

Law You Can Use: Consumer Information Column

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Pro Se Appeals: Are They Worth Trying?

Q: *If I lost a court case, is it worth trying to file an appeal without an attorney?*

A: If you do not believe you can afford an attorney to handle your appeal, you may be tempted to try to appeal your case yourself. This is called a *pro se* appeal. The administrative requirements of an appeal are great; if you choose to appeal your case yourself, you must do many things within a very short period of time. But it is **possible** to appeal your own case and succeed. If a magistrate, rather than a judge, made the original decision in your case, you will make your first appeal to the supervising judge. You must object to the magistrate's decision, and provide transcripts of the trial as well as a full explanation of the errors made during your trial. If you fail to do this, a court of appeals will not review the magistrate's decisions.

Q: *How would I appeal my own case?*

A: To appeal your own case, you must "perfect" your appeal by completing the required forms and filing them with the court. The rules for "perfecting" an appeal vary among appellate districts. The clerk of courts can give you the forms, but it is fairly easy to make a mistake that can cause your appeal to be dismissed. You must file the forms and pay the filing fee or provide an affidavit of indigency (saying you cannot pay the filing fee) within 30 days of the time that the court filed its "final appealable order." The court files a final appealable order once a case has been completely resolved. The order will usually contain the words, "final appealable order," but if not, you can ask the judge to declare it to be a final appealable order if every factual issue in the case has been resolved. If you fail to properly file your appeal, the docket sheet and the transcript order form within this 30-day timeframe, the court will dismiss your appeal.

Q: *After I've perfected my appeal, what do I do?*

A: You, as well as the other party, will have to write a "brief," or memo to the court outlining the facts of the case and giving arguments about why the trial court's decision should or should not be reversed. Every appellate district has slightly different rules for briefs, and you must strictly comply with these "briefing rules" or risk having your appeal dismissed. Appeals are most commonly dismissed because briefs are not filed on time. After the briefs for both sides are filed, the parties or their attorneys

will give their “oral argument” by answering to a panel of three senior judges about the trial court’s rulings and whether the outcome should be reversed or affirmed. If the appeals court affirms the trial court’s ruling, it means that whatever the original court decided stands; if the ruling is reversed, it means that the appeals court found that the trial made a mistake that was serious enough to require some modification, such as a retrial or other revision by the trial judge.

Q: *What are my odds if I do my own appeal?*

A: Your odds are very poor, but a very few people do win appeals without an attorney. For example, in 2007 in Cincinnati, 124 *pro se* criminal appeals were filed: 92 were dismissed or motions for late appeal denied; 30 cases were affirmed; and only *two* were reversed. The court dismissed most of the criminal *pro se* appeals for failure to comply with the procedural requirements. Of the two reversals, one involved an illegal sentence and the other was reversed because the trial court disregarded the court of appeals’ ruling in a previous case. The final 30 cases were affirmed by the court of appeals, finding that the trial court did not make a mistake sufficient to require it to retry the case.

Ultimately, this **1.6%** reversal rate compares unfavorably with the reversal rate in criminal cases in which attorneys represented the appellants. The overall reversal rate in attorney-represented criminal cases in Cincinnati in 2007 was **13.07%** (63 out of 482 cases). In short, appeals are not often successful, but the chance of winning on appeal is much greater with attorney representation than without it.

This “Law You Can Use” column was provided by the Ohio State Bar Association (OSBA). It was prepared by Ohio, Indiana and Kentucky attorney Paul G. Croushore, a member of the OSBA Criminal Justice Committee. The column offers general information about the law. Seek an attorney’s advice before applying this information to a legal problem.