

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT

LOCAL RULES

AS AMENDED THROUGH SEPTEMBER 1, 2009

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**LOCAL APPELLATE RULES
EIGHTH DISTRICT COURT OF APPEALS**

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) & (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 sixty (60) days before the effective date. Notice shall be accomplished by placing the proposed change 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 judges of the trial courts, to associations of members of the bar, and to any persons requesting a copy. Following the 60-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, exigent circumstances so require. Public comments should be forwarded in writing to: Administrator, Court of Appeals, 1 Lakeside Avenue, Cleveland, OH 44113.

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 or original action unless the party bringing the action deposits with the clerk of courts the sum of \$125.00. Of that sum, \$100.00 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 \$125.00:

- (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).

(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.
- (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.

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- (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.

[Amended Eff. April 1, 2004.]

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).

6.

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.

(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:

The prompt service of the notice of appeal, praecipe, and docketing statement; and

- (1) 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 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.

(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.

[Amended Eff. June 1, 2004.]

RULE 10. TRANSMISSION OF THE RECORD

If the appellant does not timely:

- (1) File a praecipe;
- (2) Secure the transmission of the docket and journal entries; and
- (3) 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**

(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 appellees a proposed stipulation that designates the trial court filings believed necessary for a full and fair review by the Court of Appeals;

(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.

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(c) Within 5 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 7 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 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 which remain in dispute and a detailed recitation of the efforts that have been made to resolve any such dispute.

11.

(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.

[Adopted Eff. August 1, 2005.]

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 one hundred (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 fifteen (15) pages (see Loc.App.R. 16) is necessary 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;
 - (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 (7) 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 fourteen (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 twenty (20) days after the filing of the notice of appeal;
 - (b) The appellant must serve and file a brief and assignments of error within fifteen (15) days after the record is filed;
 - (c) The appellee must serve and file an answer brief, if any, within fifteen (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 fifteen (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 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 Eff. July 1, 1999.]

RULE 12. DETERMINATION AND JUDGMENT ON APPEAL

RESERVED

RULE 13. FILING AND SERVICE

RESERVED

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 designations 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).)

RULE 15. MOTIONS

RESERVED

RULE 16. BRIEFS

(A) Length and Form.

- (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 forty (40) pages, and the appellant's reply brief, if any, must not exceed ten (10) 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 forty (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 forty (40) pages, and the portion relating to the cross-appeal must not exceed an additional twenty-five (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 (10) pages, and the portion relating to the cross-appeal must not exceed an additional twenty-five (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 (10) 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 twenty (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 Rule 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 Rule 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, Rule 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 Rule 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) **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-appellee's failure to conform may result in the brief being stricken and the right to argue being denied.

(C) **Unreported Trial Court Opinions.** If unreported opinions issued by a trial court are cited, copies must be attached to the briefs, or, if voluminous, submitted in a separate appendix of unreported opinions, and furnished to opposing counsel. Failure to do so may be grounds for striking the brief.

[Amended Eff. February 1, 2006.]

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 twenty (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 twenty (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 (10) 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 Loc.App.R. 22. (See App.R. 3(A), 4(A), 11(C) and 18(C).)

RULE 19. FORM OF BRIEFS AND OTHER PAPERS

RESERVED

RULE 20. PREHEARING CONFERENCE

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

(A) **Docketing Statement.** Each appellant and cross-appellant must complete a docketing statement and the praecipe form required by Loc.App.R. 9. The purpose of the applicable parts of the docketing statement is to determine whether an appeal will be selected for a prehearing conference.

(B) **Response By Appellee Or Cross-Appellee.** Within seven (7) days after service of appellant's or cross-appellant's docketing statement, each appellee may file with the clerk of the court of appeals, with service on all other parties, a statement report not to exceed two (2) pages, containing any information that may assist the court and parties in clarifying the issues or settling the appeal or cross-appeal.

(C) **Prehearing Conference.**

- (1) Appeals to which this rule applies will be reviewed by a conference attorney to determine whether a prehearing conference, under App.R. 20, would assist the courts or parties. Any party may request a prehearing conference, but the request need not be granted.
- (2) If an appeal is selected for conference, upon seven (7) days notice from the office of the conference attorney, unless excused, counsel and parties (including insurance adjusters) are required to attend a prehearing conference before a judge, or the conference attorney, to be held within twenty-one (21) days after the filing of the notice of appeal, 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.
- (3) The statements and comments made in settlement negotiations during the prehearing conference are confidential, except to the extent disclosed by the prehearing conference order entered under Paragraph (D), and shall not be disclosed by the conference judge or conference attorney nor by counsel in briefs or argument to the court.

(D) **Prehearing Conference Order.** At the conclusion of the prehearing conference, the judge or the presiding judge upon recommendation of the conference attorney may enter an order setting forth the actions taken and the agreements reached, which order will govern the subsequent course of proceedings, unless modified by the court.

(E) **Non-Compliance Sanctions.** If a party or attorney fails to comply with the provisions of this rule or the provisions of the prehearing conference order, this court may assess reasonable expenses caused by the failure, including attorney fees. This court may also assess all or a portion of the appellate costs or dismiss the appeal.

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 ordinary mail; and
- (2) Publishing notice in the *Daily Legal News*.

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

(B) **Time Allowed For Argument.** Each side will be allowed fifteen (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.

(C) **Waiver Of Argument.** If waiver of argument is desired, then the parties must file a joint motion waiving the argument at least fourteen (14) days before the date scheduled for oral argument. However, the court may direct that the case be argued.

(D) **Postponing Argument.**

- (1) Cases Not Yet Scheduled For Argument. Counsel who anticipates being unavailable must advise the Chief Deputy Administrator in writing at least sixty (60) days before the anticipated unavailability.

- (2) Cases Scheduled For Argument. After notice of argument 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. Within fourteen (14) days of the scheduled oral argument, a case will not be postponed on motion of a party unless a party files an affidavit of disqualification under R.C. 2701.03 or R.C. 2501.13 involving a member of the panel. If the affidavit of disqualification is denied, the same panel, where practicable, will hear the case.

[Amended Eff. July 1, 1999.]

**RULE 22. ENTRY OF JUDGMENT;
ANNOUNCEMENT OF DECISION; RECONSIDERATION**

(A) **Announcement Of Decision.** The initial release of a journal entry and opinion is an announcement of decision. Within ten (10) days after the date of an announcement of decision, any party to the appeal may file an application for reconsideration. App.R. 26(A). [Amended Eff. September 1, 2009.]

(B) **Journalization.** Under App.R. 22(C), this court will file the journal entry and opinion with the clerk of this court for journalization on the tenth day after the announcement of decision unless a timely application for reconsideration under App.R. 26(A) is filed or a timely motion for consideration en banc under Loc.App.R. 25.1 is filed. See, also, App.R. 14(A). If a timely application for reconsideration or a timely motion for consideration en banc is filed, journalization will be deferred until this court disposes of the application for reconsideration or motion for consideration en banc. Under App.R. 22(C), a journal entry and opinion constitutes the entry of the judgment upon journalization. The time for filing a notice of appeal to the Supreme Court of Ohio runs from the date of the entry of judgment in this court. S.Ct.Prac.R. II(2)(A). [Amended Eff. September 1, 2009.]

(C) **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 proceeding below unless such reference is essential to clarify or explain the role of such person in the course of said proceedings. [Adopted July 26, 2000.]

RULES 23 THROUGH 24

RESERVED

RULE 25.1. CONSIDERATION EN BANC

Questions arising out of conflicting or potentially conflicting decisions by different panels of this court shall be resolved by consideration en banc of the issues involved in the manner prescribed below.

(A) **Scope of review.** This court shall consider appeals en banc only for the following, limited purposes:

(1) to avoid entering a judgment which conflicts on questions of law with a holding in one or more prior decisions of this court that has not been superseded by statute or Supreme Court of Ohio precedent; and

(2) to resolve conflicts on questions of law between prior decisions of this court.

Any party or counsel seeking consideration en banc for any other reason is subject to sanctions.

(B) **Request for En Banc Conference.**

(1) **By the Court.** In the event the assigned panel hearing an appeal determines that it is necessary to issue a decision in conflict with the holding in a previous decision of this court or to resolve a conflict among previous decisions of this court, any judge on the assigned panel may submit a request for consideration en banc to the Administrative Judge before the decision is released. If any judge of the court believes that a decision released by this court is in conflict with the holding in a previous decision, that judge may submit a request for consideration en banc before the decision is journalized.

(2) **By a party.**

(a) **Motion for Consideration En Banc.** Subject to subdivision (A) of this rule, any party may file a motion for consideration en banc within ten days of the announcement of decision. The motion and brief in support shall not exceed ten pages. Within ten days of the filing of a motion for consideration en banc, a party opposing the motion may file an opposing brief which shall not exceed ten pages. An original and three copies of any motion for consideration en banc or opposing brief are required. Additionally, a party filing a motion for en banc consideration or opposing brief shall email the motion or opposing brief to: enbanc@8thappeals.com at the time of filing.

(b) **Separate Application for Reconsideration.** A motion for consideration en banc shall be filed separately from any application for reconsideration under App.R. 26(A). If a party combines an application for reconsideration with a motion for consideration en banc in one filing, the court may strike the filing.

(C) **Procedure.** The en banc court shall consist of all full-time judges of the Eighth Appellate District who have not been disqualified. The Administrative Judge shall inform the members of the en banc court of the request for consideration en banc. If a majority of the en banc court votes in favor of consideration en banc, the Administrative Judge shall call an en banc conference to take place at the earliest convenient date, which may be at the regularly scheduled judges' meeting. A majority decision reached by the full en banc court will be binding upon the whole court.

(D) **En Banc Opinion.** The Journal Entry and Opinion will contain: an appropriate reference to this Rule; indicate that the court convened an en banc conference in accordance with *McFadden v. Cleveland State Univ.*, 120 Ohio St.3d 54, 2008-Ohio-4914, 896 N.E.2d 672; and, upon release, will contain a request for publication.

[Loc.App.R. 25.1 supersedes former Appendix C (“En Banc Conference”) to this court’s local rules. Adopted effective September 1, 2009.]

RULE 26. RECONSIDERATION

See Loc.App.R. 22.

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 accelerated docket, however, a routine motion consists of only one extension of twenty (20) days for the record and only one extension of fifteen (15) days for the brief.)

[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);
- (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 briefly and succinctly state the qualifications of the attorney seeking admission. It shall be filed with the first pleading or brief in which the attorney seeks to participate or at least thirty (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 Eff. July 1, 1999.]

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 \$125.00. Of that sum, \$100.00 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 \$125.00:

- (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).

[Effective Feb. 1, 2005.]

(B) Procedure.

(1) Commencing An Action.

- (a) Original actions commence with the filing of a verified complaint, together with three (3) 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 in quadruplicate. 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.
- (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 twenty (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 (4) 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 ninety (90) days before the election, then the answer is due five (5) days after service of summons. The reply and the brief of plaintiff or relator must be filed within five (5) days after the filing of the answer.

Defendant's or respondent's brief must be filed no later than five (5) 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 thirty (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 set by the Cuyahoga County Board of Commissioners, is set forth in the following schedule:

	<u>Minimum Compensation</u>	<u>Maximum Compensation</u>
<u>Appellate Procedures:</u>		
Aggravated Murder - Death Sentence	\$1,050	\$5,000
Aggravated Murder with Specifications	\$1,050	\$4,000
Aggravated Murder without Specifications	\$1,050	\$4,000
Murder	\$ 700	\$1,500
Felonies	\$ -0-	\$1,000
Voluntary Manslaughter, Involuntary Manslaughter and Negligent Homicide	\$ 350	\$ 750
Aggravated Vehicular Homicide and Vehicular Homicide	\$ 350	\$ 750
Misdemeanors	\$ -0-	\$ 750
Other/Juvenile	\$ -0-	\$ 750
Hourly Rate	\$ 40	
Death Sentence Hourly Rate	\$ 45	

[Rates are effective January 2, 1997.]

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:

- (1) With permission of the court of appeals;
- (2) Upon application on a form provided and approved by the judges of the court; and
- (3) On the condition that the transcript be returned within fourteen (14) days after the date of removal or fourteen (14) days before the date set for the hearing of argument, whichever is earlier.

Failure to comply with this rule may result in a contempt citation.

**RULE 48. JUDICIAL CONFERENCE OF THE
EIGHTH APPELLATE JUDICIAL DISTRICT**

(A) **Purpose.** A conference of all of the judges of this court, the judges of the Court of Common Pleas of Cuyahoga County, municipal court judges within the district, and representative members of the bar within the district will be held periodically at a time and place to be determined by the administrative judge of this court, the presiding judge of the court of common pleas, and members of the bar as designated by this rule. The purpose of this conference is to consider the state of business of the courts, provide a forum for dialogue between the courts and the courts and the bar, and advise on ways and means of improving the administration of justice within the district.

(B) **Who Shall Attend.** Unless excused from attendance by the administrative judge, each court of appeals judge must attend the entire conference. Regular hearings and conferences will be suspended throughout the time the conference is in session. But if a case is deemed to require immediate attention, it may be heard at the discretion of at least one appellate judge together with the administrative judge.

(C) **Members Of The Conference.** Members of the conference will include lawyers from the bar who are appointed before the conference by the judges of the conference, by representatives of the organized bar, and as otherwise selected and designated in accordance with by-laws for the conference.

(D) **Matters To Be Discussed.** During the first part of the conference, the judges alone will meet to discuss matters affecting the state of the dockets and the administration of justice in the district. Concurrently with the judges' meeting, members of the bar will meet to discuss matters that may be referred to them by the judges of the courts and that may be programmed by the executive committee of the conference. During later sessions, members of the bar and judges will jointly participate in the conference's discussions and deliberations.

RULE 49. EFFECTIVE DATE

(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 Date Of Amendments.** Effective July 1, 1999, this court amended the following provisions: Loc.App.R. 3(B)(1), 9(A), 11.1(A), 21(A)(1) and 44(A)(5) as well as Appendix B, Docketing Statement, Sections A and B. Effective September 3, 2003, this court amended Appendix C. 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 added 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 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 supersedes former Appendix C, and amended Loc.App.R. 22.

RULES 50 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 Courthouse ("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.

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 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).**"

[Effective June 1, 2004.]

32.
APPENDIX A

EIGHTH DISTRICT COURT OF APPEALS -- LOCAL 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:
_____	[] App.R. 4(A)--within 30 days
Defendant.	of the entry of judgment
	[] 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).

33.
APPENDIX B

EIGHTH DISTRICT COURT OF APPEALS -- LOCAL 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 Appellate Rule 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.

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- 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.

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(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

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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 Eff. July 1, 1999.]