

**BATON ROUGE CITY COURT
P. O. BOX 3438
233 St. Louis Street
BATON ROUGE, LOUISIANA 70821**

APPEALS FACT SHEET

APPEALS, GENERALLY

An appeal does not mean an automatic new trial in either the trial court or the appellate court. Rather, it involves a review by the appellate court of the trial record (including the "transcript" of testimony) to determine if the trial judge made any errors of law or legal mistakes in conducting the trial. Factual issues, such as credibility of witnesses (meaning which witnesses or evidence should the trial judge have believed) are not normally reviewable on appeal. If the appeal court does not reverse the trial judge's decision, it may decide the case in its entirety or it may "remand" the case back to City Court for retrial consistent with the appellate court's ruling. If the appellate court "affirms" (or upholds) the trial court's judgment, the party who caused the appeal to be taken will ordinarily be responsible for court costs associated with the appeal in addition to any fines or other sums that may be owed from the trial judge's sentence or decision. In "criminal" appeal matters, the cost of the transcript is not refunded if the party appealing wins his appeal. In civil appeal matters, the issue of appeal costs is decided by the appellate court.

CRIMINAL, DWI AND TRAFFIC CASES

Criminal, DWI and traffic cases (except parking infractions) are considered "criminal" for purposes of appellate procedure and will be lodged in the Criminal Records Division of the 19th Judicial District Court, which is located at 300 North Blvd., Baton Rouge, Louisiana. Announcement of intention to take an appeal must be made within thirty (30) days from the date of sentencing, either in writing or orally in the courtroom.

An appeal does not automatically "suspend" (or hold up) execution of the Court's sentence pending outcome of the appeal. A stay must be requested within the time delays required by law, and granted by the Court in order to suspend execution of the Court's sentence pending outcome of the appeal.

After you have appealed your conviction, a "notice of appeal" will be mailed to you and your attorney (if you have one) from the Appeals Division of City Court. You will be advised of the "return date" and your due date for filing written "assignments of error" (in court if appeal is made orally at the time of sentencing, or by mail if appeal was made by written motion). The return date is the date by which the Appeals Division of City Court must file the trial record with the appellate court. You are not expected to make any appearance in the appellate court on this date. The assignments of error due date is the date by which you must file, in writing, your specific reasons where you believe the trial judge committed legal errors in the conduct of your trial. A transcript of the trial proceeding will be prepared and will be made a part of the record at a cost of \$2.50 per page. You are expected to pay this cost within twenty days or risk dismissal of the appeal and/or other penalties. For your convenience, payment may be made by check, Visa, Discover, or Master Card. After payment is made for the transcript, you will receive a copy, which you may wish to use in preparing your written assignments of error.

You will receive notification from the 19th Judicial District Court of the time limit for filing your "brief" (or memorandum) with the court as part of your appeal. The 19th Judicial District Court, at its option, may decide the case on the briefs submitted or it may set the matter for an oral argument. If you fail to file your brief timely, there shall be no oral argument and the assignments of error will be considered abandoned. If you desire oral argument, you may wish to advise the 19th Judicial District Court of the fact in writing.

If you fail to designate your assignments of error for inclusion in the record lodged with the 19th Judicial District Court, only errors "patent on the face of the record" will be reviewed.

After an appeal record is lodged with the 19th Judicial District Court, all correspondence and further proceedings will be from District Court, and not City Court, until the case is decided. Once District Court has ruled on your appeal, notice will be sent to you from the Appeals Division of City Court advising you of what action will be necessary from that point forward. If you lose your appeal, you will be given a new date by which to appear to comply with the sentence of the trial judge. It is possible to seek further review of your conviction, even if you lost in the 19th Judicial District Court; however, since this is a complex procedure, legal advice should be sought on that issue.

WRIT OF REVIEW

In addition to the above procedures for appeal, it is possible to seek a "writ of review" concerning your conviction. The writ of review is similar to the appeal in the sense that it does not involve a new trial but rather a review by the appellate court of the trial record to determine whether the trial judge committed legal errors or mistakes in conducting your trial. It differs from the appeal in the respect that the appellate court does not have to hear the writ of review if its preliminary examination indicates that it is not meritorious. An application for writ of review may or may not suspend execution of the sentence, depending on whether the defendant is granted post-conviction bail. The complexities of the rules of court concerning writs of review are such that professional legal advice is recommended.

La.C.Cr.P. Article 912.1 - Right of Appeal and Application for Review; defendant

La.C.Cr.P. Article 914.1 - Designation of record; payment of costs;

La.C.Cr.P. Article 914 - Method and time of appeal;

La.C.Cr.P. Article 844 - Assignments of error; sanctions for failure to file timely;

La.C.Cr.P. Article 853 - Time for filing motion for new trial;

La.C.Cr.P. Article 920 - Scope of appellate review;

19th Judicial Rule XII - Appeals from city court to district court.

CIVIL CASES

An appeal from a civil judgment must be filed within ten (10) days from the date of judgment or from service of notice of judgment, when such notice is necessary. No appeal is permitted for "Small Claims" proceedings (matters that have been filed in the Small Claims Division of City Court under provision of La.R.S. 13:5200, and following.) When an application for "new trial" has been timely filed, the delay for appeal commences on the day after the motion is denied, or from service of the order denying the new trial, when such notice is necessary. The delay for filing a Motion for New Trial in a regular civil case is seven (7) days, excluding weekends and holidays, from the date the judgment was signed. In a Small Claims case, the delay is three (3) days excluding weekends and holidays, from the date the judgment is signed. Where notice is required, the delay commences to run on the day after the clerk has mailed or the sheriff has served the notice of judgment.

All civil appeals are returnable to the 19th Judicial District Court, which is located at 300 North Blvd., Baton Rouge, Louisiana 70802. The filing fee for a Motion for Appeal is \$125.00, in addition the filing fee of \$321.50 imposed by the 19th Judicial District Court and estimated costs to prepare the transcript must be paid to the trial court (Appeals Division) within twenty (20) days from the mailing of such notice. If these costs are not timely paid, sanctions could include dismissal of the appeal and/or imposition of penalties. A return date for filing of the record with the 19th Judicial District Court will be set upon payment of all appeal costs at forty-five (45) days from the date costs are paid. In addition, Baton Rouge City Court charges \$2.50 per page to prepare the transcript with a \$25.00 minimum.

A civil appeal may be either "devolutive" or "suspensive". A devolutive appeal does not suspend execution of the judgment pending the outcome of the appeal. A suspensive appeal, which does suspend (or hold up) execution of the judgment pending outcome of the appeal, requires posting of a security bond with the Clerk of City Court in an amount of one and one-half times the judgment rendered. The City Court Appeals Division cannot prepare the appeal bond for you, nor are forms available for this purpose; therefore, professional legal advice is recommended concerning this subject. An appeal bond is required for all suspensive appeals and must be filed in accordance with the Order of Appeal.

Once all of your appeal costs are paid and a transcript is prepared, you will receive a copy of the transcript of the trial proceeding and any new trial hearing or other motion hearings, if any. If the amount of the estimated costs that you have paid is less than the actual cost of the transcript, then you will receive notice of additional costs or, alternatively, any reimbursement, as the situation may require. Once the record is lodged on appeal with the 19th Judicial District Court, you should direct any and all correspondence to that court, and not Baton Rouge City Court. The 19th Judicial District Court will send you a notice of the filing, assigning a number to the appeal, and informing you of your next step concerning filing of appellate briefs. The 19th Judicial District Court rules are very detailed and, if not strictly observed, will result in the dismissal of your appeal; therefore, professional legal advice is recommended. Once a decision is rendered, you will be notified by mail.

EVICCTIONS

Tenants who wish to appeal suspensively from a judgment of eviction must do so within twenty-four (24) hours from the date and time that the judgment of eviction is rendered. The tenant must raise an "affirmative defense" entitling the tenant to retain possession of the premises. The appeal bond, in an amount determined by the trial court sufficient to protect the landlord against all such damage as he may sustain as a result of the appeal, must be posted within the same twenty-four (24) hour period.

While a suspensive appeal would prevent actual eviction pending the outcome of the appeal, it does not mean that rental payments are suspended during the appeal process, or that the tenant cannot be later held responsible for any damages caused to the rental property. The tenant will still have to pay rent timely.

A "devolutive" appeal of an eviction is also possible, but it would not suspend or prevent actual eviction pending the outcome of the appeal.

PARKING INFRACTIONS

Parking infractions under Baton Rouge City Code Title 11:400 and following are considered civil, and not criminal; therefore, the above civil rules would govern the appeal process.

REFERENCES

La.C.C.P. Article 2124 - Security to be furnished on appeal; bonds
La.C.C.P. Article 2125 - Return date for appeal
La.C.C.P. Article 2126 - Payment of costs
La.C.C.P. Article 5002 - Delay for appeal
La.C.C.P. Article 4907 - New trial delays (Regular Civil)
La R.S. 13:5208 – New Trial delays (Small Claims)
La.C.C.P. Article 5001 - Appeals from city and parish courts
La.C.C.P. Article 4735 - Eviction appeal bond

Questions concerning City Court appeals should be directed to:

Debra O. Mannino/Deputy Clerk
P. O. Box 3438, 233 St. Louis Street, Room 105
Baton Rouge, Louisiana 70821-3438
Phone: (225) 389-5257

- ❖ **Reasonable accommodation will be made to assist those persons with a disability who require assistance. Please call ahead at (225) 389-5257 or (225) 389-5279.**
- ❖ **City Court employees are not permitted to give legal advice. The community resources listed below are available.**

Southeast Louisiana Legal Services
715 St. Ferdinand Street
Baton Rouge, LA 70802
Phone (225) 448-0080
Toll Free (855-512-3980)
www.slls.org

Lawyer Referral Service
544 Main Street
Baton Rouge, LA 70802
Phone (225) 344-9926
www.brba.org

Consumer Credit Counseling Services
615 Chevelle Court
Baton Rouge, LA 70806
Phone (225) 923-2227
www.moneymanagement.org

Baton Rouge Bar Association
544 Main Street
Baton Rouge, LA 70802
Phone (225) 344-4803
www.brba.org