

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT

LOCAL RULES

AS AMENDED THROUGH APRIL 9, 2018

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FOREWORD

The judges of the Eighth District Court of Appeals have adopted these local rules under Section 5(B), Article IV, Ohio Constitution, App.R. 41, and Sup.R. 5(A)(1) and (2), and filed them with the Clerk of the Supreme Court of Ohio under Sup.R. 5(A)(3). These authorities allow courts to publish rules “concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the Supreme Court.”

These local rules are not designed to provide a comprehensive scheme of local practice. Rather, they complement the rule structure of the Ohio Rules of Appellate Procedure. For that reason, these local rules are numbered to correspond to the applicable Ohio Rules of Appellate Procedure.

These local rules shall be cited as “Loc.App.R. ____.”

RULE 1. SCOPE OF RULES

(A) **Appeals.** The Rules of Appellate Procedure, as supplemented by these local rules, govern all procedures in appeals to the Eighth District Court of Appeals of Ohio from the trial courts of record within the jurisdictional boundaries of the Eighth District and other tribunals as provided by law.

(B) **Original Actions.** Original actions filed in this court are governed by the following:

- (1) The rules of civil procedure;
- (2) The local rules of appellate procedure;
- (3) All applicable statutes; and
- (4) Statutes authorizing awards of costs.

(C) **Amendment Of Rules.** The Eighth District Court of Appeals has the authority to change its local rules of practice. Ordinarily, the court shall propose a change and invite comment by interested persons at least 30 days before the effective date. In its discretion, the court may allow additional time for comments to be received. Notice shall be accomplished by placing the proposed change on the court's website (<http://appeals.cuyahogacounty.us>), on the public record with the clerk of the court of appeals, by publishing the proposed change in the *Daily Legal News*, and by mailing copies to the presiding judges of the trial courts within the district, to associations of members of the bar, and to any persons requesting a copy. Following the 30-day period for comment, the court, in its discretion, may modify, delete, or adopt a proposed rule change as originally proposed. The court may immediately delete or modify an existing rule or adopt a new rule if, in the opinion of the court, either exigent circumstances so require or the rule change is ministerial in nature. Public comments should be forwarded in writing to: Court Administrator, Court of Appeals, 1 Lakeside Avenue, Suite 202, Cleveland, OH 44113.

[Amended effective January 19, 2010.]

RULE 2. LAW AND FACT APPEALS ABOLISHED

RESERVED

**RULE 3. APPEAL AS OF RIGHT — HOW TAKEN;
COST DEPOSIT; CONSOLIDATED APPEALS**

(A) **Filing Fee And Cost Deposit.** The clerk will not accept for filing any notice of appeal, notice of cross-appeal, or original action unless the party bringing the action deposits with the clerk of courts the sum of \$175.00. Of that sum, \$150.00 will be security for the payment of costs, and \$25.00 is a fee, authorized under R.C. 2501.16(B), for the operation of the court. But, the clerk will receive and file the appeal or action without the payment of \$175.00:

- (1) If the appellant files with the clerk a sworn affidavit or affirmation of inability to secure costs by prepayment; or
- (2) If the appellant produces evidence that the trial court determined that the appellant was indigent for purposes of appeal; or
- (3) If the requirement of prepayment is otherwise excused by operation of law, e.g., R.C. 109.19 and 325.31(C).

[Amended effective April 9, 2018.]

(B) Appeal As Of Right.

- (1) The notice of appeal must individually name each party taking the appeal and must have attached to it a copy of the judgment or order appealed from (journal entry) signed by the trial judge and bearing the clerk's stamp "Received for Filing" with the date of receipt by the clerk and a copy of Affidavit of Indigency where relevant. The subject attachments are not jurisdictional but their omission may be the basis for a dismissal.

[Amended effective July 1, 1999.]

- (2) A party is required to file only one notice of appeal from a judgment entered in cases consolidated in the trial court. The notice of appeal must list all consolidated case numbers. The appeal will proceed under one case number unless otherwise ordered by the court.
- (3) Counsel, or litigants filing notices of appeal on their own behalf, must include current names and addresses for counsel of record for appellees with sufficient copies for service on all counsel. In

the event an appellee is unrepresented, then the appellee's current address and a copy for service on that appellee must be provided.

(C) Consolidation Of Appeals.

- (1) Consolidation Of Appeals. Either on motion or sua sponte, the court may consolidate cases involving related transactions or the same or similar principles of law, even though the parties are not identical. When consolidation has been ordered, the parties with a common interest must try to prepare a common brief with an addendum to cover any proposition that a party deems unique to that party.
- (2) Service In Consolidated Appeals. When appeals are consolidated, the clerk of the court of appeals may limit its notice of journal entries to one notice for each counsel (or party, if not represented by counsel) where identical journal entries are being made in each consolidated appeal. Such service will constitute due notice as to all the consolidated appeals. Costs will ordinarily be assigned to the lowest case number.

(D) Service by prosecutor. When a prosecutor takes an appeal either of right or accompanied by a motion for leave to appeal in a felony, misdemeanor, or juvenile delinquency case, and including from an order sealing the record pursuant to R.C. 2952.31, et seq., the prosecutor shall send a notice of the appeal to the Appellate Division of the Cuyahoga County Public Defender's Office via United States mail or by sending an electronic copy to pdgeneral@cuyahogacounty.us. The fact of service to the Cuyahoga County Public Defender's Office shall be included within the certificate of service. [Adopted effective August 1, 2016.]

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**RULE 4. APPEAL AS OF RIGHT — WHEN TAKEN;
CIV.R. 60(B) REMANDS**

(A) If a motion for relief from judgment or order under Civ.R. 60(B) is pending in the trial court and an appeal from the same judgment is also pending, a party may move this court, for good cause, to remand the matter to the trial court for a ruling on the motion for relief from judgment.

(B) The movant must promptly notify the court of appeals of the trial court's ruling on the motion for relief from judgment.

(C) To appeal the ruling on the motion for relief from judgment, a party must file a notice of appeal from that ruling.

(D) Consolidation of the appeals may be ordered under Loc.App.R. 3(C).

RULE 5. APPEALS BY LEAVE OF COURT IN CRIMINAL CASES

RESERVED

RULE 6. CONCURRENT JURISDICTION IN CRIMINAL ACTIONS

RESERVED

RULE 7. STAY OR INJUNCTION PENDING APPEAL

RESERVED

**RULE 8. BAIL AND SUSPENSION OF EXECUTION IN
CRIMINAL CASES**

RESERVED

**RULE 9. THE RECORD ON APPEAL; PRAECIPE;
TRIAL CLERK'S DUTIES; ABSENCE OF COURT REPORTER**

(A) The appellant must file with the clerk of the trial court, and serve upon each of the parties, the notice of appeal and an attached service, dated and signed, designating the necessary counsel or parties to be served by the clerk of the trial court in accord with App.R. 3(E). The appellant must provide the clerk with the original and one copy as well as the necessary number of copies for service.

[Amended effective July 1, 1999.]

(B) Simultaneously with filing the notice of appeal, the appellant must file with the clerk of the trial court, and serve upon each of the parties, a complete praecipe and docketing statement in accord with the forms set forth in Appendices A and B to these local rules. The appellant must also provide the clerk with the original and one copy as well as the necessary number of copies for service.

(C) The clerk of the trial court shall effect the following:

- (1) The prompt service of the notice of appeal, praecipe, and docketing statement; and
- (2) The prompt service to the clerk of the court of appeals of a copy of the notice of appeal, praecipe, and docketing statement with the filing fee.

(D) In transmitting the record, the clerk of the trial court shall:

- (1) Include on the docket sheet (App.R. 10(B)), the filing date and a brief description of each of the documents filed in the trial court;
- (2) Ascertain that the journal entries have been signed by the judge and file-stamped by the trial court clerk; and
- (3) Neatly assemble the original papers.

(E) The clerk of the trial court shall not transmit any trial exhibits consisting of weapons, ammunition, money, drugs, or any contraband, unless a majority of the members of the panel of the court of appeals assigned to hear the appeal issue a journal entry instructing the clerk to inform the custodian to make

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the retained exhibits available to the court for review on a date and at a time specified in the entry. A single member of the panel may issue a journal entry instructing the clerk of the trial court to inform the custodian to make the retained exhibits available for that judge's review at the secure area maintained by the custodian. Regardless of the location of the court's review, the custodian shall be present at all times and shall retain custody of the item(s) specified herein. After the court has concluded its review, the custodian shall return the specified item(s) forthwith to the appropriate secure area in accordance with established procedure. On the pagination sheet, the clerk shall identify the retained exhibits and their custodian.

[Amended effective June 1, 2004.]

(F) App.R. 9(B) describes a court reporter as "the person appointed by the court to transcribe the proceedings * * *." When a reporter is used to transcribe the events at trial, the record must reflect that reporter's appointment by the trial court. The court may make this appointment sua sponte or on motion. If an official court reporter is not then under contract to the court, then the trial court shall appoint a professional court reporter on a case-by-case basis.

RULE 10. TRANSMISSION OF THE RECORD

If the appellant does not timely:

- (A) File a praecipe;
- (B) Secure the transmission of the docket and journal entries; and
- (C) Effect the transmission of the record on appeal;

then the court may, without prior notice, dismiss the appeal for failure to prosecute.

Extensions of time to transmit the record to this court may be granted only by the court of appeals.

The appellant must cause timely transmission of the record or seek an extension of time to do so from this court. Applications for extension of time to transmit the record must be made by written motion and must be accompanied by one or more affidavits setting forth facts showing good cause for extension.

Cases dismissed under this rule will be reinstated only for good cause shown.

RULE 11. DOCKETING OF APPEALS FROM TRIAL COURT
ELECTRONIC FILING SYSTEMS

Notice: This Local Rule applies only to appeals in asbestos cases or in municipal court cases that are maintained on an independent electronic docketing or electronic filing system other than that of the Cuyahoga County Clerk of Courts.

(A) **Appeals Subject To This Rule.** When a case has been processed at the trial level under a court-ordered or court approved electronic filing system, the parties shall facilitate the docketing of an appeal in this court. The appeal will be assigned to the regular calendar. The documents to be transmitted on appeal will include:

- (1) Any documents or exhibits originally filed in the trial court in hard copy (paper) format;
- (2) Signed and journalized copies of the final appealable orders upon which the appeal is based; and
- (3) Stipulated paper copies of the electronic trial court filings that the parties deem necessary to provide a record for appellate review.

The appellant is responsible for providing the appropriate record, but all parties shall affirmatively cooperate to assist the clerk of the trial court in obtaining and transmitting an agreed record.

(B) **Procedure.** It is a standing order of this court that an appeal under this rule will proceed in accordance with the applicable provisions of App.R. 9(E) and 10(E), and that the parts of the electronic record not necessary for transmittal to this court of appeals shall be retained in the trial court pending further order.

- (1) Responsibilities of Appellant. The appellant shall create a supplemental record pursuant to App.R. 9(E) by providing the clerk of the trial court with paper copies of any electronic filings that the parties deem necessary for review on appeal and pursuant to the following schedule:
 - (a) Within 21 days of filing the notice of appeal, the appellant shall serve upon appellee a proposed stipulation that designates the trial court filings believed necessary for a full and fair review by the court of appeals;

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(b) Within 14 days after the proposed stipulation is provided to the appellee, the appellant shall file with the clerk of the court of appeals a written stipulation by the parties to the appeal that designates the agreed filings believed necessary for transmittal to the court of appeals; if appellee fails to timely respond, the designation shall be filed by the appellant with certification that the filing complies with section (1)(a) of this rule.

(c) Within five days thereafter, the appellant shall file with the clerk of the trial court a copy of the stipulation of the agreed filings, the neatly assembled photocopies of each stipulated electronic filing, as well as the signed and journalized entry from the trial court for each order on appeal. Simultaneously, the appellant shall draft and file a praecipe directing the clerk to certify and transmit the stipulated papers as a supplemental record on appeal pursuant to App.R. 9(E) and within the time requirements of App.R. 10.

(2) Provisions Applicable to Appellants and Appellees.

(a) All parties to the appeal shall make a timely and good faith effort to confer and agree to a reasonable stipulation of the filings necessary to comprise the record on appeal and shall assist one another in providing copies of the filings for the clerk of the trial court to certify and transmit to the clerk of the court of appeals.

(b) In cases involving numerous parties, each side shall cooperate to designate, by motion filed in this court, one or more attorneys as liaison counsel who agree to receive and disseminate appellate filings from opposing counsel and notices from the clerk of the court of appeals. The liaison counsel shall be responsible for promptly distributing copies electronically, or in such manner as agreed by the parties, to all co-parties, which service will constitute due notice. The parties with a common interest must try to prepare a common brief as set forth in Loc.App.R. 3(C)(1). Each side shall notify this court by motion at least seven days prior to oral argument to designate the counsel chosen to present oral argument.

(c) If necessary to resolve differences regarding procedure on appeal, a party may file a motion for a prehearing conference

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pursuant to Loc.App.R. 20. The motion must include an attached affidavit that, after personal consultation and sincere attempts to resolve differences, the parties are unable to reach an accord. This statement shall recite those matters that remain in dispute and a detailed recitation of the efforts that have been made to resolve any such dispute.

(d) Upon its own motion or a party's motion, the court of appeals may modify any provision of this rule in a particular case.

[Amended effective January 1, 2015.]

RULE 11.1. ACCELERATED CALENDAR

Under App.R. 11.1, this court's accelerated calendar will operate as follows:

(A) Assignment Of Cases To Accelerated Calendar. The court may assign an appeal to the accelerated or regular calendar at any stage of the proceedings.

- (1) An appeal may be assigned to the accelerated calendar if any of the following applies:
 - (a) No transcript is required (e.g., summary judgment or judgment on the pleadings); or
 - (b) The transcript and all other evidentiary materials consist of 100 or fewer pages.
- (2) An appeal will not be assigned to the accelerated calendar if any of the following applies:
 - (a) A brief in excess of 15 pages (see Loc.App.R. 16) is necessary to adequately set forth the facts and argue the issues in the case;
 - (b) The appeal concerns a unique issue of law of substantial precedential value in determining similar cases;
 - (c) The appeal concerns multiple or complex issues;

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(d) A cross-appeal is filed; or

(e) A statement is submitted under App.R. 9(C).

(B) Procedure.

- (1) Each appellant and cross-appellant must complete a docketing statement and the praecipe form required by Loc.App.R. 9. The purpose of the docketing statement is to determine whether an appeal will be assigned to the accelerated or regular calendar and the suitability of the appeal for prehearing conference.
- (2) If the appellee objects to the assignment of the appeal requested by the appellant on the docketing statement, appellee may, within seven days after the praecipe is filed, move the court under App.R. 15(B) to assign the appeal to the calendar not requested by appellant.
- (3) If waiver of argument is desired, then the parties must file a joint motion waiving the argument at least 14 days before the date scheduled for oral argument. However, the court may direct that the case be argued.
- (4) If an appeal is assigned to the accelerated calendar, then:
 - (a) The appellant must cause the record to be filed within 20 days after the filing of the notice of appeal;
 - (b) The appellant must serve and file a brief and assignments of error within 15 days after the record is filed;
 - (c) The appellee must serve and file an answer brief, if any, within 15 days after service of appellant's brief;
 - (d) The court will not accept any reply brief by appellant; and
 - (e) Neither brief may exceed 15 pages.
- (5) In its discretion, the court may issue "judgment entry — accelerated calendar" or a full opinion. (*See* App.R. Form 3).
- (6) Upon motion for good cause shown, the court may order a case to be expedited as to transmission of the record, briefing, hearing, and disposition on such schedule and priority as the

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court may direct.

See Appendix A for Praecipe conforming to Loc.App.R. 9. *See* Appendix B for Docketing Statement conforming to Loc.App.R. 9. *See* App.R. Form 3 for Judgment Entry — Accelerated Docket.

[Amended effective July 1, 1999.]

RULE 12. DETERMINATION AND JUDGMENT ON APPEAL

RESERVED

RULE 13.1. ELECTRONIC FILING (E-FILING)

(A) **Electronic Filing Required.** In accordance with App.R. 13 any document to be filed in an appeal or original proceeding before the Eighth District Court of Appeals shall be filed with the clerk electronically, except as otherwise provided for in this rule. Such filing shall be in a digitized format specified by the clerk pursuant to the Cuyahoga County Clerk of Court's electronic filing procedure, and this court's local rules and administrative order(s) regarding electronic filing. The clerk of courts is directed to accept any paper filing that is presented. However, the court may strike such filing and require that it be filed electronically if it is found to be in contravention of this rule.

(1) **Electronic Filing of the Notice of Appeal.** If the trial court is the Cuyahoga County Common Pleas Court - General Division, the appellant may file the notice of appeal electronically in accordance with the clerk's electronic filing procedures. If the trial court is a court other than the Cuyahoga County Common Pleas Court - General Division, the appellant may file the notice of appeal in paper form or electronically if that trial court has a procedure for accepting such a filing electronically. If filed in paper form, the clerk will scan this document into an approved electronic format promptly upon receipt.

(2) **Format of Electronically Filed (e-filed) Documents.** All electronically filed documents shall be formatted in accordance with the applicable appellate and local rules governing formatting of paper filings.

E-filed documents, including attachments, shall be filed in searchable, but not editable, PDF format. External electronic links, to material outside the filed document, are strictly prohibited. Internal links to other parts of the same filing are permissible.

(3) **Documents Filed Under Seal.** Documents filed under seal shall not be filed electronically or scanned by the clerk into electronic format nor uploaded to the court's case management system. The clerk shall maintain all documents filed under seal in this court in paper form only.

(4) **Filing Documents in Paper Form.** An attorney wishing to file a specific document, or all documents in a given case, in paper form rather than electronically may file a motion requesting leave to so file. The motion for leave itself may be filed in paper form and shall set forth the exceptional circumstances justifying the request.

(5) **Pro Se Litigants.** Parties who are not represented by counsel are

hereby given leave to file documents in paper form.

- (6) **Scanning and Uploading Paper Documents.** Except for documents filed under seal, any document filed in paper form will be scanned and uploaded to the clerk of court's e-filing system. The uploaded electronic document shall constitute the original document.

(B) Date and Time of Electronic Filing. Any document filed electronically shall be considered as filed with the court when the transmission to the court's authorized electronic filing system is complete. An electronic filing may be submitted to the clerk 24 hours a day, 7 days a week. Any document filed after 11:59 p.m. in the time-zone then applicable to the court, either Eastern Standard Time or Eastern Daylight Savings Time, shall be deemed to have been filed at 8:30 a.m. on the next court business day. Any document filed on a Saturday, Sunday, or legal holiday shall be deemed to have been filed at 8:30 a.m. on the next court business day.

- (1) **Rejection or Acceptance of Electronically Filed Documents.** The clerk shall reject any filing that:
 - (a) is not signed by the party;
 - (b) is not in a digitized format approved by the clerk;
 - (c) is not accompanied by a required payment; or
 - (d) requires a judge's signature.

The clerk will notify the filer when a filing has been accepted or rejected for docketing and filing in the court's case management system. Each document filed will receive an electronic stamp containing the date and time the filer transmitted the document to the court's authorized electronic filing system as well as a unique confirmation number of the filing. If the clerk rejects or otherwise cannot successfully process a filing, it will not receive a file stamp or confirmation number.

- (2) **Corrective Filings.** To retain the original date and time of filing, a corrective filing may be resubmitted to the clerk within one business day after notice of the rejection is sent to the filer. A corrective filing submitted after the one-day period expires will be considered a new filing.

- (3) **System or User Filing Errors.** If a party attempts to file a document electronically and the document is not accepted for docketing and filing the court's case management system because of an error in the transmission of the document to the electronic filing system, the court may, upon satisfactory proof, enter an order permitting the document to be filed nunc pro tunc to the date it was sent electronically.
- (4) **Fees.** Normal filing fees and case deposits will be collected via user credit card or debit card, or such other method as may be approved by the clerk, at the time the document that requires such a fee or deposit is filed.

(C) **Service.** Service of documents filed electronically shall be accomplished in the manner prescribed by the appellate rules. *See* App.R. 3 and 13. Parties are authorized to rely on the court's electronic transmission facilities to make service under App.R. 13(C)(6) to any party who is registered for electronic service on the court's electronic filing transmission facilities, however, a paper copy of any electronically filed document must be served in accordance with the App.R. 13(C)(1)-(5) upon any party who is not registered for electronic filing on the court's transmission facilities and is therefore not registered for electronic service.

(1) **Time to Respond or Act.** Whenever a time period is measured from the time after a document is filed, the time will be measured from the date the electronically filed document is deemed to have been filed.

[Amended effective August 1, 2016.]

(D) **Maintenance of Source Documents.** The person filing a document electronically shall maintain an exact copy of the source document upon which the electronic filing was based, either in an unalterable electronic format or on paper. The filing person shall retain this source document until final disposition of the case and through any appeal period. The filing person shall make the source document or a facsimile thereof available for production at the request of the court, the clerk, other counsel or parties representing themselves.

(E) **Signatures of Parties and Counsel.** The signature of an attorney or a party on a document that is filed electronically shall be represented with a conformed signature of "/s/ [name]." The conformed signature on an electronically filed document is a legal signature for purposes of the signature requirements of the civil and criminal rules of procedure, the rules of superintendence, and any other law, and will be considered the signature of the person it purports to be for all purposes. *See* App.R. 13(A)(1). When a stipulation or other document requires two or more signatures, the filing party or attorney will confirm in writing that the contents of the document are acceptable to all persons required to sign the document. The filer will indicate the agreement of all necessary parties at the appropriate place in the document, usually, the signature line(s). If it is established that the documents were transmitted without authority, the court shall order the filing stricken.

- (1) **Signature of Third Parties.** Documents containing signatures of third parties, including signatures of notaries public, shall be scanned as an image and filed electronically. The filing party shall retain the original document in paper form until final disposition of the case and through any appeal period. The filing person shall make the original document available for production and copying at the request of the court, the clerk, other counsel, or other parties representing themselves

(F) **Public Access to Electronically Filed Documents.** Members of the public may obtain copies of or review electronically filed documents at the office of the clerk of courts in accordance with the procedures established by the clerk. Public access to electronically filed public documents will be available via the internet website of the clerk of courts in accordance with the court's rules regarding privacy and confidentiality (*See* Loc.App.R. 13.2 and this court's administrative orders that may be applicable.)

[Adopted effective December 2, 2013.]

RULE 13.2. PRIVACY AND CONFIDENTIALITY

(A) **Court Records Publicly Available.** Court records are presumed to be open for public access. Sup.R. 45(A). Except as provided below, all documents filed with the clerk of this court will be available for public viewing both by direct access at the office of the clerk, and remotely via electronic transmission and the internet.

(B) **Personal and Private Information.**

- (1) **"Personal and Private" Information Defined.** The following information is deemed "personal and private" and shall not be included in any unsealed document filed with this court:

(a) a social security number or other personal identifier, including but not limited to an employer identification number or a driver's license number;

(b) a financial account number, including but not limited to bank account numbers and credit and debit card numbers;

(c) a juvenile's name in any appeal, except for the juvenile's initials, or a generic term or abbreviation such as "child," however, this does not apply to juveniles who have been bound over to the court of common pleas and convicted of criminal charges. To the extent reference to another person is likely to reveal the identity of the juvenile, that person should also be identified by a generic term or initials; and

(d) the name of the victim of a sexual offense, except for the victim's initials or a generic term or abbreviation such as "Victim 1" or V1. To the extent reference to another person is likely to reveal the identity of the victim of a sexual offense, that person should also be identified by a generic term or initials.

(e) any other information deemed personal and private by any federal or state constitution, statute, regulation, executive order, or court ruling (e.g., privacy rules under the Health Insurance Portability and Accountability Act ("HIPAA"), Internal Revenue Service ("IRS") income tax filings, etc.)

- (2) Parties' and Counsel's Responsibilities Regarding Personal and Private Information. Filing parties and their counsel are responsible for removing personal and private information from any document they file with the clerk of court's office, or redacting the information in accordance with the procedure described in subparagraph four below. This responsibility extends to and includes any exhibits or addenda attached to filings such as bank statements, tax returns, or medical records. *The clerk of court is not responsible for the removal of any personal and private information contained in a document filed with the clerk.*
- (3) Correction of Improperly Filed Personal and Private Information. If personal and private information is improperly included in a filing, either the party who filed the information or the person whose information is disclosed may move the court for leave to replace the filed document with an identical document with the personal and private information removed or redacted in accordance with the procedure outlined in subparagraph 4 below. The proposed replacement document shall be attached to the motion. If the court grants the motion, then the clerk will file-stamp the replacement document, replace the originally filed document with the replacement document, and return the originally filed document to the person who filed it. The clerk will also include a notation of this action on the docket.
- (4) Redaction. In lieu of removing all personal and private information from a document to be filed with the court, a party may redact the document, replacing the personal and private information with references that correlate to specific personal and private information. The parties may, without leave of court, file under seal a Personal Identifier Form that consists of a correspondence table or key that will allow the court to identify the referenced personal and private

information. The Personal Identifier Form shall be filed in a separate envelope within the case file, and conspicuously marked as follows:

“NOTICE: The enclosed personal and private information is non-public. It is for the use of the court, the attorneys of record listed in the case, and the clerk of court’s office only. Any other person must have a court order to view the contents of this envelope.”

- (5) Journal Entries Containing Personal and Private Information. If a journal entry necessarily includes personal and private information, the court will submit the entry to the clerk in two separate formats. One copy will include the personal and private information and will be retained by the clerk under seal. The other copy will have the personal and private information removed or redacted, will include the notation “personal and private information redacted,” and will be placed in the public file. Both copies will be signed by the court. If the court inadvertently files a journal entry that contains personal and private information, any party may move the court to redact the information from the copy of the journal entry that is placed in the public file. If the court grants this motion, the redacted journal entry will be filed as a nunc pro tunc entry. The original non-redacted entry will be retained by the clerk under seal.

(C) **Documents Filed Under Seal.** The clerk of courts shall not allow public access, either by direct access or remotely, to any document that has been filed under seal except by order of court.

(D) **Restricted Public Access.** All documents filed with the clerk will be available for direct access at the office of the clerk immediately. However, the clerk of courts will not make any document filed with the court available electronically for a period of at least ten days.

Within ten days after a document is filed, any party may move the court to restrict public access to the document to direct access only. While this motion is pending, the clerk will not make the document available electronically. The court will restrict public access to direct access only, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a greater interest after considering the following:

- (1) whether public policy is served by restricting public access;
- (2) whether any federal, state, or common law exempts the document or

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information from public access;

- (3) whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.

When restricting public access to direct access only, the court will use the least restrictive means available. *See* Sup.R. 45.

NOTE: any information available electronically must match the document available directly at the clerk's office. Sup.R. 45(C). Therefore, the clerk may not post a redacted document, but retain the non-redacted original for public viewing at the clerk's office.

(E) Requests for Restricted Public Access by a Non-Party. A non-party may move the court to restrict public access to information concerning that person in a court document at any time. Upon the movant's request, the court may order the clerk not to make the subject document available electronically during the pendency of the motion. In determining whether to grant the request, the court will apply the same standards it applies to a party's request pursuant to paragraph D above.

[Amended effective March 29, 2017.]

RULE 13.3. JUDGE'S ELECTRONIC SIGNATURE

Electronic documents may be signed by a judge or magistrate via an electronic signature as defined by R.C. 1306.01, affixed through a secure process approved by the court. An electronic signature will be represented as a digitized image of the judge's or magistrate's handwritten signature superimposed over the court's official seal.

All documents signed in this manner shall have the same force and effect as if the judge or magistrate had affixed his or her signature to a paper copy of the document. Electronic submission of such an electronically signed document to the clerk of court by an authorized member of the court's staff shall constitute the filing of the document for all purposes, including, but not limited to, the Rules of Superintendence and the Ohio Appellate Rules.

[Adopted effective July 30, 2014.]

RULE 14. COMPUTATION AND EXTENSION OF TIME

An appellant desiring an extension of time to file the record, assignments of error, briefs, or any other document shall file a written motion for an extension of time with supporting brief or affidavit before the due date to avoid dismissal of the case.

An appellee desiring an extension of time to file additional designation of the record, briefs, or any other documents shall file a written motion for an extension of time with supporting brief or affidavit before the due date. Otherwise, the case will be placed on the calendar for oral argument. (*See* App.R. 18(C).)

Any motion for an extension of time shall include the original due date of the document and the total number of extensions, if any, the party has been granted to date. If a request for an extension of time has been granted previously, any subsequent request must be supported by facts which demonstrate why additional time is necessary, and the request will be granted only in exceptional circumstances and in the interest of justice.

[Amended effective July 15, 2013.]

RULE 15. MOTIONS

RESERVED

RULE 16. BRIEFS

(A) **Length And Form.** All briefs filed in this court must comply with the requirements of App.R. 16 and 19.

- (1) Appeal Involving No Cross-Appeal. In the absence of a cross-appeal, the appellant's opening brief and the appellee's answering brief must each not exceed 40 pages, and the appellant's reply brief, if any, must not exceed ten pages.
- (2) Appeal Involving Single Cross-Appeal. If a single cross-appeal has been filed, there shall be a total of four briefs, each containing only one cover, one table of contents, and one table of authorities and conforming to the following requirements:
 - (a) Appellant's Opening Brief. The first brief is the appellant's opening brief, which shall address only those issues related to the appellant's appeal and must not exceed 40 pages.

(b) Appellee's Answer Brief / Cross-Appellant's Opening Brief. The second brief is the appellee / cross-appellant's brief, identified on its face as an answer brief and brief in support of the cross-appeal. The table of contents of the brief shall designate which portion of the brief relates to the appeal and which portion relates to the cross-appeal. The portion relating to the appeal must not exceed 40 pages, and the portion relating to the cross-appeal must not exceed an additional 25 pages.

(c) Appellant's Reply Brief / Cross-Appellee's Answer Brief. The third brief is the appellant / cross-appellee's brief, identified on its face as a reply brief in support of the appellant's appeal and an answer brief to the cross-appeal. The table of contents of the brief shall designate which portion of the brief is a reply and which portion relates to the cross-appeal. The portion that is a reply in support of the appeal must not exceed ten pages, and the portion relating to the cross-appeal must not exceed an additional 25 pages. The reply portion of the brief must be restricted to matters in rebuttal to the answer portion of the second brief.

(d) Cross-Appellant's Reply Brief. The cross-appellant may file a reply brief in support of the cross-appeal, which must not exceed ten pages. The cross-appellant's reply brief must be restricted to matters in rebuttal to the portion of the third brief addressing the cross-appeal.

(3) Appeal Involving Multiple Cross-Appeals. If more than one cross-appeal has been filed, the parties shall propose to the court for approval or modification, no less than 20 days before the first brief would otherwise be due, a stipulated briefing order setting page limitations and including other provisions that conform as closely as reasonably possible to the provisions of Loc.App.R. 16(A)(2), but also taking into account the potential need for adjustment to those provisions as necessary to accommodate the multiple issues raised and the parties to whom the issues are directed. In the event the parties cannot agree on a proposed stipulated briefing order, the parties shall adhere to the requirements of Loc.App.R. 16(A)(2), unless the court on motion issues a different briefing order.

(4) Cross-Appeal(s) Involving Fewer Than All Appellees: In the event of multiple appellees, Loc.App.R. 16(A)(2) and (3) apply

only to those cross-appellees who have filed cross-appeals. Any appellee who has not filed a cross-appeal shall follow the length and form requirements of Loc.App.R. 16(A)(1).

- (5) Exclusions from Page Limitations: All page limitations are exclusive of the table of contents, the table of authorities, statutes, any other authorities cited, and any appendices.
- (6) Motion to Exceed Page Limitations: Application for permission to file a longer brief may be made by a motion specifying the number of extra pages requested, the portion of the brief requiring extra pages, and why extra pages are needed.

(B) Notice of Conceded Error. When a party concedes an error that is dispositive of the entire appeal, the party conceding the error shall file a separate notice of conceded error either in lieu of or in addition to their responsive brief. Once all briefing is completed, the appeal will be randomly assigned to a merit panel for review. The appeal will be considered submitted on the briefs unless the assigned panel sets an oral argument date.

(C) Anders Brief with Motion to Withdraw as Counsel. If appellant's counsel in a criminal appeal files a no merit brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), counsel shall also file a separate motion requesting leave to withdraw in compliance with Loc.App.R. 44(B). Counsel shall serve both a copy of the motion to withdraw and the *Anders* brief upon appellant as well as any further court orders that are issued in the appeal unless and until the motion to withdraw is granted.

Upon the filing of an *Anders* brief, the court will either grant appellant leave to file a pro se brief and assignment of error that comports with the appellate rules and local appellate rules within 45 days or, in its discretion, the court may assign new counsel. The order will also inform appellant that the court will independently examine the record regardless of whether such a brief is filed.

If the appellant files a pro se brief, the appellee may respond and the appellant may reply as provided by the appellate rules and local appellate rules. Once briefing is complete, or the 45-day period for filing a pro se brief has lapsed without a brief being filed, the appeal and the motion to withdraw will be assigned to a merit panel for review. The panel will conduct an independent examination of the record to determine if it discloses an issue of arguable merit prejudicial to the appellant. The appeal will be considered submitted on the briefs unless the court sua sponte sets an oral argument date.

(D) Case Citation. Citation to authority in a brief shall be included in the body text of the brief, except when the citation supports a proposition made in a footnote, and shall conform to the manual of citation issued by the Supreme Court of Ohio's Reporter of Decisions that may be found at

<http://www.supremecourt.ohio.gov>.

(E) **Unnecessary Attachments of Legal Authority Disfavored.** Parties are discouraged from attaching to briefs any legal authority generally accessible through online legal research databases. Only if the determination of the assignments of error presented requires consideration of legal authority not accessible through any online resources, shall the relevant parts be reproduced in an attachment or appendix at the end of the brief.

(F) **Failure To Comply.** A brief not prepared in accordance with these rules and the formalities mandated by App.R. 16 and 19 may be returned by the court to counsel to be conformed to the rules within a specified time. An appellant's failure to conform may result in dismissal of the appeal; a cross-appellant's failure to conform may result in dismissal of the cross-appeal; and an appellee's / cross-appellant's failure to conform may result in the brief being stricken and the right to argue being denied.

[Amended effective July 30, 2014.]

RULE 17. BRIEF OF AN AMICUS CURIAE

RESERVED

**RULE 18. FILING AND SERVICE OF BRIEFS;
CROSS-APPEALS; CONSEQUENCES OF FAILURE TO FILE**

(A) Cross-Appeals.

- (1) A cross-appellant must serve and file the appellee's brief and the cross-appellant's brief within 20 days after service of the appellant's brief. The appellee's brief and the cross-appellant's brief must be filed as a single document.
- (2) The cross-appellee must serve and file the cross-appellee's brief and may serve and file an appellant's reply brief within 20 days after service of the cross-appellant's brief. The cross-appellee's brief and the appellant's reply brief must be filed as a single document.
- (3) The cross-appellant may serve and file a reply brief within ten days after service of the cross-appellee's brief.

(B) Failure To File. If the record, assignments of error or brief of appellant has not been timely filed, then the appeal will be dismissed. A motion for reconsideration may be filed under App.R. 26(A)(1). (See App.R. 3(A), 4(A), 11(C) and 18(C).)

[Amended effective July 20, 2010.]

RULE 19. FORM OF BRIEFS AND OTHER PAPERS

RESERVED

RULE 20. PREHEARING CONFERENCE

Under App.R. 20, this court's prehearing mediation conference procedure will operate as follows:

(A) Docketing Statement and Mediation Form.

(1) Each appellant and cross-appellant must complete a docketing statement and the praecipe form required by Loc.App.R. 9.

(2) Counsel for appellant, cross-appellant, appellee or a self-represented party must complete and submit to the mediator the confidential mediation form provided by the mediator within ten days from date of receipt. The mediator will not disclose this form or its contents to the other parties, unless the submitting party consents to such disclosure. This form will not be filed with the Clerk of Courts for the Court of

Appeals but rather sent directly to the Office of the Conference Mediator. (See ((C.)) Privileged Communications and Confidentiality.)

(B) Prehearing Mediation Conference.

(1) The mediator shall review the required docketing statement filed pursuant to Loc.App.R. 9 or complaint filed pursuant to Loc.App.R. 45 to determine whether a prehearing mediation conference, under App.R. 20, would assist the court or parties. Any party may request a prehearing mediation conference, but the request need not be granted. The court may, in its discretion, order the parties to mediate any action before the court at any stage in the proceedings.

(2) All mandamus actions involving compliance with R.C. 149.43, Ohio's Public Records Acts, shall be referred automatically to the mediation conference program for mediation. If the case is not amenable to mediation, the mediator shall inform the court and the action shall proceed in accordance with Loc.App.R. 45. If amenable to mediation, the mediation conference will proceed in accordance with the time period set forth in section (B)(3) below.

(3) If an appeal or complaint is selected for a prehearing mediation conference, upon seven days' notice from the office of the conference mediator, unless excused, counsel and parties (including insurance adjusters) are required to attend a prehearing mediation conference before the court's mediator or a visiting judge. The mediation conference is to be held within 21 days after the filing of the notice of appeal or complaint, or as soon thereafter as practicable, to consider the possibility of settlement, the simplification of issues, and such other matters as may aid in the disposition of the proceedings by the court.

(C) Privileged Communications and Confidentiality.

(1) Except to the extent disclosed by the prehearing mediation conference order entered under Paragraph (E) of this Rule, the definitions contained in R.C. 2710.01 apply to the mediation. The privileges contained in R.C. 2710.03 and the exceptions contained in R.C. 2710.05 apply to mediation communications. The privileges may be waived under R.C. 2710.04. Mediation communications are also confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to such disclosure. This court may impose sanctions for any improper disclosures made in violation of this rule.

(2) All mediation communications are confidential with the following exceptions:

(a) Parties may share all mediation communications with their attorneys or vice versa.

(b) The mediator shall inform the court or report to the proper authorities certain information, including the following:

(i) Allegations of abuse or neglect of a child or other individual as required by the law;

(ii) Certain threats of harm to other people or oneself;

(iii) Statements made during the mediation process to plan or hide an ongoing crime;

(iv) Statements made during the mediation process that reveal a felony.

(D) Prehearing Mediation Conference Order. At the conclusion of the prehearing mediation conference, the Administrative Judge, upon recommendation of the mediator, may enter an order setting forth how the action is to proceed. Said order shall remain in force unless modified by the court. If a settlement is reached, the mediator shall submit an outcome report to the Administrative Judge advising the Administrative Judge that the matter is settled and is to be dismissed as final upon application of the appellant or relator to dismiss or remand in compliance with the applicable appellate rules.

(E) Noncompliance Sanctions. If a party or attorney fails to comply with the provisions of this rule or the provisions of the prehearing mediation conference order, the Administrative Judge may hold a party in contempt and/or assess reasonable expenses caused by the failure, including attorney fees. The court may also assess all or a portion of the appellate costs or dismiss the appeal or original action.

[Amended effective March 29, 2017.]

RULE 21. ORAL ARGUMENT

(A) **Notice Of Argument.** The court shall notify each counsel (or party if not represented by counsel) of the time and place of oral argument by:

- (1)
 - (a) sending notice by facsimile, when available; or
 - (b) sending notice by email, when available; or
 - (c) sending notice by ordinary mail; and
- (2) Publishing notice in the *Daily Legal News*.

The mail notice will be sent no later than 30 days before oral argument.

(B) **Argument When Error is Conceded.** When a notice of conceded error has been filed, the case will be considered submitted on the briefs and will not be scheduled for oral argument, except by an order of the assigned panel. If a party moves for oral argument, the panel may, in its sole discretion, grant the motion and schedule oral argument at the earliest feasible date. *See* Loc.App.R. 16(B).

(C) **Argument When “Anders” Brief is Filed.** When a “no merit” brief is filed in a criminal case pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), or if an appellant subsequently files a brief as permitted in Loc.App.R. 16(C), the case will be considered submitted on the briefs and will not be scheduled for oral argument, except by an order of the assigned panel. If a party moves for oral argument, the panel may, in its sole discretion, grant the motion and schedule oral argument at the earliest feasible date.

(D) **Time Allowed For Argument.** Each side will be allowed 15 minutes for oral argument but may move to expand the time for good cause. This request must be filed by separate motion at the time the party’s brief is filed.

(E) **Waiver Of Argument.**

A party’s motion to waive oral argument will not automatically result in cancellation of the scheduled argument. Oral argument will take place at the scheduled date and time unless the court grants the motion to waive.

- (1) **Motion to Waive Oral Argument.** A party may file a motion to waive oral argument no less than ten calendar days before the date scheduled for argument. If an appellee wishes to be heard at argument despite an appellant's motion to waive, within five calendar days after the appellant's motion is filed, appellee may move that the argument go forward as scheduled. Absent such a motion by appellee, an appellant's waiver will be deemed a request to waive oral argument as to all parties. A motion to waive filed less than ten calendar days before oral argument may only be granted by unanimous consent of the assigned merit panel.
- (2) **Cancellation of Argument When Pro Se Appellant is Imprisoned.** When an appellant who is imprisoned is representing himself or herself on appeal, the court will cancel oral argument unless, no fewer than ten calendar days before the date scheduled for argument, (1) counsel files a notice of appearance on the appellant's behalf for the purpose of arguing the appeal, (2) or appellant notifies the court that he or she is able to appear, or (3) appellee files a motion requesting that argument proceed as scheduled.

(F) Postponing Argument.

- (1) Counsel who anticipate being unavailable for oral argument in a pending appeal at any time after briefing is completed but before argument is scheduled must advise the Assignment Commissioner of their unavailability in writing. The notice shall be in letter format, addressed to the Assignment Commissioner, Ohio Court of Appeals, Eighth Appellate District, 1 Lakeside Avenue, Room 202, Cleveland, Ohio 44113, and shall include the case caption, the appellate case number, and the dates on which counsel anticipates being unavailable for oral argument. The letter may be delivered to the Assignment Commissioner by U.S. Mail, personal delivery, or via email to assign@8thappeals.com.
- (2) Cases Scheduled For Argument. Once oral argument has been scheduled and notice has been given under subsection (A) of this rule, a case will not be advanced or postponed on motion of a party except for good cause shown.

RULE 22. ENTRY OF JUDGMENT

(A) **Journalization.** This court will file the journal entry and opinion or any other dispositive entry with the clerk of this court for journalization as of the date of its release.

[Amended effective July 20, 2010.]

(B) **Form of Opinions.** Opinions of this court will not identify or make reference by proper name to the trial judge, magistrates, court officials, administrative personnel, or counsel for the parties involved in the proceedings below unless such reference is essential to clarify or explain the role of such person in the course of said proceedings.

[Adopted effective July 26, 2000.]

**RULE 23. FRIVOLOUS ACTIONS;
VEXATIOUS LITIGATORS; SANCTIONS**

(A) If the Eighth District Court of Appeals, sua sponte or on motion by a party, determines that an appeal, original action, or motion is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose on the person who signed the appeal, original action, or motion, a represented party, or both, appropriate sanctions. The sanctions may include an award to the opposing party of reasonable expenses, reasonable attorney fees, costs or double costs, or any other sanction the Eighth District Court of Appeals considers just. An appeal or original action shall be considered frivolous if it is not reasonably well-grounded in fact, or warranted by existing law, or by a good faith argument for the extension, modification, or reversal of existing law.

(B) If a party habitually, persistently, and without reasonable cause engages in frivolous conduct under division (A) of this rule, the Eighth District Court of Appeals may, sua sponte or on motion by a party, find the party to be a vexatious litigator. If the Eighth District Court of Appeals determines that a party is a vexatious litigator under this rule, the Court may impose filing restrictions on the party. The restrictions may include prohibiting the party from continuing or instituting legal proceedings in the Eighth District Court of Appeals without first obtaining leave, prohibiting the filing of actions in the Eighth District Court of Appeals without the filing fee or security for costs required by Loc.App.R. 3(A), or any other restriction the Eighth District Court of Appeals considers just.

[Adopted effective June 22, 2010.]

RULES 24 THROUGH 25.1.

RESERVED

RULE 26. EN BANC CONSIDERATION

(A) **Scope of Review.** This court shall consider an appeal en banc in accordance with App.R. 26(A)(2) and the procedures set forth in this rule. En banc consideration is not favored.

(B) **Judicial Request for En Banc Consideration.** Any judge may submit a request to the Administrative Judge for en banc consideration before or within five days after a decision is journalized.

(C) **Party Application For En Banc Consideration.** App.R. 26(A)(2) governs parties' applications for en banc consideration. The parties must strictly comply with the time limits of the appellate rule for filing an application, an opposing brief, or a reply brief. The application and opposing brief shall not exceed ten pages. The reply brief shall not exceed five pages. The parties shall file an original and three copies of the application, opposing brief, or reply brief, and shall email the application, opposing brief, or reply to: enbanc@8thappeals.com at the time of filing. The subject line of the email shall identify the appeal number and the type of document being submitted, whether application, opposing brief, or reply brief. The application or brief shall be attached to the email in Microsoft Word, WordPerfect, or PDF format.

- (1) **Contents of the Application for En Banc Consideration.** An application for en banc consideration shall (a) disclose the dispositive point of law upon which the panel's decision conflicts with the decision of another panel of this court, (b) specifically cite the conflicting authority and the point of law stated therein that conflicts with the present case, and (c) explain why en banc consideration is necessary to secure and maintain uniformity of this court's decisions. Any application that fails to comply with this provision may be summarily dismissed. In addition, the party or counsel who fails to comply with this provision is subject to sanctions.

(D) **Procedure.** The Administrative Judge may summarily dismiss any application for en banc consideration that does not comply with the requirements of App.R. 26(A)(2) and this local rule. If a majority of the en banc court votes to consider a case en banc, the Administrative Judge shall call an en banc conference at the earliest convenient date, which may be at the regularly scheduled judges' meeting. When a sua sponte request for en banc consideration is granted after the panel's decision has been journalized, the Administrative Judge will also issue an

order vacating the panel's decision. Additional briefing and / or oral argument will be permitted only at the court's request. A decision reached by a majority of the en banc court will be binding upon the whole court. In the event a majority of the full-time judges of the appellate district is unable to concur in a decision, the decision of the original panel shall remain the decision in the case.

[Amended effective February 15, 2011.]

RULES 27 THROUGH 33.

RESERVED

**RULE 34. DESIGNATION OF COURT ADMINISTRATOR
AS MAGISTRATE**

Pursuant to App.R. 34, the court hereby appoints the Court Administrator to act as Magistrate for the limited purpose of ruling on routine procedural motions. The following are routine procedural motions:

- (A) Amendment of the praecipe;
- (B) Substitution of counsel;
- (C) Unopposed motion to transfer to the accelerated or to the regular docket;
- (D) Voluntary dismissal before hearing;
- (E) The first two extensions of time to file the record, supplemental record, or brief. (On the accelerated docket, however, a routine motion consists of only one extension of 20 days for the record and only one extension of 15 days for the brief.)

[Adopted effective April 4, 2001.]

RULES 35 THROUGH 43.

RESERVED

RULE 44. DESIGNATION AND WITHDRAWAL OF COUNSEL;
ADMISSION PRO HAC VICE

(A) **Designation Of Counsel.** Every notice of appeal, pleading, motion, and brief must contain:

- (1) The number of the case;
- (2) The name of the court;
- (3) The caption of the case;
- (4) The nature of the proceeding (e.g., Appeal; Motion for Reconsideration) and the name of the court, agency, or board below;
- (5) The name, office address, telephone number and facsimile number of counsel representing the party for whom the document is filed (or the party, if not represented by counsel);

[Amended effective July 1, 1999]

- (6) The name of a particular attorney primarily responsible for the case when counsel is a firm of attorneys; and
- (7) The attorney registration number issued by the Supreme Court of Ohio.

(B) **Withdrawal Of Counsel.**

- (1) If counsel desires to withdraw, counsel must:
 - (a) File a notice of withdrawal in this court; and
 - (b) Submit proof of service of the notice upon counsel's client.
- (2) The notice of withdrawal must contain:
 - (a) A showing of good cause for withdrawing; and

(b) The name and office address of substitute counsel or, if none, then the name and address of counsel's client.

(C) Admission Pro Hac Vice.

- (1) This court may permit any attorney who is admitted to practice in the highest court of a state, commonwealth, territory, or possession of the United States or the District of Columbia, or who is admitted to practice in the courts of a foreign state, to appear pro hac vice and file pleadings, memoranda, briefs, or other documents, or participate in oral argument before the court.
- (2) Admission pro hac vice will be allowed only on motion of an attorney admitted to practice in Ohio and registered with the clerk for active status. The motion shall demonstrate compliance with Gov.Bar.R. XII. It shall be filed with the first pleading or brief in which the attorney seeks to participate or at least 30 days before oral argument if the attorney seeks only to participate in oral argument. The court may withdraw admission pro hac vice at any time.

[Amended effective February 15, 2011.]

RULE 45. EXTRAORDINARY WRITS (ORIGINAL ACTIONS)

The court of appeals has original jurisdiction over the extraordinary writs of Habeas Corpus, Mandamus, Procedendo, Prohibition, and Quo Warranto. Section 3, Article IV, Ohio Constitution.

(A) Filing Fee And Cost Deposit. The clerk will not accept an original action for filing unless the party bringing the action deposits with the clerk of courts the sum of \$175.00. Of that sum, \$150.00 will be security for the payment of costs, and \$25.00 is a fee, authorized under R.C. 2501.16(B), for the operation of the court. But the clerk will receive and file the action without the payment of \$175.00:

- (1) If the plaintiff or relator files with the clerk a sworn affidavit or affirmation of inability to secure costs by payment; or
- (2) If the appellant produces evidence that the trial court determined that the appellant was indigent for purposes of appeal; or

- (3) If the requirement of prepayment is otherwise excused by operation of law, *e.g.*, R.C. 109.19 and 325.31(C).

[Amended effective July 1, 2012.]

(B) Procedure.

(1) Commencing An Action.

(a) Original actions commence with the filing of a verified complaint, together with six copies, conforming to the format requirements of App.R. 19. (*See also* R.C. Chapter 2731 (Mandamus), Chapter 2733 (Quo Warranto), Chapter 2725 (Habeas Corpus)). All later pleadings and other papers must also be filed with an original and six copies. All complaints must contain the specific statements of fact upon which the claim of illegality is based and must be supported by an affidavit from the plaintiff or relator specifying the details of the claim. Absent such detail and attachments, the complaint is subject to dismissal.

[Amended effective January 19, 2010.]

(b) Except as provided in Loc.App.R. 45(B)(2), the clerk shall issue a summons as well as serve the summons and a copy of the complaint by certified mail sent to the address of the respondent as indicated on the complaint unless the party filing the action requests another permissible method of service. *See* Civ.R. 4.1.

- (2) Alternative Writ. If an alternative writ is requested, the plaintiff or relator must also submit a separate application for the alternative writ. If the party filing the action requests expedited disposition of an application for an alternative writ, that party must file a written request with the clerk for personal service under Civ.R. 4.1(B) as well as effect personal service and the return of service forthwith unless that party certifies to the court in writing why prompt service is not practicable. If an alternative writ is granted, respondent must comply with relator's request for relief or show cause why respondent is not

required to comply with that request.

If an alternative writ is granted, the burden of service is on the plaintiff or relator. If an alternative writ is not granted, then service must be made under the Rules of Civil Procedure. Under unusual circumstances, the court may issue an alternative writ on its own motion.

When an alternative writ is not granted, the action will proceed as any civil action under the Rules of Civil Procedure. When an alternative writ is granted, the court shall issue a schedule for filing stipulations and briefs or shall schedule the action for a “guidelines hearing” at an early date. At the guidelines hearing, the court shall set a schedule for filing motions or other papers and for taking evidence.

- (3) Dispositive Motions. When a party files either a motion to dismiss or a motion for summary judgment, the movant must also file a supporting brief and indicate whether granting the motion will dispose of the entire case. A brief in opposition may be filed within 20 days of the filing of the motion. The brief in opposition must also indicate whether the motion is dispositive. Unless it directs otherwise, the court will rule on motions without oral argument.
- (4) Evidentiary Hearings. If the parties do not stipulate to the evidence, then the court may appoint a magistrate to take testimony on issues of disputed fact. The Rules of Evidence will apply to the taking of testimony under Civ.R. 53.
- (5) Dismissal For Failure To Prosecute. Absent a showing of good cause, if no further action has been taken to join the issues within four months after filing of the complaint, then the original action will be dismissed for failure to prosecute, after notice to counsel of record.
- (6) Election Cases. If an original action relating to an election is filed within 90 days before the election, then the answer is due five days after service of summons. The reply and the brief of plaintiff or relator must be filed within five days after the filing of the answer.

Defendant’s or respondent’s brief must be filed no later than five

days after the filing of plaintiff's or relator's brief. Only in exceptional cases will time be extended or diminished, even with consent of opposing counsel.

- (7) Habeas Corpus. Actions in Habeas Corpus shall proceed in conformity with this rule, except to the extent that specific procedures are prescribed in R.C. Chapter 2725.
- (8) Recording Of Proceedings. Upon prior written notice to the court, any party may make arrangements for the recording of any evidentiary hearing by any authorized means. *See, e.g., Crim.R. 22.*

RULE 46. APPOINTED COUNSEL

(A) **Motions**. Motions for appointment of counsel for an indigent and for the transcript at state's expense should be filed, wherever possible, as a single motion. A copy of the Affidavit of Indigency filed with the notice of appeal must be attached to such motion.

(B) **Selection Of Counsel**. The court shall maintain a list of qualified attorneys who have notified the court of their interest in serving as appointed counsel in criminal cases. In selecting attorneys, the court shall consider the experience and expertise of counsel, the nature of the case, and the frequency of appointment.

The court shall keep a record of all counsel appointments made in a given calendar year and shall review the record quarterly to assure that appointments are equitably distributed among counsel on the appointment list.

(C) **Application For Fees**. Applications for fees on appeal in criminal cases in which counsel has been appointed for an indigent must be completed on the form prescribed by the Ohio Public Defender Commission. Such applications must be submitted to the court for payment no later than 30 days after the decision in the case has been journalized. The form includes the application, entry, and certification by the court for assigned counsel fees as required by the County Auditor for payment.

When the trial court has made the appointment, counsel must append a copy of the Journal Entry of such appointment to the application. If counsel fails to designate the crime originally charged, the court will assume the crime is not homicide.

(D) **Appointed Counsel Fees.** The rate of compensation for appointed counsel, as authorized by Cuyahoga County Council, is set forth in the following schedule:

	<u>Hourly Rate</u>
Death sentence.....	\$95
Other appellate-level proceedings	
In court.....	\$60
Out of court.....	\$50
	<u>Maximums</u>
Aggravated murder — death sentence.....	\$15,000
Aggravated murder with or without specifications.....	\$4,500
Murder.....	\$2,250
Voluntary manslaughter, involuntary manslaughter, negligent homicide, aggravated vehicular homicide, and vehicular homicide.....	\$1,250
All other felonies.....	\$1,125
Misdemeanors (except those noted above).....	\$875
Other and juvenile.....	\$875

[Amended effective February 1, 2014, per Cuyahoga County Council Resolution No. R2014-0005.]

RULE 47. REMOVAL OF TRANSCRIPT

When a notice of appeal has been filed in a particular case, the entire file becomes subject to the exclusive direction and control of the court of appeals. With the filing of a notice, the authority of the court of appeals automatically supersedes any existing authority to allow the removal of a transcript from the trial court. After a notice of appeal has been filed, a transcript, whether part of the trial court record or filed on appeal, may be removed only:

(A) By order of the court of appeals, or upon application on a form provided to the clerk of courts and approved by the judges of the court for this purpose, and

(B) On condition that the transcript be returned within 14 days after the date of removal or 14 days before the date set for the hearing of argument, whichever is earlier.

Transcripts are official court records and may not be altered or defaced in any manner. Failure to comply with this rule may result in a contempt citation.

[Amended effective July 30, 2014.]

RULE 48.

RESERVED

RULE 49. EFFECTIVE DATES

(A) **Effective Date Of Rules.** These rules govern all proceedings in actions brought after the effective date and also all further proceedings in actions then pending, except to the extent that application in a particular action pending on the effective date will not be feasible or will work an injustice.

Adopted this 13th day of January 1999, effective February 1, 1999, under Rule 31 of the Ohio Appellate Rules and Section 5(B), Article IV, Ohio Constitution, and filed with the clerk of this court and with the Supreme Court of Ohio.

(B) **Effective Dates Of Amendments.** Effective July 1, 1999, this court amended the following provisions: Loc.App.R. 3(B)(1), 9(A), 11.1(A) and (B), 21(A)(1), 44(A)(5), and 44(C) as well as Appendix B, Docketing Statement, Sections A and B.

Effective July 26, 2000, this court adopted Loc.App.R. 22(B).

40.

Effective April 4, 2001, this court adopted Loc.App.R. 34.

Effective April 1, 2004, this court amended Loc.App.R. 3(A). Effective June 1, 2004, this court amended Loc.App.R. 9(E) and adopted Loc.App.R. 60.

Effective February 1, 2005, this court amended Loc.App.R. 45. Effective August 1, 2005, this court adopted Loc.App.R. 11.

Effective February 1, 2006, this court amended Loc.App.R. 16.

Effective November 9, 2007, this court amended Loc.App.R. 60.

Effective March 18, 2009, this court amended Loc.App.R. 22(A) and (B) to bring them into conformity with revised App.R. 22. Effective September 1, 2009, this court adopted Loc.App.R. 25.1, which superseded former Appendix C, and amended Loc.App.R. 22.

Effective January 19, 2010, this court amended Loc.App.R. 1(C), 16, and 45(B)(1)(a). Effective June 22, 2010, this court adopted Loc.App.R. 23 and 50. Effective July 20, 2010, this court amended Loc.App.R. 22(A). Effective July 20, 2010, this court adopted Loc.App.R. 26, which supersedes former Loc.App.R. 25.1, and amended Loc.App.R. 18(B).

Effective February 15, 2011, this court amended Loc.App.R. 26 and amended Loc.App.R. 44(C)(2).

Effective July 1, 2012, this court amended Loc.App.R. 3(A), 14, and 45(A).

Effective July 15, 2013, this court amended Loc.App.R. 14. Effective October 16, 2013, this court amended Loc.App.R. 16(C). Effective December 2, 2013, this court adopted Loc.App.R. 13.1 and 13.2. Effective December 11, 2013, this court amended Loc.App.R. 21.

Effective February 1, 2014, Loc.App.R. 46(D) was amended pursuant to the rates established by Cuyahoga County Council Resolution No. R2014-0005. Effective July 30, 2014, the court adopted Loc.App.R. 13.3 and amended Loc.App.R. 16, 21, and 47.

Effective January 1, 2015, this court amended Loc.App.R. 11 and 13.2(C). Effective September 16, 2015, Loc.App.R. 48 was abrogated.

Effective August 1, 2016, Loc.App.R. 13.1(C), 13.2(B)(1)(c), and 20 were amended and Loc.App.R. 3(D) was adopted.

Effective March 29, 2017, Loc.App.R. 13.2(B)(1) and 20(B)(2) were amended.

41.

Effective April 9, 2018, Loc.App.R. 3(A) was amended.

**RULE 50. CONDITIONS FOR RECORDING, BROADCASTING,
OR PHOTOGRAPHING APPELLATE COURT PROCEEDINGS**

The following conditions shall apply to broadcasting, recording, or photographing court proceedings in the Eighth District Court of Appeals.

All media representatives or any other persons who seek to televise, record, or photograph court proceedings shall request permission from the court in writing at least two business days prior to the date on which the proceedings are scheduled to occur. The request may be mailed, faxed, or emailed to the court.

The judge presiding over the proceedings shall issue a written order authorizing the request in those proceedings that are open to the public as provided by Ohio law. In order to conform to this court's policies prohibiting, whenever possible, publication of the names and identities of juveniles, victims of sexual offenses, and / or individuals in matters under seal, the presiding judge of the panel may direct that the recording, by whatever method, either not be made, or be made in such a manner as to assure that such publication does not occur.

The provisions of Rule 12 of the Ohio Rules of Superintendence (Sup.R. 12) shall apply, except that not more than one photographer, one portable camera (television, videotape, or movie) with one operator, or more than one audio system shall be permitted in the courtroom. Arrangements for the "pooling" of equipment shall be made as set forth in the aforesaid rule.

All persons, including media representatives, shall at all times conduct such activity in a manner whereby the participants shall not be distracted, nor the dignity of the proceedings impaired. The presiding judge may revoke permission to broadcast, record, or photograph any proceeding for the failure of any persons, including media representatives, to conduct themselves accordingly or for failure to comply with Sup.R. 12 or this local rule.

[Adopted effective June 22, 2010.]

RULES 51 THROUGH 59.

RESERVED

RULE 60. SECURITY POLICY / FIREARMS AND DANGEROUS ORDNANCE PROHIBITION

No person, including a judge of a court of record of this state, magistrate of a court of record of this state, employee of this court, bailiff or deputy bailiff of a court of record of this state, county prosecutor, assistant county prosecutor, or a secret service officer appointed by a county prosecutor shall knowingly possess, have under their control, convey, or attempt to convey a deadly weapon, firearm, or dangerous ordnance onto the premises of the Cuyahoga County Court House (“Court House”).

Any person who possesses a valid license to carry a concealed firearm as issued under R.C. 2923.125 or the reciprocity provision contained in R.C. 109.69, and conveys or attempts to convey a firearm into the Court House, shall immediately inform the Cuyahoga County Sheriff (“Sheriff”) of the individual’s possession of a concealed firearm and shall be instructed by the Sheriff of the general prohibition against the possession of any deadly weapon, firearm, or dangerous ordnance within the Court House. The Sheriff shall not take possession of any firearm carried by a properly licensed person, but shall require that the licensee leave the Court House and further instruct the licensee to safely secure the firearm outside the Court House. Admittance of the licensee shall be permitted once the firearm has been safely secured outside the Court House and the licensee passes the security screening procedure as contained in the “Security Policy and Procedures Manual/Plan” as implemented by this court on June 29, 1995, as amended through November 19, 2007.

A peace officer or an officer of any law enforcement agency of the state of Ohio or another state, a peace officer or an officer of a political subdivision of the state of Ohio or another state, or an officer or agent of the United States of America, who is authorized to carry a deadly weapon, firearm, or dangerous ordnance, who possesses or has under that individual’s control a deadly weapon, firearm, or ordnance, and who is acting within the scope of that individual’s duties at the time of possession or control, shall immediately inform the Sheriff of the possession of the deadly weapon, firearm, or ordnance and shall immediately surrender possession of the deadly weapon, firearm, or ordnance to the Sheriff prior to entering the Court House. The Sheriff shall secure the surrendered deadly weapon, firearm, or ordnance within the secured “gun lock boxes” located at the street level entrance and rear parking garage entrance to the Court House. The deadly weapon, firearm, or dangerous ordnance shall be returned to the individual upon leaving the Court House. This Local Rule of Court is not applicable to the Sheriff, to Deputy Sheriffs, or to Cuyahoga County Central Services / Protective Services Officers while they are on official duty within the Court House.

The Sheriff shall post signs at the street level entrance and the rear parking garage entrance to the Court House, which contain the following language: “Unless otherwise authorized by law pursuant to the Ohio Revised Code and Local Rule of

44.

Court, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon, firearm, or dangerous ordnance onto the premises of the Cuyahoga County Court House. THE CARRYING OF A CONCEALED FIREARM OR THE OPEN CARRY OF A FIREARM, WITHIN THE CUYAHOGA COUNTY COURT HOUSE, IS PROHIBITED BY LOCAL RULE OF COURT AS AUTHORIZED BY OHIO REVISED CODE §2923.123(C)(6)."

[Amended effective November 19, 2007.]

APPENDIX A

EIGHTH DISTRICT COURT OF APPEALS — LOCAL APPELLATE RULE NO. 9

PRAECIPE

		Trial Court Case No. _____
		Date Of Final Judgment _____
Plaintiff,		In Trial Court _____, 2_____
vs.		The Notice Of Appeal Was Filed
		Timely In Compliance With:
		<input type="checkbox"/> App.R. 4(A) — within 30 days
		of the entry of judgment
Defendant.		<input type="checkbox"/> App.R. 4(B) — exceptions to
		the 30-day requirement

TO THE CLERK OF THE TRIAL COURT:

- 1. Appellant requests that the clerk immediately prepare and assemble the original papers and exhibits filed in the trial court and a certified copy of docket and journal entries.

- 2. In addition, appellant will cause the record in this appeal to include the following (if applicable):
 - a. Complete transcript under Appellate Rule 9(B).
 - b. Partial transcript under Appellate Rule 9(B).
 - c. Statement of evidence or proceedings under Appellate Rule 9(C).
 - d. Agreed statement under Appellate Rule 9(D).

Appellant or Attorney for Appellant

PLEASE NOTE:

- 1. The appellant must instruct the court reporter to prepare the transcript.
- 2. If the items checked above are not timely filed with the court, then the appeal will be dismissed. App.R. 10(A).

APPENDIX B

EIGHTH DISTRICT COURT OF APPEALS — LOCAL APPELLATE RULE NO. 9

DOCKETING STATEMENT

_____ Trial Court Case No. _____

Plaintiff,

vs.

Defendant.

A. CHOOSE THE APPROPRIATE DESIGNATION FOR THIS CASE (check one):

- Accelerated calendar (*see* Loc.App.R. 11.1.)
- Regular calendar
- Denial of bail appeal
- Appeal (check one of the following):
 - A. From an order granting or denying:
 - 1. Adoption of a minor child; or
 - 2. Termination of parental rights. *See* App.R. 11.2.
 - B. Concerning a dependent, neglected, unruly, or delinquent child. *See* App.R. 7(C).

(Item A of this docketing statement was adopted at the Judges' meeting on February 15, 2001 to comply with App.R. 11.2.)

Assigned to the accelerated calendar for the reason(s) checked (*see* Local Rule 11.1).

- 1. No transcript required.
- 2. Transcript and all other evidentiary materials consist of one hundred (100) or fewer pages.

Assigned to the regular calendar with full briefing for the reason(s) checked.

- 1. Transcript and all other evidentiary materials are more than one hundred (100) pages.
- 2. Brief in excess of fifteen (15) pages is necessary to argue the issues adequately.

- 3. Appeal concerns unique issue of law that will be of substantial precedential value in determining similar cases.
 - 4. Appeal concerns multiple or complex issues.
 - 5. A statement is submitted under App.R. 9(C).
-

B. THE FOLLOWING QUESTIONS APPLY TO ALL CIVIL AND ADMINISTRATIVE APPEALS:

1. Final appealable order:

- (a) Has the trial court disposed of all claims by and against all parties?
 - Yes. Attach copies of all judgments and orders indicating that all claims against all parties have been dismissed.
 - No.
- (b) If the answer to (a) is "No," has the trial court made an express determination that there is "no just reason for delay," per Civ.R. 54(B), with respect to the judgment or order from which the appeal is taken?
 - Yes, in the same judgment or order.
 - Yes, in a subsequent order dated _____. Attach a copy of the subsequent order.
 - No.
- (c) Is the judgment or order subject to interlocutory appeal under R.C. 2505.02 (check all that apply)?
 - Yes, because the order affects a substantial right in an action and prevents a judgment. *See* R.C. 2505.02(B)(1).
 - Yes, because the order was made in a special proceeding. *See* R.C. 2505.02(B)(2).
 - Yes, because the order vacates or sets aside a judgment or grants a new trial. *See* R.C. 2505.02(B)(3).
 - Yes, because the order grants or denies a provisional remedy and meets the other criteria of R.C. 2505.02(B)(4).
 - Yes, because the order determines that an action may or may not be maintained as a class action. *See* R.C. 2505.02(B)(5).
 - No.

(d) Does the right to an immediate appeal arise from a provision of a statute other than R.C. 2505.02?

Yes. Identify statute: _____.

No.

NOTE: IF THE ANSWER TO ALL OF THE ABOVE IS "NO," THE ORDER IS NOT A FINAL APPEALABLE ORDER, AND THE APPEAL WILL BE SUMMARILY DISMISSED FOR LACK OF APPELLATE JURISDICTION.

2. Nature of case:

Administrative Appeal

Contract

Declaratory Judgment

Domestic Relations

Juvenile

Medical Malpractice

Personal Injury

Probate

Other (describe): _____

3. Do you know of another case pending before this court that raises the same issue or issues?

Yes No

If yes, please cite the case(s): _____

4. Does the appeal turn on an interpretation or application of a particular case or statute?

Yes No

If yes, please cite the case(s) or statute(s): _____

5. How would you characterize the extent of your settlement discussions before judgment?

None

Minimal

Moderate

Extensive

6. Have settlement discussions taken place since the judgment or order appealed from was entered?

Yes No

7. Would a prehearing conference assist the resolution of this matter?

Yes No Maybe

Please explain (optional): _____

8. Briefly summarize the assignments of error presently anticipated to be raised on appeal. (Attach a separate sheet if necessary.)

Appellant or Attorney for Appellant

The primary purpose of a prehearing conference is to encourage the parties to explore any possibilities there may be for settlement of the case before incurring additional expenses or, if that is not possible, to limit the issues.

Loc.App.R. 20(E) provides that this court may assess reasonable expenses, including attorney fees, assess all or a portion of the appellate costs, or dismiss the appeal for failure to comply with provisions of this Rule.

[Amended effective July 1, 1999.]