements of appendices in civil appeals?

The purpose of an APPENDIX in a CIVIL CASE is to present the COURT ON APPEAL with copies of only those parts of the RECORD ON APPEAL that are relevant to the legal issues presented on APPEAL. Include documents that were part of the record before the TRIAL COURT (documents filed by either party or JUDGMENTs and ORDERs by the judge), and ensure that whatever copies you include are accurate copies of the proceedings in the TRIAL COURT. This means ensuring your copies do not have additional things written on, or removed from, the copy.

Appellate Rule 50(A) explains what documents should be included in an APPEAL APPENDIX in a CIVIL CASE. Instead of searching your personal records for the documents, you can provide the TRIAL COURT's clerk with a list of the documents needed. The list of MOTIONS and pleadings can be obtained from the TRIAL COURT's CHRONOLOGICAL CASE SUMMARY. The TRIAL COURT's clerk may charge you for the copies.

An APPENDIX should include copies of the following documents, if they exist, that are relevant to the issues presented, and they should be placed in the APPENDIX in this ORDER:

1. CHRONOLOGICAL CASE SUMMARY
2. JUDGMENT or ORDER being appealed
3. Jury verdict (if there is one)
4. Any jury instruction not included in APPELLANT'S BRIEF or the TRANSCRIPT (when arguing about the jury instruction or refusal to give the jury instruction)
5. Pleadings and other filings from the CLERK'S RECORD (in chronological order) that are necessary for resolution of the issues raised on APPEAL
6. Other short excerpts from the RECORD ON APPEAL (in chronological ORDER), such as a contract or pictures, that are important to the court's consideration of the issues on APPEAL
7. Any record material relied on in the BRIEF, unless the material is already included in the TRANSCRIPT
8. VERIFICATION OF ACCURACY (see above)

What are the specific requirements of an Appendix in a Criminal Case?

In a criminal case, an APPENDIX should include copies of the following documents, if they exist, that are relevant to the issues presented, and they should be placed in the APPENDIX in this ORDER:

1. The CLERK'S RECORD, including the chronological case summary;
2. Any jury instruction not included in APPELLANT'S BRIEF or the TRANSCRIPT (when arguing about the jury instruction or refusal to give the jury instruction)

3. Other short excerpts from the RECORD ON APPEAL (in chronological order), such as jury instructions or pictures, that are important to the court's consideration of the issues on APPEAL
4. Any material from the record on appeal relied on in the BRIEF, unless the material is already included in the TRANSCRIPT
5. VERIFICATION OF ACCURACY (see above)

NOTE

In terms of content, Appellant's Appendix and Appellee's Appendix should follow the rules above. Whether in civil or criminal Appeals, the following two rules also apply to appendices:

1. Appellee's Appendix should not contain any materials already contained in Appellant's Appendix, unless necessary for completeness or context. Appellee's Appendix can contain additional materials that Appellee believes are relevant to the issues on appeal.

2. Because the Transcript is transmitted to the Court on Appeal, neither party should reproduce portions of the Transcript in an Appendix.

STEP NINE

Appellee's Appearance

OVERVIEW

Appellee's appearance should be filed with the Clerk's Office no later than thirty days after the Appellant files the Notice of Appeal or with the first document you file, whichever is earlier.

Most everything in this guide so far has focused on the APPELLANT. Now we begin to bring the APPELLEE into the mix by discussing the APPELLEE's appearance. The four most important questions are (1) when must the APPELLEE's appearance be filed; (2) where is the APPELLEE's appearance filed; (3) on whom must the APPELLEE SERVE a copy of APPELLEE's appearance; and (4) what content must be included in the APPELLEE's appearance? The answers to those questions are below.

When is the Appellee's appearance filed?

Under Appellate Rule 16(B), APPELLEE must file an appearance no later than fifteen days after the filing of the NOTICE OF APPEAL or with the first document filed by the APPELLEE, **whichever comes first**.

For instance, if APPELLEE files a MOTION with the court (above) before she has filed an appearance, she must file the APPELLEE'S appearance with the MOTION that she is filing.

Where is the Appellee's appearance filed?

File the APPELLEE'S appearance with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court. The Clerk's Office is located at

200 West Washington Street
216 State House
Indianapolis, IN 46204

You may file your appearance electronically. If you file it on paper, only one copy of the motion should be filed with the Clerk's Office. If you need a file-stamped copy for your records, include an additional copy and a self-addressed stamped envelope.

On whom must I serve a copy of my appearance?

If you file your appearance within the first fifteen days after the APPELLANT files a NOTICE OF APPEAL (as required by Appellate Rule 16), then you must serve a copy of your appearance on all parties of record in the TRIAL COURT, whether or not they have entered an appearance in the APPEAL. Appellate Rule 24(A)(2). After fifteen days, however, you only need serve a copy on (a) parties who have filed appearances; and (b) APPELLANTS who have filed NOTICE OF APPEAL. Appellate Rule 24(A)(3).

What must be included in the Appellee's appearance?

Under Appellate Rule 16(B), the APPELLEE'S appearance (when not represented by an attorney) should include the following information:

1. the case caption, which includes information about the parties and the appellate CASE NUMBER;
2. the appearing party's name, address, fax number, telephone number, and e-mail address, if any;
3. if it is a CIVIL CASE, whether APPELLEE is willing to participate in appellate ALTERNATIVE DISPUTE RESOLUTION;
4. APPELLEE's signature; and

5. If you are the APPELLEE, a CERTIFICATE OF SERVICE verifying that a copy of the APPELLEE'S appearance was SERVED on all other parties to the APPEAL.

NOTE

If another party is represented by an attorney, then you must serve *the attorney* with a copy of the Appearance, not the party.

NOTE

Here is an example of a certificate of service:

CERTIFICATE OF SERVICE

I certify that the foregoing document was served on the following by _____ [specify means of service, such as "U.S. mail, postage prepaid"] on _____ [specify date of service]:

[Type here the name(s) and addresses of all persons to whom you sent a copy of your Appearance]

NOTE

To learn more about service of documents on other parties, including what methods of service are acceptable, see Appellate Rule 24.

STEP TEN

Filing the Appellee's Brief

OVERVIEW

The Appellee's Brief is due thirty days after Appellant's Brief is served. The Appellee's Brief should respond to the legal and factual arguments in Appellant's Brief and should explain why the Lower Court or Administrative Agency was correct. Appellate Rule 46 governs the content of an Appellee's Brief. If necessary, the Appellee should file an Appendix with the Brief.

The APPELLEE'S BRIEF should respond to the APPELLANT'S BRIEF and explain why the TRIAL COURT's or ADMINISTRATIVE AGENCY's JUDGMENT or ORDER is correct.

When is the Appellee's Brief due?

The APPELLEE'S BRIEF is due no later than thirty days after SERVICE of the APPELLANT'S BRIEF. Three days can be added to the due date if the APPELLANT'S BRIEF was SERVED by U.S. Mail or a third-party carrier. If the deadline falls on a weekend or State holiday, then the due date is extended to the next business day.

Where is the Appellee's Brief filed and how many copies?

APPELLEE must file the APPELLEE'S BRIEF with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court. The Clerk's Office is located at

200 West Washington Street
216 State House
Indianapolis, IN 46204

You may file an APPELLEE'S BRIEF electronically. The APPELLEE must SERVE a copy of the APPELLEE'S BRIEF on all the other parties to the APPEAL who are not represented by counsel, or on their attorneys if they are represented by counsel. If you file on paper, only one copy of the brief should be filed with the Clerk's Office. If you need a file-stamped copy for your records, include an additional copy and a self-addressed stamped envelope.

What is the purpose of the Appellee's Brief?

The APPELLEE'S BRIEF is a response to the APPELLANT'S BRIEF. It states the law and the facts from the APPELLEE's perspective and explains how the law should apply to the particular facts of your case. As with the APPELLANT'S BRIEF, the APPELLEE'S BRIEF should not be used to personally attack the opposing party, the opposing party's counsel or the TRIAL COURT. APPELLEE's objective is to convince the COURT ON APPEAL that the TRIAL COURT did not make the specific error or errors in law, fact, or procedure that the opposing party claims it made and that the JUDGMENT or ORDER being appealed was correctly decided.

The nuts and bolts of an Appellee's Brief

See Step Eight -- the same rules governing content, formatting, and citation guidelines apply to the APPELLEE'S BRIEF, except for the following:

What must be included in the Appellee's Brief?

The APPELLEE'S BRIEF must conform to the Appellate Rules and should be as organized as possible. The content required in all APPELLEE'S BRIEFS is set out in Appellate Rule 46. An APPELLEE'S BRIEF submitted to the COURT ON APPEAL must be divided into the following sections in the following order:

Cover Content. The front cover must have the information contained in Form 43-1, including the case number, the names and designations of the parties, the information from the TRIAL COURT, the title (i.e.,

APPELLANT'S BRIEF), and your contact information. See Appellate Rule 43(H).

Table of Contents. Lists the sections of the BRIEF, including the headings and subheadings of each section and the page number on which they begin. It is generally considered helpful to the court to use headings and subheadings within the BRIEF. Headings and subheadings provide a roadmap for the court when it is reading the BRIEF.

Table of Authorities. Lists each case, statute, rule, and other AUTHORITY cited in the BRIEF, with references to each page on which it is cited. The AUTHORITY cited should be grouped in the following order in this table:

1. cases, listed in alphabetical order
2. constitutional citations in order
3. statutes, listed in order by number from lowest to highest
4. other secondary AUTHORITY in alphabetical order

Within each of these groupings, the authorities should be listed alphabetically.

NOTE

The Appellee might not cite to all four types of authority in the Appellee's Brief.

NOTE

Agreement with Appellant's Statements. The Appellee's Brief may omit the next three sections—statement of issues, statement of the case, and the statement of the facts—if the Appellee agrees with those statements in the Appellant's Brief. If any of these statements are omitted, the Appellee's Brief should state explicitly that the Appellee agrees with the Appellant's statements.

Statement of the Issues. The statement of the issues describes, in a short, summary fashion, each legal issue presented to the appellate court for review. This section should respond to all issues raised by the APPELLANT.

Statement of the Case. The statement of the case briefly describes the nature of the case, the proceedings before the TRIAL COURT relevant to the issues presented, and the TRIAL COURT's rulings. Page references to the RECORD ON APPEAL or the APPENDIX are required.

Statement of the Facts. The statement of facts describes the facts relevant to the issues presented for review. Facts already described in the statement of the case should not be repeated. Page references to the RECORD ON APPEAL or the APPENDIX are required for each factual assertion. The statement of facts must be in a narrative form, rather than a witness-by-witness summary of testimony. For appeals challenging a ruling on a petition for postconviction relief, the statement of the facts can focus on facts from the postconviction proceeding rather than on facts relating to the criminal conviction.

NOTE

You must include citations to the Record on Appeal or Transcript in both the Statement of the Case and the Statement of Facts. Study Appellate Rule 22 for more information. If you make a factual assertion—such as, "The parties divorced on July 24, 2011"—you must provide a citation to the page number of the Transcript, exhibits to the Transcript, or Appendix that supports that factual assertion. It would look something like this in your brief: "The parties divorced on July 24, 2011. Appellant's App. 57." By doing this, you are telling the court what evidence in the Appendix supports this fact.

Why is this important? Basically, the appellate court must make its decision based on the factual evidence presented to the trial court. To do so, the Court on Appeal cannot simply "take your word" concerning that evidence—it must see that

> evidence for itself, to ensure you are summarizing that evidence correctly. Because this is so important, the failure to provide citations to the record can be considered "procedural bad faith" and result in the appellate court assessing damages, including the other side's attorney fees. See Appellate Rule 66(E). Indiana's appellate courts have held that procedural bad faith can occur "when a party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates relevant facts appearing in the record, and files briefs written in a manner calculated to require the maximum expenditure of time both by the opposing party and the reviewing court." *Watson v. Thibodeau*, 559 N.E.2d 1205, 1211 (Ind. Ct. App. 1990).

Summary of the Argument. This section is a summary of each issue you plan on arguing. This section gives the court a quick overview of each issue in a few paragraphs. The court should be able to figure out the main points of your legal arguments by reading this section.

Argument. The argument section is the heart of the APPELLEE'S BRIEF where the APPELLEE addresses and responds to the arguments made in the argument section of the APPELLANT'S BRIEF. The arguments about each issue must be presented in a logical, easy-to-follow fashion and be supported by citations to legal authorities, the APPELLANT'S APPENDIX, the TRANSCRIPT, the EXHIBITS to the TRANSCRIPT, or the APPELLEE's appendix (if one is to be filed).

Conclusion. This section should be a precise statement of the RELIEF SOUGHT. For APPELLEE, this is typically affirmance of the TRIAL COURT'S ORDER or JUDGMENT being challenged by APPELLANT. APPELLEE is also required to sign the BRIEF immediately following the conclusion.

Trial Court's Order or Judgment. The APPELLEE'S BRIEF does *not* need to attach the TRIAL COURT'S ORDER or JUDGMENT being appealed.

Word-Count Certificate. If the APPELLEE'S BRIEF is longer than thirty pages, it must include one of the following word-count certificates:

1. "I verify under penalties of perjury that this brief contains no more than 14,000 words"
2. "I verify under penalties of perjury that this brief contains [insert actual number] words."

The word-count certificate should appear at the end of the BRIEF and before the CERTIFICATE OF SERVICE.

CERTIFICATE OF SERVICE. This certifies that a copy was provided to all other parties to the APPEAL if they are not represented by counsel, or to their attorneys if they are. It must be at the end of the BRIEF and not separately filed.

How long can the Appellee's Brief be?

Appellate Rule 44 establishes how long the APPELLEE'S BRIEF can be. An APPELLEE'S BRIEFcannot exceed thirty pages unless it is accompanied by a word-count certificate (see below) certifying that the BRIEF does not exceed 14,000 words.

Words that appear on the cover, table of contents, TABLE OF AUTHORITIES, signature block, CERTIFICATE OF SERVICE, or word-count certificate do not count toward the word limit. Appellate Rule 44(C). In other words, everything listed under **What must be included in the Appellee's Brief**? from the Statement of Issues through and including the Conclusion is included in the word limit.

Headings and footnotes are also included in the length limits. If you use word-processing software to verify the word count, be sure it includes the footnotes in the word count. For instance, Microsoft Word is set not to count footnotes by default, but this can be changed within its word-count settings.

Appellee's Appendix

The APPELLEE should file an APPELLEE'S APPENDIX if APPELLEE believes additional items from the RECORD ON APPEAL are relevant to the issues being raised on APPEAL. See Step Eight above for the rules governing the filing of appendices . If an APPELLEE'S APPENDIX is

necessary, APPELLEE must file one copy with the Clerk's Office at the same time as (or before) filing the APPELLEE'S BRIEF.

STEP ELEVEN

Filing the Appellant's Reply Brief

OVERVIEW

The last brief filed in a typical appeal is the Appellant's Reply Brief, which is due fifteen days after service of Appellee's Brief. The Appellant's Reply Brief cannot raise new issues. Instead, it should respond to the assertions and arguments raised in Appellee's Brief.

The APPELLANT is not required to file a reply BRIEF. An APPELLANT'S REPLY BRIEF is only needed if APPELLANT feels that a response to the APPELLEE'S BRIEF is necessary. No new issues can be raised in the APPELLANT'S REPLY BRIEF. Rather, the APPELLANT'S REPLY BRIEF should discuss and respond to the factual and legal arguments contained in the APPELLEE'S BRIEF.

When is the Appellant's Reply Brief due?

The APPELLANT'S REPLY BRIEF is due no later than fifteen days after SERVICE of the APPELLEE'S BRIEF. Three days are added to the due date if SERVICE was made by U.S. Mail or a third-party carrier. If the due date falls on a weekend or State holiday, the due date is extended to the next business day.

Where is the Appellant's Reply Brief filed and how many copies?

APPELLANT must file the APPELLANT'S REPLY BRIEF with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court. The Clerk's Office is located at

200 West Washington Street
216 State House
Indianapolis, IN 46204

You may file your APPELLANT'S REPLY BRIEF electronically. The APPELLANT must SERVE a copy of the appellant's reply brief on all the other parties to the APPEAL. If you file on paper, only one copy of the brief should be filed with the Clerk's Office. If you need a file-stamped copy for your records, include an additional copy and a self-addressed stamped envelope.

What is included in the Appellant's Reply Brief?

Appellate Rule 46(C) governs the contents of the APPELLANT'S REPLY BRIEF. The APPELLANT'S REPLY BRIEF should contain the following:

Cover. The APPELLANT'S REPLY BRIEF cover will essentially be the same as the opening BRIEF cover, except that it will be entitled "APPELLANT'S REPLY BRIEF".

Table of Contents. Lists the sections of the BRIEF, including the headings and subheadings of each section, and the page numbers on which they begin. It is generally considered helpful to the court to use headings and subheadings within the BRIEF.

TABLE OF AUTHORITIES. Lists each case, statute, rule and other AUTHORITY cited in the BRIEF, with references to each page on which it is cited. The AUTHORITY cited should be grouped in the following order in the TABLE OF AUTHORITIES:

1. cases, listed in alphabetical ORDER
2. constitutional citations in order
3. statutes, listed in order by number from lowest to highest

4. other secondary AUTHORITY in alphabetical order

NOTE

The appellant might not cite to all four types of authority in the reply brief.

Summary of the Argument. This section is a short summary of each issue you plan on arguing. This section gives the court a quick overview of your arguments in a few sentences or paragraphs. The court should be able to figure out the main points of your legal arguments by reading this section.

Argument. This section contains a detailed discussion responding to the assertions and arguments in the APPELLEE'S BRIEF. The arguments must be presented in a logical, easy-to-follow fashion and be supported by citations to legal AUTHORITY, the APPENDIX, TRANSCRIPT, EXHIBITS to the TRANSCRIPT, and the APPELLEE'S APPENDIX (if one is filed).

Conclusion. This section should be a precise statement of the RELIEF SOUGHT. APPELLANT is also required to sign the BRIEF immediately after the Conclusion.

Word-Count Certificate. If the APPELLANT'S REPLY BRIEF is longer than fifteen pages, it must include one of the following word-count certificates:

1. "I verify under penalties of perjury that this brief contains no more than 14,000 words
2. "I verify under penalties of perjury that this brief contains [insert actual number] words."

The word-count certificate should appear at the end of the BRIEF and before the CERTIFICATE OF SERVICE.

CERTIFICATE OF SERVICE. As with all filings submitted during the APPEAL, this certifies that a copy was provided to all other parties to the APPEAL, or to their attorneys if they are represented by counsel. It must be at the end of the BRIEF and not separately filed.

How long can the Appellant's Reply Brief be?

Appellate Rule 44 establishes how long the APPELLANT'S REPLY BRIEF can be. In sum, an APPELLANT'S REPLY BRIEF cannot exceed fifteen pages, unless it is accompanied by a word count certificate (see below) certifying that the appellant's reply brief does not exceed 7,000 words. Using today's standard word processing software, it is not unusual for a 15-page APPELLANT'S REPLY BRIEF to contain substantially less than 7,000 words.

The words that count toward the word limit include everything from the Summary of the Argument through and including the Conclusion. For purposes of counting words, you omit the cover page, the table of contents, TABLE OF AUTHORITIES, signature block, and all certificates and verifications.

STEP TWELVE

The Court of Appeals Decision on the Merits

OVERVIEW

The Court of Appeals, consisting of a panel of three judges, will read the Briefs and other materials and write an Opinion. One of the judges writes the Opinion with input from the other two. Once the Opinion is final, the judges vote on it. Sometimes one or both of the judges other than the author write separate Opinions describing how they would have decided differently. Once you receive the Opinion, you have thirty days to file a petition seeking reconsideration by the Court of Appeals (see Step Thirteen) or seeking review by the Supreme Court (see Step Fourteen).

Once briefing is complete, the COURT OF APPEALS begins work on a decision. A three-judge panel of the COURT OF APPEALS receives the case. You will not know who the three-judge panel is until you receive the OPINION or the court sets oral argument, if it decides oral argument is needed. Review Appellate Rules 52 and 53 for the specifics associated with oral argument.

As part of its work reaching the decision, the judges review the BRIEFS and appendices submitted by the parties and the RECORD ON APPEAL. The judges will decide the case by applying the appropriate legal standards using previous decisions of the court and other legal AUTHORITY as guides. One judge from the three-judge panel is selected to be the "writing judge," meaning that judge will write the court's OPINION on behalf of the panel. One of the judges on the panel may disagree with the majority's decision and write either a concurring or dissenting OPINION. Generally speaking, at least two of the judges on the panel (usually all three) will reach consensus and issue the court's OPINION. It could be a matter of weeks or a matter of months between the end of briefing and the issuance of the court's OPINION.

The court issues its decision in a document called an OPINION or MEMORANDUM DECISION, which is sent to the parties by the Clerk's Office staff. In either document, the court explains the facts of the case relevant to its decision, discusses the arguments made by the parties, and renders its decision and reasoning behind it.

Once the OPINION or MEMORANDUM DECISION is handed down, there are three options:

1. accept the decision
2. seek rehearing with the COURT OF APPEALS (described in Step Thirteen)
3. seek transfer to the Indiana SUPREME COURT (described in Step Fourteen).

If both parties choose the first option, the COURT OF APPEALS decision is certified and becomes final after the time for all PETITIONS FOR REHEARING or PETITIONS TO TRANSFER have expired. The final two steps of this guide discuss the other two options: rehearing and transfer.

STEP THIRTEEN

What is a Petition for Rehearing?

OVERVIEW

If you believe the Court of Appeals made a significant error in its Opinion or Memorandum Decision in your Appeal, you may file a Petition for Rehearing. This petition asks the Court of Appeals to reconsider its decision. The Petition for Rehearing is considered by the same panel of judges that issued the original decision. The procedures governing Petitions for Rehearing are described in Appellate Rules 54 and 55.

When can a party file a Petition for Rehearing?

A party can seek rehearing from the following decisions:

1. A published decision (also known as an OPINION)
2. A MEMORANDUM DECISION that is not published
3. An ORDER dismissing an APPEAL
4. An ORDER declining to authorize the filing of a successive petition for post-conviction relief.

A party *cannot* seek rehearing from an ORDER denying a petition to transfer (see Step Fourteen).

When is the Petition for Rehearing due?

A PETITION FOR REHEARING must be filed with the Clerk no later than thirty days after the COURT OF APPEALS issues one of the four decisions mentioned above. This deadline is *not* extended by three days if the opinion

is sent to you by mail. Additionally, Appellate Rule 35(C) prohibits MOTIONs for extension of time to file Petitions for Rehearing.

Where is a Petition for Rehearing filed and how many copies?

A PETITION FOR REHEARING is filed with the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court. The Clerk's Office is located at

200 West Washington Street
216 State House
Indianapolis, IN 46204

You may file your PETITION FOR REHEARING electronically. A copy of the PETITION FOR REHEARING must be SERVED on all the other parties to the APPEAL or their attorneys if they are represented. If you file on paper, only one copy of the petition should be filed with the Clerk's Office. If you need a file-stamped copy for your records, include an additional copy and a self-addressed stamped envelope.

What must a party include in a Petition for Rehearing?

Here are some nuts-and-bolts requirements for all PETITIONS FOR REHEARING (with citation to the applicable Appellate Rule):

Page Size. 8 ½ × 11 inches, white paper. Appellate Rule 43(B).

Production. Typewritten, printed, or produced by a word-processing system using black print. Appellate Rule 43(C).

Typeface. Typeface must be 12 points or larger. See Appellate Rule 43(D) for the required font style. Common typefaces like Times New Roman, Courier, and Arial are acceptable.

Line spacing. All text must be double-spaced. Long quotations, footnotes, tables, charts, and similar material must be single-spaced. Appellate Rule 43(E).

Single-sided. Use only one side of the paper (not double-sided). Appellate Rule 43(C).

Numbering. All pages must contain page numbers at the bottom of the page. Appellate Rule 43(F). Page numbering begins on the first page of the document.

Binding. Conventionally filed documents shall be bound by a single staple, not in booklet form. Appellate Rule 43(J).

How long can the Petition for Rehearing be?

Appellate Rule 44 establishes how long the PETITION FOR REHEARING can be. A petition for rehearing cannot exceed ten pages unless it is accompanied by a word-count certificate (see below) certifying that the BRIEF does not exceed 4,200 words.

Words that appear on the cover, table of contents, TABLE OF AUTHORITIES, signature block, CERTIFICATE OF SERVICE, word-count certificate, or the appealed JUDGMENT or ORDER do not count toward the word limit. Appellate Rule 44(C). In other words, everything listed under **What form and content must the Petition for Rehearing follow?** below from the Statement of Issues through and including the Conclusion is included in the word limit.

Headings and footnotes are also included in the length limits. If you use word-processing software to verify the word count, be sure it includes the footnotes in the word count. For instance, Microsoft Word is set not to count footnotes by default, but this can be changed within its word-count settings.

What form and content must the Petition for Rehearing follow?

A PETITION FOR REHEARING should state concisely the reasons the party believes rehearing is necessary. It should contain the following:

Front page. Lists the case name, the parties, and the court's information. *See* Appellate Rule 43(G).

Table of Contents. Lists the sections of the PETITION FOR REHEARING, including the headings and subheadings of each section and the page numbers on which they begin. It is generally considered helpful to the court to use headings and subheadings within the PETITION FOR REHEARING.

Table of Authorities. Lists each case, statute, rule, and other AUTHORITY cited in the PETITION FOR REHEARING with references to each page on which it is cited. The authorities should be listed alphabetically or numerically. The AUTHORITY cited should be listed in the following order in this table:

1. cases, listed in alphabetical order
2. constitutions
3. statutes, listed in order by number from lowest to highest
4. other secondary AUTHORITY in alphabetical order

NOTE

You need not cite to all four types of Authority in the petition for rehearing.

Statement of the Issues. The Statement of Issues describes in concise terms each issue presented for rehearing.

Argument. The Argument section contains the detailed discussion about why you believe the COURT OF APPEALS made an error. The argument about each issue presented must be supported by discussions of and citations to authorities that support the points you make in the Argument section. Remember, you are challenging the *decision* of the COURT OF APPEALS, not the COURT OF APPEALS judges themselves, the opposing party, or the opposing party's lawyer. Arguments that contain angry name-calling and personal attacks are inappropriate and drastically hurt the effectiveness of your presentation.

Conclusion. The Conclusion should be a precise statement of the RELIEF SOUGHT on rehearing, followed by the signature of the party filing the petition for rehearing.

Word-Count Certificate. If the PETITION FOR REHEARING is longer than ten pages, it must include one of the following word-count certificates:

1. "I verify under penalties of perjury that this Petition for Rehearing contains no more than 4,200 words," or
2. "I verify under penalties of perjury that this Petition for Rehearing contains [insert actual number, not exceeding 4,200 words] words."

The word-count certificate should appear at the end of the Petition for Rehearing and before the CERTIFICATE OF SERVICE.

CERTIFICATE OF SERVICE. As with all filings made during the APPEAL, this certifies that a copy was provided to all other parties to the APPEAL or their attorneys if they are represented. It must be at the end of the PETITION FOR REHEARING and not separately filed.

Can a party respond to a Petition for Rehearing?

Yes. You may file a response if you choose to do so. A BRIEF in response to a PETITION FOR REHEARING is not required unless specifically requested by the court. Here is what you need to know about Responses to PETITIONS FOR REHEARING:

Due date

A BRIEF in response to a PETITION FOR REHEARING must be filed not later than fifteen days after the PETITION FOR REHEARING is SERVED or fifteen days after the court issues its ORDER requesting a response. If SERVICE was by mail or third-party carrier, the party filing the response BRIEF may extend the due date by three days.

Filing and number of copies

The same rules as with the PETITION FOR REHEARING apply to the response BRIEF. The response BRIEF should be filed with the Clerk's Office and SERVED on all other parties to the APPEAL. The response BRIEF cannot exceed ten pages, unless accompanied by a word-count certificate that the response BRIEF does not exceed 4,200 words. The same nuts-and-bolts requirements for formatting are required (see **What form and content must the Petition for Rehearing** follow? above).

Content

The response BRIEF to a PETITION FOR REHEARING under **What form and content must the Petition for Rehearing** follow? above.

Can a party reply to a Response?

No. Reply BRIEF in support of PETITIONS FOR REHEARING are not permitted. See Appellate Rule 54(D).

What will the court do after a Petition for Rehearing is briefed?

Once briefing on the PETITION FOR REHEARING is complete, the panel issuing the original OPINION will consider the arguments made. The court can summarily deny the petition, or it can issue another written OPINION that further explains, modifies, or changes its original OPINION.

STEP FOURTEEN

What is a Petition to Transfer?

OVERVIEW

Following an adverse decision by the Indiana Court of Appeals, a party may ask the Indiana Supreme Court to hear the case by filing a Petition to Transfer within forty-five days of the adverse ruling (or thirty days after a ruling on a Petition for Rehearing). After the Petition to Transfer is completely briefed, there is not additional briefing before the Indiana Supreme Court.

Following an adverse decision by the COURT OF APPEALS, a party may file a PETITION TO TRANSFER with the SUPREME COURT under Appellate Rule 57. The opposing party has an opportunity to file a response, after which the petitioning party has an opportunity to file a reply. Then, the SUPREME COURT reviews the parties' filings, along with the COURT OF APPEALS decision and the briefs filed by the parties with the COURT OF APPEALS, to determine whether it wishes to grant the PETITION TO TRANSFER and, take JURISDICTION over the appeal.

Unlike the COURT OF APPEALS, the Indiana SUPREME COURT's JURISDICTION over most appeals is within its DISCRETION. In other words, simply filing a PETITION TO TRANSFER does not mean the SUPREME COURT will take the case. In fact, the SUPREME COURT generally grants only about 10 percent of the PETITIONS TO TRANSFER it receives.

When can a party file a Petition to Transfer?

A PETITION TO TRANSFER may be sought from adverse decisions by the COURT OF APPEALS in any of the following forms:

1. A published OPINION

2. A MEMORANDUM DECISION that is not published
3. An amendment or modification of a published OPINION or an unpublished MEMORANDUM DECISION
4. An ORDER dismissing an APPEAL.

A PETITION TO TRANSFER may **not** be filed with regard to any other ORDER by the COURT OF APPEALS. Two examples of decisions from the COURT OF APPEALS that are not considered "adverse decisions" for the purpose of PETITIONS TO TRANSFER are the denial of an interlocutory APPEAL under Appellate Rule 14(B) and an ORDER declining to authorize the filing of a successive petition for postconviction relief.

What content should be included in the Petition to Transfer briefs?

Appellate Rule 57(G) is the rule establishing the Required Content of the Petition to Transfer and the response BRIEF:

> **Question Presented on Transfer.** A brief statement identifying the issue, question, or PRECEDENT warranting granting the PETITION TO TRANSFER. The statement must not be argumentative or repetitive. **The statement must be set out by itself immediately following the front page.**
>
> **Table of Contents.** A table of contents containing the items specified in Rule 46(A)(1).
>
> **Background and Prior Treatment of Issues on Transfer.** A brief statement of the procedural and substantive facts necessary for consideration of the PETITION TO TRANSFER, including a statement of how the issues relevant to transfer were raised and resolved by any ADMINISTRATIVE AGENCY, the TRIAL COURT, and the COURT OF APPEALS. To the extent extensive procedural or factual background is necessary, reference may be made to the appellate BRIEFS, rather than repeating this information in the PETITION TO TRANSFER.
>
> **Argument.** An argument section explaining the reasons the SUPREME COURT should grant or deny the PETITION TO TRANSFER.

Conclusion. A short and plain statement of the relief requested, followed by the signature of the party filing the PETITION TO TRANSFER.

Word-Count Certificate, if necessary. See Rule 44(F).

Certificate of Service. See Rule 24(D).

What issues are important in a Petition to Transfer?

Appellate Rule 57(H) establishes what issues are of most importance to the SUPREME COURT when deciding whether to grant a PETITION TO TRANSFER:

Conflict in Court of Appeals decisions. The COURT OF APPEALS has issued a decision in conflict with another decision of the COURT OF APPEALS on the same important issue.

Conflict with Supreme Court decision. The COURT OF APPEALS has issued a decision in conflict with a decision of the SUPREME COURT on an important issue.

Conflict with federal appellate decision. The COURT OF APPEALS has decided an important federal question in a way that conflicts with a decision of the SUPREME COURT of the United States or a United States Court of Appeals.

Undecided question of law. The COURT OF APPEALS has decided an important question of law or a case of great public importance that has not been, but should be, decided by the SUPREME COURT.

Precedent in need of reconsideration. The COURT OF APPEALS has correctly applied cases issued by the SUPREME COURT but those cases are wrong or in need of clarification or modification in some specific way.

Significant departure from law or practice. The COURT OF APPEALS has significantly departed from accepted law or practice or has approved a significant departure by a TRIAL COURT or ADMINISTRATIVE AGENCY to a degree makes the exercise of SUPREME COURT JURISDICTION appropriate to correct the departure.

What are the briefing deadlines for a Petition to Transfer?

Briefing on a PETITION TO TRANSFER consists of three BRIEFS:

1. the PETITION TO TRANSFER
2. the Response to the PETITION TO TRANSFER
3. the Petitioner's Reply in Support of PETITION TO TRANSFER

Deadline for Petition to Transfer

The due date of a PETITION TO TRANSFER turns on whether a PETITION FOR REHEARING was filed.

No Petition for Rehearing Filed. If no PETITION FOR REHEARING was filed with the COURT OF APPEALS, then a PETITION TO TRANSFER must be filed no later than forty-five days after the COURT OF APPEALS issued an OPINION or MEMORANDUM DECISION.

Petition for Rehearing Filed. If a PETITION FOR REHEARING was filed, then a PETITION TO TRANSFER must be filed no later than thirty days after the COURT OF APPEALS issued its ruling on the PETITION FOR REHEARING.

The due date for a PETITION TO TRANSFER is **not** extended by three days, even if the clerk SERVES you with the COURT OF APPEALS OPINION or order by mail or third-party carrier. Also, it is important to note that the supreme court does **not** permit the filing of a MOTION for extension of time that seeks to extend the deadline to file a PETITION TO TRANSFER. See Appellate Rule 57(C).

Deadline for the Brief in Response to a Petition to Transfer

An opposing party may file a BRIEF in response to a petition to transfer no later than twenty days after the petition is SERVED. If SERVICE of the petition is by U.S. mail or third-party carrier, then the deadline for the opposing party to file a BRIEF in response to the PETITION TO TRANSFER **is** extended by three days. See Appellate Rule 57(D). MOTIONS for extension of time are **not** permitted.

Deadline for reply Brief in Support of Petition to Transfer

A petitioner (the party who filed the PETITION TO TRANSFER) may file a reply BRIEF in support of a PETITION TO TRANSFER no later than **ten days** after a BRIEF in response is SERVED. If SERVICE of the response BRIEF was made by U.S. mail or third-party carrier, the deadline is extended by three days. *See* Appellate Rule 57(E). MOTIONS for extension of time are **not** permitted.

Is there a filing fee for a Petition to Transfer?

Yes. A petitioner must pay a filing fee of **$125** to the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court at the same time the PETITION TO TRANSFER is filed. A party who is proceeding *IN FORMA PAUPERIS* is not required to pay the $125 filing fee.

What is the required format of the briefs relating to a Petition to Transfer?

The same formatting requirements for PETITIONS FOR REHEARING are also applicable to petitions to transfer. They include

Page Size. 8 ½ × 11 inches, white paper. Appellate Rule 43(B).

Production. Typewritten, legibly printed or produced by a word-processing system using black print. Appellate Rule 43(C).

Typeface. Typeface must be 12 point or larger. See Appellate Rule 43(D) for the required font style. Common typefaces like Times New Roman, Courier, and Arial are acceptable.

Line spacing. All text must be double-spaced. Long quotations and footnotes must be single-spaced. Appellate Rule 43(E).

Single-sided. Use only one side of the paper (not double-sided). Appellate Rule 43(C).

Numbering. All pages must contain page numbers at the bottom of the page. Appellate Rule 43(F). Page numbering begins on the front page of the document.

Binding. Conventionally filed documents shall be bound by a single staple, not in booklet form. Appellate Rule 43(J).

What are the page limits and word limits for Petitions to Transfer?

Petition to Transfer

A PETITION TO TRANSFER cannot exceed ten pages unless it is accompanied by a word-count certificate (see below) affirming that the petition does not exceed 4,200 words. *See* Appellate Rule 44.

Words that appear on the front page, table of contents, signature block, certificate of SERVICE, or word-count certificate do not count toward the word limit. Appellate Rule 44(C). In other words, the questions presented on transfer, the background and prior treatment of issues on transfer, argument and conclusion sections are included in the word limit.

Headings and footnotes are also included in the length limits. If you use word-processing software to verify the word count, be sure it includes the footnotes in the word count. For instance, Microsoft Word is set not to count footnotes by default, but this can be changed within its word-count settings.

Brief in Response to a Petition to Transfer

A BRIEF in response to a PETITION TO TRANSFER cannot exceed ten pages unless it is accompanied by a word-count certificate (see below) affirming that the BRIEF does not exceed 4,200 words. As with the petition, the words within the following sections count toward the word limit: the questions presented on transfer, the background and prior treatment of issues on transfer, argument and conclusion. For purposes of counting words, you can omit the front page, the table of contents, the TABLE OF AUTHORITIES, the signature block, and all certificates and verifications.

Reply in Support of Petition to Transfer

A reply in support of a PETITION TO TRANSFER cannot exceed three pages unless it is accompanied by a word-count certificate (see below) affirming that the reply does not exceed 1,000 words. For purposes of counting words, you can omit the front page, the tables of contents and authorities, the signature block, and all certificates and verifications.

Is there any further briefing?

No. The parties do not get another opportunity to reargue or present new issues in new BRIEFS to the SUPREME COURT. The parties must rely on the briefing submitted during the PETITION TO TRANSFER process and the briefing filed in the COURT OF APPEALS.

When a case is TRANSMITTED ON TRANSFER to the SUPREME COURT, all of the materials considered by the COURT OF APPEALS are automatically provided to the SUPREME COURT. The parties are not required to do anything to ensure the materials physically move from one court to the other—the Clerk of the Supreme Court, Court of Appeals, and Tax Court takes care of that.

What happens after the Petition to Transfer is decided?

It could be a matter of weeks or several months before the SUPREME COURT rules on the PETITION TO TRANSFER. Once the SUPREME COURT rules, the decision will be sent to you. The Court will either deny or grant the petition. If the petition is granted, then the COURT OF APPEALS decision is VACATED, and the parties must await the SUPREME COURT'S OPINION. If the petition is denied, the clerk will certify the COURT OF APPEALS' OPINION or MEMORANDUM DECISION as final, and it will become law of the case.

GLOSSARY

NOTE

Appellate Rule 2 contains several definitions, some of which are also included in this list. Terms in this glossary that are also defined in the Rules include a citation to the rule containing its definition.

administrative agency. A governmental body empowered to direct and supervise the implementation of law. The administrative agencies whose divisions are most commonly reviewed by Indiana's appellate courts are the Unemployment Compensation Review Board, the Department of Workforce Developments (workers' compensation cases), the Indiana Utility Regulatory Commission, the Indiana Civil Rights Commission, and the Indiana Department of Environmental Management. *See* Appellate Rule 2(A). Decisions by other executive-branch agencies begin the appeals process by filing a Petition for Judicial Review at the trial court once all administrative remedies have been exhausted. Indiana Code § 4-21.5-5-1 to -16.

alternative dispute resolution (ADR). Ways to settle a case other than by having litigation in court. ADR methods normally include arbitration and mediation. Disputes resolved through ADR are often far less costly and also resolved much faster than, disputes resolved through traditional litigation.

appeal. A review by an appellate court of what happened in a TRIAL COURT or ADMINISTRATIVE AGENCY to determine if errors occurred and if the errors are significant enough to require some form of relief to the party that raised the error or errors.

appellant. The party appealing a decision. This is the party who lost in the TRIAL COURT or ADMINISTRATIVE AGENCY and wants the COURT OF APPEALS to reverse or fix the JUDGMENT of the TRIAL COURT or ADMINISTRATIVE AGENCY.

appellant's brief. The brief filed by the APPELLANT in the COURT OF APPEALS. The appellant's BRIEF sets out the APPELLANT's argument that the TRIAL COURT's or ADMINISTRATIVE AGENCY's decision is incorrect and should be reversed.

appellant's reply brief. This is a BRIEF filed by the APPELLANT in response to the APPELLEE'S BRIEF. The BRIEF is limited to issues that were raised in the APPELLANT'S BRIEF or a response to issues raised in the APPELLEE'S BRIEF.

appellee. The party who won in the TRIAL COURT or ADMINISTRATIVE AGENCY. This party generally wants the COURT OF APPEALS to agree with the decision of the TRIAL COURT or ADMINISTRATIVE AGENCY.

appellee's brief. The BRIEF filed by the APPELLEE in response to the APPELLANT'S BRIEF. The appellee's brief sets out the APPELLEE'S argument that the TRIAL COURT or ADMINISTRATIVE AGENCY's decision is correct and why the APPELLEE believes that the points in the APPELLANT'S BRIEF are incorrect.

appendix. A document filed by a party with the party's BRIEF containing documents relevant to the issues on APPEAL. See Appellate Rule 2(C) for the Rule' definition.

authority. A source of information, rules, or legal reasoning to which parties cite to support their argument. Examples include statutes, court opinions, rules, regulations, and legal treatises. All important principles within an argument should be followed by a citation to authority.

belated motion. A MOTION that has not been filed on time.

brief. A written presentation of legal arguments.

case number. The official number issued by a court for the purposes of identifying the case and record keeping.

certificate of service. A statement saying how and when you SERVED a party with a document. The rules require that you send a copy of any document that you file with the court to each opposing party. This is sometimes called a *Proof of Service*. Both terms mean the same thing. All documents filed with Indiana's appellate courts require a CERTIFICATE OF SERVICE.

child in need of services (CHINS) . A court case in which a court addresses allegations that a child has been neglected or abused or needs help that the child's parents cannot or will not provide.

Chronological Case Summary (CCS). A record-keeping format of case information in Indiana. It mainly contains entries that summarize important events that occurred during the course of a case, including the filing of each document in the matter. The CCS includes the title of the proceeding; the assigned CASE NUMBER; the names, addresses, telephone, and attorney numbers of all attorneys involved in the proceeding (if any), or the fact that a party appears PRO SE with address and telephone number of the party; and charges fees and penalties to the parties. The judicial events include the date of each event and briefly define any documents, ORDERS, rulings, or JUDGMENTs filed or entered in the case.

civil case. A case to protect the private right of a person or compel some type of solution in a dispute between parties. These cases usually involve money damages or equitable relief (e.g., an INJUNCTION or SPECIFIC PERFORMANCE).

Clerk's Record. The papers and MOTIONS filed in the TRIAL COURT or ADMINISTRATIVE AGENCY as well as ORDERS issued by the TRIAL COURT judge or ADMINISTRATIVE AGENCY, hearing officer, or review board. *See* Appellate Rule 2(E) for the Rules' definition.

Court of Appeals. The intermediate court in Indiana. The Court of Appeals hears APPEALS of cases that have taken place in TRIAL COURTS or ADMINISTRATIVE AGENCIES.

court on appeal. The Supreme Court and the Court of Appeals.

court reporter. A person who is designated by a court or ADMINISTRATIVE AGENCY to perform official reporting services, including preparing the TRANSCRIPT.

criminal case. A case dealing with a violation of Indiana's criminal laws. Appellate Rule 2(G) has a definition of *criminal appeals*.

discretion. The power of judges to make decisions within legal bounds.

docket. List of documents in a case that have been filed with the Clerk's Office and the date on which they were filed. The appellate docket is available online at https://mycase.in.gov.

Electronic filing (e-filing): a method of filing documents with the clerk by electronic transmission utilizing the Indiana E-Filing System. E-filing does not include transmission by facsimile or email. *See* Appellate Rule 2(R).

exhibit. Physical or documentary evidence brought before trial court. Examples may include a weapon allegedly used in the crime, an invoice or written contract, a photograph, or a video recording.

final judgment. Final decision by the TRIAL COURT or ADMINISTRATIVE AGENCY. This JUDGMENT resolves all of the issues that were presented in the TRIAL COURT or ADMINISTRATIVE AGENCY involving all parties. *See* Appellate Rule 2(H).

in forma pauperis. Latin phrase that essentially means "in the form of a poor person," or "indigent." Also referred to as PAUPER STATUS.

injunction. An ORDER by the court that stops a party from continuing to do an action or forces a party to continue to do an action. The person who has been given this ORDER is said to have been enjoined from continuing to do the action or enjoined to continue doing the action. Two types of injunctions are PERMANENT INJUNCTIONS and PRELIMINARY INJUNCTIONS. A party that fails to comply with an INJUNCTION faces criminal or civil penalties and may have to pay damages or accept sanctions

interlocutory appeal. An interlocutory appeal is an APPEAL from an ORDER or a decision before a case is finished. It usually involves an ORDER relating to evidence or a procedural matter. There are two types of interlocutory appeals: automatic and discretionary. Interlocutory appeals can be taken in either criminal or CIVIL CASES, and they can only be filed with the COURT OF APPEALS.

judgment. A court's determination of the rights and obligations of the parties.

jurisdiction. The AUTHORITY or power the court has to act or hear a case and make a decision.

leave of court. Permission from the court to take an action that is otherwise not allowed. For instance, you would need to receive leave of court if you wanted to file a BRIEF after the deadline for filing has passed.

litigant. A party to a case. A person involved in a lawsuit as plaintiff, defendant, APPELLANT, or APPELLEE.

lower court. A court that is lower in hierarchy than another court, so the "higher" court has the AUTHORITY to review and either affirm or reverse the decision of the "lower" court. So, for example, a TRIAL COURT is a lower court from the perspective of the COURT OF APPEALS or SUPREME COURT, and the COURT OF APPEALS is a lower court from the perspective of the SUPREME COURT.

memorandum decision. The written decision of the court including the reasons for the decision and the facts on which the decision was based. This type of decision is binding on the parties involved, but it cannot be cited as AUTHORITY in other cases.

merits. The rights and wrongs of a legal case, absent of any emotional or technical biases. The court or jury looks at the facts and evidence in the case to decide its outcome.

motion. The procedure by which a party asks the appellate court to do something or to permit one of the parties to do something. For example, a party may ask the court for an extension of time to prepare a BRIEF; it would do so by filing a MOTION for extension of time.

movant. The party who files a motion.

notice of appeal. A document filed by the APPELLANT with the Clerk of the Supreme Court, Court of Appeals, and Tax Court that starts an APPEAL. This document asks the TRIAL COURT to prepare the CLERK'S RECORD and the TRANSCRIPT, if necessary. *See* Appellate Rules 2(I), 9, and 24(A)(1). Failure to file the Notice of Appeal with the Clerk of the Supreme Court, Court of Appeals, and Tax Court within the time required by the Rules will result in forfeiture of the right to appeal.

notice of completion of clerk's record. Under Appellate Rule 10(C), a notice from the TRIAL COURT clerk letting the appellate court clerk know that the CLERK'S RECORD is complete and ready to be distributed. The TRIAL COURT clerk should provide copies of the completed record to the parties upon request. It also includes the CHRONOLOGICAL CASE SUMMARY and states whether the TRANSCRIPT is complete, has been requested, or has not been requested.

notice of completion of transcript. Under Appellate Rule 10(D), if the TRANSCRIPT has been requested but has not been filed when the trial court clerk files the NOTICE OF COMPLETION OF THE CLERK'S RECORD, the TRIAL COURT clerk must file this notice within five days of receiving the TRANSCRIPT from the COURT REPORTER.

Notice of Defect. Under Appellate Rule 23(D), the Clerk's Office "receives" but does not file a document that does not comply with certain Appellate Rules specified in Appendix B of the Appellate Rules.

NOTE

If the Transcript is complete on or before the Clerk's Record is completed, this notice will not occur. Also, do not confuse this with the Notice of Filing of Transcript, which the Court Reporter will file in the trial court (not the appellate court) and serve on you to notify you that the trial court's clerk has five days to file the Notice of Completion of Transcript.

opinion. The written, published decision of the court, including the reasons for the decision and the facts on which the decision was based.

order. A written or oral decision by a court or ADMINISTRATIVE AGENCY filed in response to a MOTION or petition and that directs the parties to do something.

pauper status. Status given a party without the ability to pay all of the court fees and costs. Grants a party the ability to proceed without paying certain fees and costs. *See IN FORMA PAUPERIS*.

permanent injunction. An ORDER by a court that stops a party from continuing to do an action or forces a party to continue to do an action. It is considered permanent because the ORDER is given after the TRIAL COURT has heard the MERITS of the case and because it has no end point. The person who has been given this ORDER is said to have been "enjoined" from continuing to do the action or enjoined to continue doing the action. It may also be called an INJUNCTION. A party that fails to comply with an INJUNCTION faces criminal or civil penalties and may have to pay damages or accept sanctions.

petition for rehearing. A BRIEF filed by a party unsatisfied with a court's decision asking the same court to reconsider the case.

petition to transfer. A BRIEF filed by a party unsatisfied with the COURT OF APPEALS decision asking the SUPREME COURT to take the case for its consideration.

precedent. A previously decided case that is recognized as binding on future cases that have similar facts or legal issues.

preliminary injunction. An ORDER by a court that stops a party from continuing to do an action or forces a party to continue to do an action until the case has been decided. It is considered preliminary because the ORDER is given before the TRIAL COURT has heard the MERITS of the case. The person who has been given this ORDER is said to have been "enjoined" from continuing to do the action or enjoined to continue doing the action. If it is issued at the end of the trial then it is just an INJUNCTION or PERMANENT INJUNCTION. A party that fails to comply with an INJUNCTION faces criminal or civil penalties and may have to pay damages or accept sanctions.

pro se. A party to a case who proceeds in the litigation without being represented by an attorney.

record on appeal. Consists of the clerk's record and all proceedings before the TRIAL COURT, whether or not transcribed and transmitted to the COURT ON APPEAL. *See* Appellate Rule 2(L).

relief sought (remedy). The means in which a court of law enforces a right, imposes a penalty, or makes some other court ORDER to impose its will. The most common types of remedies are money damages, INJUNCTIONS, SPECIFIC PERFORMANCE, and declaratory relief.

remand. An action by the appellate court in which it sends a case back to the TRIAL COURT or COURT OF APPEALS (if done by the SUPREME COURT) for further proceedings.

service/serve. The formal delivery or the act of formally delivering any document that you file with the court to each party. *See* Appellate Rule 24 *See also* CERTIFICATE OF SERVICE.

specific performance. An ORDER of a court which requires a party to perform a specific act, usually what is stated in a contract. For instance, you have a contract to buy a rare painting and you pay for the painting. The other party refuses to give you the painting. You can go to court and ask the court for specific performance of the delivery of the painting to you, rather than money damages for the breach of contract.

standard of review. The amount of deference given by one court in reviewing a decision of a lower court or tribunal.

stay. Temporary delay of the enforcement of a court ORDER or JUDGMENT. In an appeal, a STAY of the TRIAL COURT or ADMINISTRATIVE AGENCY'S ORDER or JUDGMENT may be granted until the COURT ON APPEAL determines whether the TRIAL COURT or ADMINISTRATIVE AGENCY'S ORDER or JUDGMENT was proper.

Supreme Court. The highest appellate court in the State of Indiana. The Supreme Court consists of five justices. Once a case has been decided by the COURT OF APPEALS, parties may file a petition to transfer asking the Supreme Court to hear the case. *See* Appellate Rule 57(B). The Court has the DISCRETION to decide whether to take these cases.

table of authorities. A listing of all the legal cases, statutes, and secondary AUTHORITY used in a BRIEF, Petition for Rehearing, or PETITION TO TRANSFER and the page(s) on which each AUTHORITY was cited.

transcript. The transcript or transcripts of all or part of the proceedings in the TRIAL COURT that any party has designated for inclusion in the RECORD ON APPEAL. It includes any associated EXHIBITS. *See* Appellate Rule 2(K).

transmitted on transfer. When a party files a PETITION TO TRANSFER and all parties have filed their briefs, the documents are sent to the SUPREME COURT for its review and decision on whether to grant transfer. A DOCKET entry will appear reading *Transmitted on Transfer on* a specified date to indicate that the justices have received the documents for review. This entry does not indicate any decision about whether to grant transfer.

trial court. The court where a case starts; the court that decides the facts and law in the case.

vacate. To cancel a previous JUDGMENT by a LOWER COURT. It normally results from the decision of an appellate court to overturn, reverse, or set aside the JUDGMENT of the LOWER COURT. It is as if the LOWER COURT never issued its decision. It should not be confused with a STAY, which only temporarily suspends a JUDGMENT until the APPEAL is completed.

verification of accuracy. A statement, signed by the party under penalties of perjury, indicating that the documents placed in the APPENDIX are accurate copies from the TRIAL COURT record. The verification must be signed by the party or the party's attorney.

TABLE OF AUTHORITIES

Indiana Rules of Appellate Procedure

RESOURCES

Helpful Resources Apart from This Guide

Indiana Appellate Court and Clerk Websites

A great deal of valuable information can be found on the Indiana appellate courts' website—www.courts.in.gov. From this website, you can access the courts' DOCKETS, text of OPINIONS, and rules of appellate procedure, among other resources.

Indiana Appellate Rules and Sample Forms

http://www.in.gov/judiciary/rules/appellate/index.html.

The Clerk's online Docket

https://mycase.in.gov.

Coalition for Court Access

https://indianalegalhelp.org

The Court's e-filing website

www.courts.in.gov/efile

Indiana Statutes and Constitution

The Indiana Constitution

http://iga.in.gov/legislative/laws/const/

The Indiana Code (statutes)

http://www.in.gov/legislative/ic/code/

The Indiana Administrative Code

http://www.in.gov/legislative/iac

Legal Research Websites

Cornell Law School, Legal Information Institute. Provides information about legal topics as well as links to state statutes and state constitutions.
http://www.law.cornell.edu

Find Law. Provides information about legal topics by subject matter.
http://www.findlaw.com

Google Scholar. Provides most published court opinions and some other legal authorities.
http://scholar.google.com/

LLRX.com. Provides articles on specific legal topics and links to resources.
http://www.llrx.com

The Virtual Chase: Legal Research on the Internet. Provides links to various resources.
http://www.virtualchase.com.

Organizations providing legal services and other resources to people with low or no income

The Indiana Supreme Court maintains a web page with several organizations that provide legal services to people with low or no income here: http://www.in.gov/judiciary/probono/2343.htm.

The Indiana Supreme Court also has a law library available to the public. It is located next to the Supreme Court's courtroom on the north side of the third floor of the State House.
https://www.in.gov/judiciary/supreme/2329.htm

You can search by county for these organizations. In addition, the following provide referrals and other services:

Indiana State Bar Association
http://www.inbar.org/
You can find general Indiana attorney information and local bar association contact information.

Indiana Pro Se Directory
http://www.in.gov/judiciary/probono/files/prose-directory-0608.pdf
The Indiana Pro Bono Commission has compiled a directory of providers around the state that can help individuals who choose to handle their legal issues without an attorney. Providers are listed by county, and names, addresses, phone numbers and the range of services are listed.

Indianapolis Bar Association Lawyer Referral Service
https://www.indybar.org/index.cfm?pg=LawyerReferralService
(can also provide lawyer referrals for other languages): Call 317-269-2222.

Lake County Bar Association Lawyer Referral Service
http://www.lakecountybar.com/?page_id=21
Call 219-738-1905.

Allen County Bar Association Lawyer Referral Service
http://www.allencountybar.org/lawyer-referral-service/
Call 260-423-2358.

St. Joseph County Bar Association Lawyer Referral Service
http://sjcba.org/contact/
Call 574-235-9657.

Indiana University Mauer School of Law – Bloomington
http://www.law.indiana.edu/

Indiana University McKinney School of Law – Indianapolis
http://indylaw.indiana.edu/
McKinney School of Law at Indiana University in Indianapolis makes its law library available to the public: https://mckinneylaw.iu.edu/library/library-services/index.html. Make sure to check the hours it is open before visiting.

Notre Dame Law School
http://www.nd.edu/~ndlaw/

Notre Dame Law School's Kresge Law Library is open to the public during designated hours. https://law.nd.edu/faculty-scholarship/kresge-law-library/

SAMPLE FORMS

The following forms are contained in this document. These and other appellate forms are also available as separate documents—in both Adobe PDF and Microsoft Word formats—and can be accessed via the web at http://www.in.gov/judiciary/rules/appellate/index.html (scroll to the bottom of the page) or https://www.in.gov/judiciary/2708.htm.

Form App. R. 9-1 NOTICE OF APPEAL
http://www.in.gov/judiciary/files/form-appellate-9-1.doc

Form App. R. 16-1 APPELLEE's Notice of Appearance
http://www.in.gov/judiciary/files/form-appellate-16-1.doc

Form App. R. 16-2 Notice of Appearance in Interlocutory Appeals
http://www.in.gov/judiciary/files/form-appellate-16-2.doc

Form App. R. 40-1 Motion to Proceed *IN FORMA PAUPERIS*
http://www.in.gov/judiciary/files/form-appellate-40-1.doc

Form. App. R. 40-2 AFFIDAVIT to Proceed *IN FORMA PAUPERIS*
http://www.in.gov/judiciary/files/form-appellate-40-2.doc

Form App. R. 43-1 Cover for BRIEF
http://www.in.gov/judiciary/files/form-appellate-43-1.doc

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