

SOUTHERN DISTRICT'S
ABCs OF APPELLATE PRACTICE

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INTRODUCTION

This manual is a summary of basic procedural requirements for processing and perfecting direct appeals from the lower courts and administrative agencies within the Missouri Court of Appeals, Southern District's jurisdiction. It is designed for use merely as a reference tool and a general, simple information guide for self-represented litigants who are before this Court. **It is not to be used as a substitute for the Missouri Rules of Court or the judicial decisions interpreting them. Nothing in the ABCs of Appellate Practice shall be reported, cited or otherwise used in any case before any court. Parties are urged to examine the Rules and judicial decisions for a thorough understanding of appellate procedures and potential issues in their case.** Should there be a conflict between information within this document and the Supreme Court Rules, Court Operating Rules or Special Rules, the Rules shall prevail.

Appellate practice before the Southern District of the Missouri Court of Appeals is governed by Supreme Court Rules that are applicable to all three appellate districts in Missouri. Generally those rules are found in Rule 30 for criminal appeals and Rules 81, 83 and 84 for civil appeals. Special Rules have been promulgated by the Southern District applicable to proceedings in this Court. **A Missouri attorney in good standing shall be a registered user of the electronic filing system and Supreme Court Rule 103, Court Operating Rule 27 and this Court's Special Rule 18 shall also apply to all filings. This manual is primarily designed for the use by parties who are ineligible to file documents through the electronic filing system. Attorneys are expected to consult the applicable rules.**

The Southern District is composed of seven judges and has general appellate and original remedial writ jurisdiction over cases arising in the 44 counties across southern Missouri. The Court is located at 300 Hammons Parkway, Springfield, Missouri, 65806. Telephone No.: (417) 895-6811 and Telefacsimile No.: (417) 895-6817. The Court holds oral argument in Springfield in January, March, June and September. Oral Argument is held in Poplar Bluff in April and October. The Court may sit in other locations in the Southern District during the year.

THE APPELLATE PROCESS: STEP BY STEP

Generally, a party initiates an appeal by filing a notice of appeal with the clerk of the trial court or administrative agency that issued the decision. Once the notice of appeal is filed, the party appealing, or Appellant, has responsibility for ordering and filing a record on appeal and then filing an "Appellant's Brief." Strict time lines govern these filings and the process can be complicated. While the staff at the Court can explain the appellate process and court procedure to litigants, they cannot give legal advice about their cases.

I. INITIATING AN APPEAL

- **General Rule:** In general civil and criminal appeals, the notice of appeal is due ten (10) days after the judgment becomes final.

A. FILING THE NOTICE OF APPEAL

Generally, in civil and criminal appeals, the notice of appeal must be filed with the clerk of the trial court no later than ten (10) days after the judgment becomes final. Rules 30.01(a) and 81.04(a).

The form and contents of a notice of appeal are contained in Form 8-A(2) for civil cases and Form 8-A(3) for criminal cases. At the time of the filing the notice of appeal with the clerk of the trial court, a docket fee of \$70.00 or an in forma pauperis finding by the trial court must be filed. Rules 30.01(a) and 81.04(d) & (e). An appellant who is ineligible to use the electronic filing system shall serve a copy of the notice of appeal on all other parties to the judgment not represented by an attorney as provided by Rule 43.01. Also see Rules 30.006 and 81.006(c)(2).

The notice of appeal must specify the parties taking the appeal, the judgment, decree or order appealed from, the court to which the appeal is taken and shall be signed. Rules 30.01(a), 55.03(a) and 81.04(a). The clerk of the trial court shall give notice of the transmittal of the notice of appeal to all parties. Rules 30.01(c) and 81.04(g).

B. LATE NOTICE OF APPEAL

A party may seek leave from the Court of Appeals to file a late notice of appeal. Leave to file a late notice of appeal is sought by filing with the Clerk of the Court of Appeals a written motion for special order permitting a late notice of appeal.

In accordance with Supreme Court Rule 81.07, the party in a civil case who requests a special order must make a showing by affidavit or otherwise that the delay was not due to the appellant's culpable negligence and attach a copy of the final judgment to the motion. This must be done within six (6) months of the final judgment. In accordance with Supreme Court Rule 30.03, the party in a criminal case must request a special order within twelve (12) months of the final judgment and "for good cause shown" the Court of Appeals, in its discretion, may issue a special order.

II. THE RECORD ON APPEAL

- **General Rule:** In most cases, the Record on Appeal is due 90 days after the notice of appeal is filed with the circuit court, if a legal file and transcript are to be filed. If the case is a legal file only, then the legal file is due within 30 days.

A. GENERAL PROCEDURE

It is the appellant's burden to provide this Court with the record on appeal that contains all of the proceedings and evidence necessary to the determination of all questions to be presented to the Court for decision. Rules 30.04 and 81.12.

The record on appeal is divided into two components - the "legal file" and the "transcript." The record on appeal must be filed with the appellate court within ninety (90) days from the date of the filing of the notice of appeal in the trial court, if both a legal file and a transcript are to be filed. Rule 81.19. If the record on appeal consists of the legal file only, the legal file must be filed within thirty (30) days after the notice of appeal is filed in the trial court. Rule 81.19.

In appeals of the termination of parental rights, the record on appeal is due thirty (30) days after the notice of appeal is filed. RSMo. §453.011 and Special Rule 17.

The record on appeal is to be filed with the Clerk of the Court of Appeals. Rule 30.04 and 81.12(d). Proof of service on the respondent(s) shall be consistent with Rules 30.006 and 81.006.

B. LEGAL FILE

The legal file shall contain clearly reproduced, exact copies of the pleadings and other portions of the trial record previously reduced to written form. Rules 30.04(b) and 81.12(b)(2).

In most cases, the legal file should contain in chronological order at least the following documents:

- (1) circuit court docket sheets;
- (2) pleadings upon which the action was tried;
- (3) the verdict;
- (4) findings of the court or jury;
- (5) judgment or order appealed from;
- (6) motions and orders after judgment;
- (7) notice of appeal.

The legal file shall be securely bound and labeled with the style of the case and the Southern District Appeal Number. The legal file shall be paginated, contain an index referring to the documents by page number and shall not contain more than 200 pages in a volume. Rule 81.21. The documents shall begin with the docket sheets on top numbered as page 1. The oldest document shall follow the docket sheets with the remaining documents arranged in chronological order ending with the notice of appeal at the bottom. Rule 81.12(b)(4) and Special Rule 2(b). The legal file must be certified by the clerk of the trial court to consist of true copies of the portions of the record filed in the trial court. Rule 81.12(b)(5). Certification by the Circuit Clerk is not necessary if the parties agree in writing that the legal file is true and accurate. Rule 81.15. Proof of service on the respondent(s) shall be consistent with Rules 30.006 and 81.006.

C. TRANSCRIPT

The transcript must contain the portions of the proceedings and evidence not previously reduced to written form. Rules 30.04(c) and 81.12(c).

The transcript pages shall be numbered consecutively and must be preceded by a complete index. Rules 30.04(c) and 81.12(c). A volume of transcript shall not exceed 200 pages. Rules 30.04(c) and 81.12(c). The transcript must be certified by the court reporter as a true and accurate reproduction of the proceedings transcribed or by a transcriber as a true and accurate reproduction of the sound recording. Rules 30.04 and 81.12(c). Certification is not necessary if the parties agree in writing that the transcript is true and accurate. Rule 81.15. Proof of service on the respondent(s) shall be consistent with Rules 30.006 and 81.006.

A party who files a paper transcript shall also file the electronic medium provided by the court reporter. Rule 81.21.

D. EXHIBITS

Appellant is responsible for depositing all exhibits that are necessary for the determination of any point relied on with the appellate court.

Exhibits shall be deposited on or before the day the reply brief is due or when the court so directs, whichever is earlier. Rule 81.16. Special Rule 4 requires that each exhibit be labeled with the case number and contained collectively in an envelope labeled with the case number and style, name and address of the party depositing the exhibits and an index of all exhibits enclosed. In a civil appeal, except post-conviction proceedings, exhibits deposited with the clerk must be removed within thirty (30) days after mandate has issued or they will be destroyed. Rule 81.16(e) and Special Rule 4.

III. BRIEFS

- **General Rule:** Appellant's brief is due 60 days after the record on appeal is filed. Respondent's brief is due 30 days after Appellant's brief is filed. The reply brief is due 15 days after Respondent's brief is filed.
- **Notice:** An appellant has the right to represent himself/herself on appeal. However, "we must hold him to the same standards of practice and procedure that we would expect of an attorney in order to ensure fairness and impartiality." *State v. Douglas*, 132 S.W.3d 251,256 (Mo.App. 2004) and *Hicks v. Div. of Employment Security*, 41 S.W.3d 638, 640 (Mo.App. 2001).

A. GENERAL PROCEDURE

Within sixty (60) days after the record on appeal is filed, the appellant's brief must be filed with the Clerk of the Appellate Court. Within thirty (30) days after filing of the appellant's brief, the respondent's brief may be filed with the appellate court. Within fifteen (15) days after the filing of the respondent's brief, the appellant's reply brief may be filed.

B. GENERAL FORMAT OF BRIEFS NOT FILED THROUGH THE ELECTRONIC FILING SYSTEM

1. Computer Generated Briefs

All briefs should be prepared using computer software as provided by Rules 81.18 and 84.06. The briefs must be formatted for pages of size 8 ½ by 11 inches. The font size throughout the brief (including footnotes) shall not be smaller than 13 point, Times New Roman. All text (including footnotes) must be double-spaced, except for the cover, certificate of service, certificate required by Rule 84.06(c) and signature block, which may be single-spaced. The pages, including the cover page, must be numbered consecutively, and the brief must be secured by affixing a temporary binding such as a rubber band or a binder clip but not with adhesive tape, staples, spiral binding, or edge sealing products. Rules 81.21 and 84.06.

Appellant's initial brief and all briefs in a cross appeal except the reply brief shall not exceed 31,000 words. Respondent's brief shall not exceed 27,900. The reply brief shall not exceed 7,750 words. Rule 84.06(b). Briefs shall contain a certificate that provides the information required by Rule 55.03 which states that the brief complies with the word limits of Rule 84.06(b), and states the number of words in the brief. Rule 84.06(c). Word counts may be obtained using computer software.

If a brief is prepared in accordance with Rule 84.06(a) and not otherwise electronically filed, an electronic copy of the brief and the appendix shall be submitted to the court via CD-ROM, disk, or other electronic medium acceptable to the court. The electronic copy shall be in Word, WordPerfect, Adobe Acrobat PDF, or any searchable format in which the onscreen presentation is identical to the paper document. Special Rule 16. An adhesive label shall be affixed to each disk legibly identifying the caption of the case, the party filing the disk, the disk number (e.g., "Disk 1 of 2"), and the word processing format (e.g., Microsoft Word). The filing party must file a certification that the disk has been scanned for viruses and is virus-free.

2. Typewritten Briefs

A party ineligible to file documents through the electronic filing system AND unable to prepare a brief using computer software may file a typewritten brief. Rule 81.21(e). Typewritten briefs must be on 8½ by 11 inch paper and typed on only one side of the page. The type size must be not less than ten pitch and ten characters to the inch. All text (including footnotes) must be double-spaced, except for the cover, certificate of service and signature block, which may be single-spaced. The pages, including the cover page, should be numbered consecutively, and the brief must be secured by affixing a temporary binding such as a rubber band or a binder clip but not with adhesive tape, staples, spiral binding, or edge sealing products. Rule 81.21.

Appellant's initial brief and all briefs in a cross appeal except the reply brief shall not exceed 100 pages. Respondent's brief shall not exceed 90 pages. The reply brief shall not exceed 25 pages. Rule 81.21(e)(2).

3. Certificate of Service

Proof of service on the opposing parties shall be consistent with Rules 30.006 and 81.006.

C. CONTENTS OF BRIEF

The contents of the brief must conform to the requirements set forth in Rules 30.06 and 84.04. Briefs not in compliance with the rules may be stricken, the party may be ordered to file a new or amended brief, or the appeal may be dismissed. In addition, Rules 30.20 and 84.13 require that the Court not consider any allegations of error that are not properly briefed. In recent years, the appellate courts have required strict adherence to the rules relating to the contents of a brief.

1. Appellant's Brief

The appellant's brief shall contain:

(1) Table of Contents - A detailed table of contents with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited. Rules 30.06 and 84.04(a)(1).

(2) Jurisdictional Statement - A concise statement of the grounds upon which the jurisdiction of the reviewing court is based. Rules 30.06(b) and 84.04(a)(2).

(3) Statement of Facts - A fair and concise statement of the facts, without argument, relevant to the issues presented for review. Page references to the record on appeal must be included. Rules 30.06 and 84.04(a)(3).

(4) Points Relied On - A brief statement of what actions or rulings of the trial court or administrative agency are sought to be reviewed and wherein and why they are claimed to be erroneous. Rules 30.06 and 84.04(d). Each point relied on shall: (A) identify the trial court or administrative ruling that the appellant challenges; (B) state concisely the legal reasons for the appellant's claim of reversible error; and (C) explain in summary fashion why those legal reasons support the claim of reversible error. See Rule 84.04(d) for specific examples of the form.

(5) Argument - The argument must substantially follow the order of the "Points Relied On." The point relied on shall be restated at the beginning of the section of the argument discussing that point. The argument shall also include a concise statement of the applicable standard of review. Page references to the transcript must be included. Rules 30.06 and 84.04(e).

(6) Conclusion - At the end of the brief, the party should provide a short conclusion stating the precise relief sought. Rule 84.04(a)(6).

(7) Appendix - An appendix shall accompany and be separate from the brief. Rule 84.04(h).

2. Respondent's Brief

The respondent's brief shall include a detailed table of contents and table of authorities, and an argument in conformity with Rule 84.04(f). The respondent may adopt the jurisdictional statement and statement of facts of the appellant or, if not satisfied, respondent may include a jurisdictional statement or statement of facts. Rules 30.06 and 84.04(f).

The argument portion shall contain headings identifying the points relied on contained in the appellant's brief to which each argument responds. The respondent's brief may also contain additional arguments in support of the judgment that are not raised by the points relied on in the appellant's brief. Rules 30.06 and 84.04(f).

3. Reply Brief

The appellant may file a reply brief but shall not reargue points covered in the main brief. Rules 30.06 and 84.04(g).

D. APPENDIX TO BRIEFS

A party's brief shall be accompanied by a separate appendix. Rule 84.04(h). The appendix must contain the following materials unless they have already been filed in another appendix: (1) the judgment, order, or decision in question, including the relevant findings of fact and conclusions of law; (2) the complete text of all statutes, ordinances, rules of court, or agency rules; and (3) the complete text of any instruction to which a point relied on relates. The appendix must have a separate table of contents. The pages in the appendix shall be numbered consecutively beginning with page A1 and shall not be counted as part of the brief. Rule 84.04(h).

IV. DOCKETING

In accordance with Special Rule 1, an appellant desiring to orally argue may serve notice thereof no later than 10 days after the brief of respondent is due to be filed. Such notice shall be made by separate pleading captioned "Request for Oral Argument". Failure of appellant to request oral argument within the time and manner required shall constitute a waiver on behalf of all parties to appear and orally argue. The case will then be submitted to a three-judge panel for decision without argument.

If oral argument is requested, the case is set on a docket for oral argument before one of the Court's divisions and counsel or the self-represented parties are notified. The docket should be examined carefully to avoid going to the wrong courtroom. This Court sits in Springfield, 300 Hammons Parkway, Third Floor and in Poplar Bluff, Butler County Courthouse, 100 N. Main Street, Second Floor and other locations throughout the Southern District.

V. ORAL ARGUMENT

Court normally convenes at 9:00 a.m. and 1:00 p.m. to hear oral arguments. Oral argument is optional. Cases may be submitted on the briefs without oral argument. If counsel for appellant or a self-represented appellant are not present when court convenes, the case may be submitted on the briefs. A respondent who fails to file a brief will not be permitted to participate in oral argument. Special Rule 1.

In cases that are set on the oral argument docket, the appellant is allowed a maximum of twenty (20) minutes for argument and may reserve up to five (5) minutes for rebuttal. Respondent is allowed a maximum of fifteen (15) minutes. Special Rule 1.

If there are multiple parties on a side they shall divide the allotted time. In cross-appeals, the plaintiff in the trial court shall be entitled to open and close the argument, unless the Court directs otherwise.

VI. OPINION

In each case determined by the Court, the opinion or judicial decision is reduced to writing and filed in the cause. The Court is also authorized to issue memorandum decisions or summary or written orders. Rules 30.25(b) and 84.16(b). The opinion is sent to each responsible attorney of record or self-represented party on the day it is filed.

VII. POST-DISPOSITION PROCESS

A. POST-DISPOSITION MOTIONS

A party may file in the Court of Appeals post-disposition motions and/or an application to transfer to the Supreme Court of Missouri after the court files its opinion, written order, memorandum decision or order of dismissal. Rules 30.26, 30.27, 83.02, and 84.17. The post-disposition motions or application may be accompanied by suggestions in support and must be filed in the clerk's office of the Court of Appeals within fifteen (15) days after the opinion, written order, memorandum decision or order of dismissal is filed.

No suggestions in opposition may be filed unless requested by the court. If the court requests such suggestions, any other party may file suggestions in opposition within ten (10) days after the request. Rules 83.02, 83.06 and 84.17.

An application for transfer must be filed in the Court of Appeals and denied before an application for transfer may be filed in the Missouri Supreme Court. If the Court of Appeals denies the application for transfer, a party may make an application for transfer directly to the Supreme Court of Missouri. Application for transfer directly with the Supreme Court must be filed in the Office of the Clerk of the Supreme Court within fifteen (15) days after the date on which transfer was denied by the Court of Appeals. Rule 83.04.

B. MANDATES

Judgments of the court take effect when the mandate issues. Generally, a mandate is not issued until the time for filing post-disposition motions has expired. If a post-disposition motion is filed, the mandate will not issue until this court and the Missouri Supreme Court resolve all such motions.

VIII. ADDITIONAL APPELLATE PROCEDURE

A. MOTIONS

All motions must be in writing and must be filed with the Clerk's office. Motions should not be in letter form and should not be addressed to a judge, but to the Clerk. All motions must be signed and must include proof of service upon opposing counsel or self-represented party. Rules 30.006, 81.006 and 84.01(a). Unless otherwise ordered, suggestions in opposition may be filed within five (5) business days after the date of service. Rule 84.01(b). Motions are decided on the pleadings without oral argument. Rules 30.10 and 84.01. Rulings are sent through the electronic filing system or in accordance with Rule 81.005.

B. FACSIMILE AND E-MAIL FILINGS

ONLY those parties ineligible to use the electronic filing system may file documents by fax at 417-895-6817. Any document not requiring a filing fee and not exceeding 20 pages may be accepted for filing by facsimile transmission. Special Rule 21. Legal files and transcripts, including supplements thereto may NOT be filed by facsimile transmission.

ONLY those parties ineligible to use the electronic filing system may file certain documents by e-mail attachment provided a single e-mail attachment does not exceed ten megabytes and is in PDF searchable format. COR27.02(c). E-mail filings shall be sent to sdcoa@courts.mo.gov with the caption of the case, case number and the party filing the document included with the attachment. Special Rule 21.

IX. FORMS

A. NOTICE OF APPEAL FORM – 8-A(2) (CIVIL)

B. NOTICE OF APPEAL FORM – 8-A(3) (CRIMINAL)

C. NOTICE OF APPEAL FORM – 8B (UNEMPLOYMENT COMPENSATION)

D. NOTICE OF APPEAL FORM – 8C (WORKER'S COMPENSATION)