

PROPOSED AMENDMENTS TO LOCAL RULES

Introduction:

Over the past year, the Eighth District Court of Appeals has reviewed its current Local Appellate Rules with three primary objectives: (1) update the rules to capture amendments in the law and the actual practices of the court, trial courts, and clerk's office; (2) eliminate confusion and inconsistencies related to electronic filing and time requirements; and (3) address issues raised by the Cuyahoga County Public Defender's Office, the Cuyahoga County Prosecutor's Office, and members of the bar. As a result, we propose amendments to 20 local rules and have revised our Praecipe and Docketing Statement Form. For your convenience, a summary of the proposed amendments is contained in a chart following the key to proposed amendments.

Comments Requested: The Court of Appeals of Ohio, Eighth Appellate District will accept public comments until November 30, 2018 on the proposed amendments to the following local rules:

- Loc.App.R. 3
- Loc.App.R. 4
- Loc.App.R. 5
- Loc.App.R. 9
- Loc.App.R. 10
- Loc.App.R. 11
- Loc.App.R. 11.1
- Loc.App.R. 13.2
- Loc.App.R. 13.3
- Loc.App.R. 14
- Loc.App.R. 16
- Loc.App.R. 19
- Loc.App.R. 20
- Loc.App.R. 21
- Loc.App.R. 22
- Loc.App.R. 23

-Loc.App.R. 26

-Loc.App.R. 44

-Loc.App.R. 45

-Loc.App.R. 60

-Appendix A: Praeipice and Docketing Statement Form

Comments on the proposed amendments should be submitted in writing to: Erin M. O'Toole, Court Administrator, Eighth District Court of Appeals, 1 Lakeside Ave., Rm. #202, Cleveland, Ohio 44113 or emo@8thappeals.com not later than November 30, 2018. Please include your full name and mailing address in any comments submitted by e-mail.

Key to Proposed Amendments:

1. Existing language appears in regular type. Example: text.
2. Existing language to be deleted appears in strikethrough. Example: ~~text~~.
3. New language to be added appears in underline. Example: text.

Summary of Proposed Amendments

Rule	Summary
Loc.App.R. 3	<ul style="list-style-type: none">▪ Includes cross-appeal within the title▪ Eliminates reference to clerk’s “Received for Filing” stamp because that stamp is no longer used (journal entry must still be time-stamped)▪ Includes a page limitation for addendums filed under section (C)(1)▪ Includes language notifying parties to utilize the lowest appeal number when filing documents in a consolidated appeal▪ Includes language notifying parties that notice of cross-appeal must be filed with the clerk of the trial court along with praecipe and docketing statement (consistent with proposed amendment to Ohio App.R. 3)
Loc.App.R. 4	<ul style="list-style-type: none">▪ Specifies that “promptly notify” means to notify within seven days of judgment being rendered
Loc.App.R. 5	<ul style="list-style-type: none">▪ Reinforces clerk of court’s duty to serve prosecuting attorney with copy of defendant’s motion for delayed appeal and provides mechanism for prosecuting attorney to respond within 10 days

<p>Loc.App.R. 9</p>	<ul style="list-style-type: none"> ▪ Notifies appellant of use of e-filing system to satisfy service requirement to any party who is registered for electronic service on the court’s e-filing system ▪ Eliminates redundancies related to trial clerk and reflects use of single form for praecipe and docketing statement ▪ Clarifies that an original transcript must be filed in support of an appeal --the court will not accept a copy without leave of court
<p>Loc.App.R. 10</p>	<ul style="list-style-type: none"> ▪ Clarifies the responsibility of the appellant and captures the 2014 amendment to App.R. 10, which no longer allows dismissal of an appeal for clerk’s failure to transmit record when the appellant has fully cooperated
<p>Loc.App.R. 11</p>	<ul style="list-style-type: none"> ▪ Changes title (eliminates confusion because most trial courts have electronic dockets now) ▪ Limits rule to application in asbestos cases only
<p>Loc.App.R. 11.1</p>	<ul style="list-style-type: none"> ▪ Replaces reference to two forms with the new revised single form: praecipe and docketing statement form ▪ Eliminates 7-day time requirement for appellee to request a different calendar designation of the appeal if appellee objects to the

	calendar designation requested by appellant
Loc.App.R. 13.2	<ul style="list-style-type: none"> ▪ Removes language implying that electronically filed documents are returned to the filer; instead, reflects actual practice of removing document from docket
Loc.App.R. 13.3	<ul style="list-style-type: none"> ▪ Reflects the actual practice by eliminating reference to court’s official seal (there is no official court seal used in journal entries electronically signed by judges)
Loc.App.R. 14	<ul style="list-style-type: none"> ▪ Includes requirement of showing “good cause” for any extension, which avoids any potential conflict with App.R. 14
Loc.App.R. 16	<ul style="list-style-type: none"> ▪ Includes certificate of service as an exclusion from page limitations ▪ Eliminates reference to filing a responsive brief in support of conceded error ▪ Based on emerging case law from other Ohio appellate districts that are no longer accepting <i>Anders</i> briefs (as well as the issues raised in dissenting opinions of <i>State v. Upkins</i>, ___ Ohio St.3d ___, 2018-Ohio-1812 and <i>State v. Bowshier</i>, ___ Ohio St.3d ___, 2018-Ohio-2150, the provision for <i>Anders</i> briefs has been eliminated. ▪ Updates 16(F) to reflect the actual practice of striking a brief (as

	opposed to returning brief) when an electronically filed brief fails to comply with the rules
Loc.App.R. 19	<ul style="list-style-type: none"> ▪ Reminds party that e-filed brief must be in searchable, but not editable, PDF format ▪ Consistent with the Supreme Court of Ohio Writing Manual, specifies that quotations more than four lines should be indented and single-spaced ▪ Highlights that footnotes must be at least 12-point font ▪ Specifies that margins must be at least one inch on all four sides ▪ Recognizes that brief be set in a plain, legible typeface and that italics and boldface are reserved for emphasis, i.e., cannot write your entire brief in italics ▪ Recognizing that many people read briefs from electronic devices, incorporates use of the preferred font (“Georgia”), but does not require
Loc.App.R. 20	<ul style="list-style-type: none"> ▪ Includes “Mediation” in the title of the rule to reflect the actual practice and terminology used in rule
Loc.App.R. 21	<ul style="list-style-type: none"> ▪ Eliminates reference to fax because that is no longer the practice

	<ul style="list-style-type: none"> ▪ Consistent with proposed amendment to Loc.App.R. 16, eliminates reference to <i>Anders</i> in former section (C) ▪ Clarifies practice and expectation when more than one appellee: divide the time amongst the appellees ▪ Includes new section as to oral argument taking precedence over conflicts in trial courts
Loc.App.R. 22	<ul style="list-style-type: none"> ▪ Requires clerk’s office to serve the trial court judge and administrative judge with any order that remands an appeal for correction of the record or dismisses an appeal for lack of a final appealable order. The rule also requires stating the basis of the remand and the time for returning the record.
Loc.App.R. 23	<ul style="list-style-type: none"> ▪ Adds “motion” to list of filings subject to a finding of frivolous ▪ Notifies vexatious litigators of the requirement contained in R.C. 2323.52 to seek leave of court before filing in court of appeals and that failure to comply with statute will result in dismissal
Loc.App.R. 26	<ul style="list-style-type: none"> ▪ Eliminates reference to internal operating procedures contained in former section (B) (Judicial Request for En Banc Consideration) and former section (D) (Procedure)

	<ul style="list-style-type: none"> ▪ Updates rule as to electronic filing and eliminates the redundancy of having attorneys email and upload application after e-filing ▪ Clarifies language as to the requirements for the application for en banc consideration ▪ Eliminates loop hole of having no page limitation for a motion for reconsideration filed some time apart from motion for en banc; now if party seeks reconsideration and en banc, local rule makes clear that the party must file in a single document, not exceeding 10 pages ▪ Eliminates the unnecessary language contained in former section (D) requiring the Administrative Judge to vacate a panel decision in the event a sua sponte decision to consider a case en banc as result of 2011 amendment to former S.Ct.Prac.R. 2.2 (now reflected in S.Ct.Prac.R. 7.01(A)(5) and (6)) ▪ Eliminates unnecessary language in former section (D) that is already contained verbatim in App.R. 26(A)
Loc.App.R. 44	<ul style="list-style-type: none"> ▪ Replaces fax number with email address ▪ Clarifies the timing for filing a motion for pro hac vice

<p>Loc.App.R. 45</p>	<ul style="list-style-type: none"> ▪ Specifies the governing rules and specifies the appropriate title for parties in respective original actions ▪ Reduces number of required copies from six to five when filing in paper form ▪ Recognizes that failure to file a verified affidavit does not result in automatic dismissal; instead, court may dismiss if complaint is not supported with affidavit. ▪ Suggests the filing of a memorandum in support of claims contained in petition or complaint ▪ Specifies the requirement of electronic filing for attorneys ▪ Requires a response to complaint or petition ▪ Reflects the actual practice of court holding a hearing as opposed to only a magistrate
<p>Loc.App.R. 60</p>	<ul style="list-style-type: none"> ▪ Updates rule to reflect amendments to Sup.R. 9, which now require that a single security policy should be adopted by multiple courts that occupy the same building and that such plan is not a public record. To avoid any inconsistency with the other courts in our building, it was recommended to revise rule.

Appendix A: Praecipe and Docketing Statement Form

- Combines praecipe and docketing statement into a single form
- Simplifies the wording for selecting the desired record under praecipe
- Provides the criteria for selecting the appropriate calendar
- Includes section on general information relevant to both civil and criminal appeals:
 - Asks whether a stay was requested in trial court
 - Asks whether the party has attached a copy of the final judgment being appealed
 - Asks whether person has been declared a vexatious litigator and alerts person to requirements of R.C. 2323.52(F)(2)
- Includes section for criminal cases and directs person to skip civil case section
 - Alerts filer to *Lester* requirements of the sentencing order to avoid any FAO issues
 - Captures companion cases of co-defendants who were indicted and convicted under the same complaint – not limited to just the same trial
 - Requests party to notify type of criminal appeal
- Includes section for civil cases, directing filer to skip criminal section

	<ul style="list-style-type: none">▪ Simplifies questions related to final appealable order▪ Asks filer to identify the legal authority to allow for an appeal of interlocutory order
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**RULE 3. APPEAL AS OF RIGHT — HOW TAKEN;
COST DEPOSIT; CONSOLIDATED APPEALS; CROSS-APPEAL**

(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 (“affidavit of indigency”) 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”~~ time-stamped 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 email and a copy for service on that appellee must be provided. If filing notice of appeal in paper form, appellant is required to provide sufficient copies for service on all appellees.

(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. Any addendum may not exceed 15 pages without leave of court.
- (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.
- (3) Manner of Filing in Consolidated Appeals. After consolidation of appeals, parties shall file any documents, including motions, briefs, and notices, under the lowest appeal number, indicating on the title of the document all appellate case numbers subject to the consolidation.

(D) Cross-Appeal. Notice of cross-appeal shall be filed like a notice of appeal with the clerk of the trial court and with the praecipe and docketing statement.

(DE) **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.~~]

(Adopted eff. Feb. 1, 1999; amended eff. July 1, 1999; April 1, 2004; July 1, 2012; Aug. 1, 2016; April 9, 2018; _____.)

**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 within seven days of the order being journalized.

(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).

(Adopted eff. Feb. 1, 1999; amended eff. _____.)

RULE 5. APPEALS BY LEAVE OF COURT IN CRIMINAL CASES

(A) Motion by Defendant in Delayed Appeal. When a defendant appeals pursuant to App.R. 5(A), the clerk of court shall serve a copy upon the prosecuting attorney. The prosecuting attorney shall be afforded 10 days to respond in writing as to whether the defendant is entitled to a delayed appeal.

(Adopted eff. Feb. 1, 1999; amended eff. _____.)

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 certificate of 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 if filing in paper form.

~~[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 ~~Appendixes 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 if filing in paper form. Otherwise, if filing electronically, appellant may 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 and does not need to provide any copies.

(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, and the 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.

~~[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.

(G) Any transcript of proceedings filed in support of an appeal shall consist of the original transcript as created by the official court reporter designated by the trial court under App.R. 9(B)(2). No party is permitted to file a copy of a transcript, which is hereby defined as not the original transcript created by the official court reporter, unless leave of court is requested and granted by this court. Any copy of a transcript may be sua sponte stricken by this court.

(Adopted eff. Feb. 1, 1999; amended eff. July 1, 1999; June 1, 2004; _____.)

RULE 10. TRANSMISSION OF THE RECORD

It is the duty of the appellant to do the following timely: ~~If the appellant does not timely:~~

(A) File a praecipe and docketing statement as provided in Loc.App.R. 9;
and

(B) Cooperate with the clerk of the trial court to ~~Secure~~ the transmission of the docket and journal entries and to effect the transmission of the record on appeal. ~~and~~

~~(C) Effect the transmission of the record on appeal;~~

If the appellant fails to timely perform these duties, 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.

(Adopted eff. Feb. 1, 1999; amended eff. _____.)

**RULE 11. DOCKETING OF APPEALS FROM TRIAL COURT
ELECTRONIC FILING SYSTEMS IN ASBESTOS CASES**

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 In Asbestos Cases. ~~Subject To This Rule.~~** When an asbestos 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;

(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 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.]~~

(Adopted eff. Aug. 1, 2005; amended eff. Jan. 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;
- (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 praecipe and docketing statement ~~and the praecipe form~~ required by Loc.App.R. 9 (see Appendix A for Praecipe and Docketing Statement Form). ~~The purpose of the docketing statement is~~ This form allows the court to determine whether an appeal will be assigned to the accelerated or regular calendar and the suitability of the appeal for a prehearing mediation conference.
- (2) If the appellee objects to the assignment of the appeal requested by the appellant on the praecipe and docketing statement form, 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 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.]~~

(Adopted eff. Feb. 1, 1999; amended eff. July 1, 1999; _____)

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 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 remove the originally filed document from the electronic docket. If the document had been submitted in paper form, the clerk will return the originally filed document to the person who filed it. ~~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 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.]~~

(Adopted eff. Dec. 2, 2013; amended eff. Jan. 1, 2015; Aug. 1, 2016; Mar. 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; amended eff. _____.)~~

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 setting forth good cause for the extension 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 setting forth good cause for the extension 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.

(Adopted eff. Feb. 1, 1999; amended eff. July 1, 2012; July 15, 2013; _____.)

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, certificate of service, ~~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~~ a 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.~~

(CD) 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>.

(DE) 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 result in the brief being stricken and the court ordering that an amended brief complying with the rules be filed by a specified date. ~~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-appelleeant's failure to conform may result in the brief being stricken and the right to argue being denied.

~~[Amended effective July 30, 2014.]~~

(Adopted eff. Feb. 1, 1999; amended eff. Feb. 1, 2006; Jan. 1, 2010; Jan. 19, 2010; July 30, 2014; _____.)

RULE 19. FORM OF BRIEFS AND OTHER PAPERS

~~RESERVED~~

(A) Form of Brief

- (1.) Reproduction. A brief may be reproduced by any process that yields an image with clear black text in at least 12 point type when printed. This applies to both e-filed documents and those submitted in paper form. E-filed briefs shall be filed in searchable, but not editable, PDF format.
- (2.) Paper Size, Line Spacing, and Margins. The brief must be formatted to fit on 8 1/2 by 11 inch paper when printed. Text must be double-spaced between lines, except quotations more than four lines long should be indented and single-spaced. Headings and footnotes may be single-spaced but must be at least 12-point font. Margins must be at least one inch on all four sides.
- (3.) Typeface and Type Style. The body of the brief must be set in a plain, legible typeface. The preferred font type is "Georgia." The style of the brief should be set in a plain, roman style, although italics and

boldface may be used for emphasis. Case names must be italicized or underlined.

(B) Other Papers. The requirements contained above also apply to other papers filed in the court, including motions, applications for reconsideration, and applications for en banc consideration.

(Adopted eff. Feb. 1, 1999; amended eff. _____.)

RULE 20. PREHEARING MEDIATION 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 pre-hearing 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.]~~

(Adopted eff. Feb. 1, 1999; amended eff. Aug. 1, 2016; 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~~
~~(b) e) 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.~~

(C~~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. If there is more than one appellee, they must divide the 15 minutes absent an order granting additional time.

(DE) 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 a pro se 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.

(EF) 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.

(F) Precedence of Oral Argument. If counsel of record on an appeal has an assignment, including but not limited to pre-trial or trial proceedings, before any municipal court or court of common pleas that conflicts with an oral argument scheduled before the Eighth District Court of Appeals, the oral argument assignment before the Eighth District Court of Appeals takes precedence.

~~[Amended effective July 30, 2014.]~~

(Adopted eff. Feb. 1, 1999; amended eff. July 1, 1999; December 11, 2013; July 30, 2014; _____.)

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.

(B) Remand and Dismissal Orders.

- (1) An order of remand shall contain a specific description of the basis for the remand and shall state the date upon which the record is to be returned to the clerk of this court.

- (2) The clerk of this court shall serve, upon the trial court judge and the administrative judge of the trial court, any order of this court that remands an appeal for correction of the record under App.R. 9(E) or dismisses an appeal for lack of a final appealable order.

(CB) 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.]

(Adopted eff. Feb. 1, 1999; July 26, 2000; amended eff. July 20, 2010; .)

**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, or motion 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.

(C) Any party, that has been declared a vexatious litigator under R.C. 2323.52 or Loc.App.R. 23, must seek leave of court to proceed with any appeal or original action that is filed in the Eighth District Court of Appeals. The failure to comply with R.C. 2323.52(F)(2) shall result in the dismissal of any appeal or original action as filed by a party that has been declared a vexatious litigator.

(Adopted eff. June 22, 2010; amended eff. _____.)

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.~~

(BC) 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 electronically file an original and three copies of the application, opposing brief, or reply brief in accordance with Loc.App.R. 13.1. , 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.

(a) An application for en banc consideration shall include a concise one-paragraph statement of the dispositive point of law upon which the applicant asserts that the panel's decision conflicts with a prior panel's decision of this court.

(b) The application must specifically identify the paragraph(s) of the panel opinion at issue and the paragraph(s) of the prior panel's opinion that conflict on a point of law and explain why en banc is necessary to secure and maintain uniformity of this court's decisions. 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.

(2) Parties seeking both reconsideration and en banc application must file a combined application in a single document that does not exceed ten pages.

~~(C)~~ **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. When a majority of the en banc court votes to consider a case sua sponte after the panel's decision has been journalized, the Administrative Judge will issue an order indicating the case is being considered for en banc review and additional briefing may be ordered by the court. ~~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.~~

(Adopted eff. July 20, 2010; amended eff. Feb. 15, 2011; _____ .)

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 email address ~~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~~ may be filed at any time, but no later than 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.

(Adopted eff. Feb. 1, 1999; amended eff. July 1, 1999; Feb. 15, 2011; _____.)

RULE 45. EXTRAORDINARY WRITS (ORIGINAL ACTIONS)

(A) General.

- (1) 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.

- (2) In all original actions filed in the Eighth District Court of Appeals, these rules shall govern the procedure and the form of all documents filed in the actions.

(3) The Ohio Rules of Civil Procedure shall supplement these rules unless clearly inapplicable. Where these rules conflict with the Ohio Rules of Civil Procedure, these rules shall control.

(B) **Parties.** The party filing an action in mandamus, prohibition, procedendo, or quo warranto shall be referred to as the relator. Party filing an action in habeas corpus shall be referred to as the petitioner. The party named in an original action shall be referred to as the respondent.

(CA) **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 or petitioner 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~~

~~(23)~~ 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.]

(DB) **Procedure.**

(1) Commencing An Action.

(a) Original actions commence with the filing of a verified complaint or petition, together with six copies, Counsel shall file the complaint or petition electronically unless seeking leave to file in paper form in compliance with Loc.App.R. 13.1(A)(4). All documents shall conform

~~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.~~ Pro se litigants are permitted to file the complaint or petition and all subsequent documents electronically or in paper form per Loc.App.R. 13.1(A)(5). If filing in paper form, the verified complaint or petition and all later pleadings must be filed with an original and five copies.

(b) All complaints or petitions should ~~must~~ contain the specific statements of fact upon which the claim of illegality is based and ~~must~~ should be supported by an affidavit ~~from the plaintiff or relator~~ specifying the details of the claim. The complaint or petition may include a memorandum in support of the claims. Absent such detail and attachments, the complaint or petition may be ~~is~~ subject to dismissal.

[Amended effective January 19, 2010.]

(c) Any affidavit shall be made on personal knowledge, setting forth facts admissible in evidence, and demonstrating affirmatively that the affidavit is competent to testify to all matters stated in the affidavit.

(~~d~~) 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~~ the clerk's standard procedure, such as federal express 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.

(a) If an alternative writ is requested, the ~~plaintiff or relator or petitioner~~ 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.

(b) 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.

(c) 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, and evidence 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) Response to Complaint or Petition. In all actions, except for a petition for habeas corpus or an election action, the respondent shall file an answer or to a motion to dismiss within 28 days of service of the summons and complaint. The court, in the exercise of its sound discretion, may shorten the period for the filing of the respondent's answer or motion to dismiss.

(43) 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.

- (54) Evidentiary Hearings. If the parties do not stipulate to the evidence, then the court may conduct a hearing or 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.
- (65) 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~~ may be dismissed for failure to prosecute, after notice to counsel of record.
- (76) 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~~ the 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. The court, in the exercise of its sound discretion, may shorten any time period for the filing of any answer, motion, or response to any motion.
- (87) 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.
- (98) 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.

(Adopted eff. Feb. 1, 1999; amended eff. Feb. 1, 2005; Jan. 1, 2010; Jan. 19, 2010; July 1, 2012; .)

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 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).”~~

For purposes of ensuring security in court facilities and pursuant to the provisions of the Ohio Court Security Standards adopted by the Supreme Court of Ohio in Rule 9 of the Rules of Superintendence for the Courts of Ohio, this Court has adopted and implemented a local Security Policy and Procedures Plan/Manual.

(Adopted eff. June 1, 2004; amended eff. Nov. 19, 2007; _____.)

APPENDIX A Praecipe and APPENDIX B Docketing Statement have been removed and replaced with a single praecipe and docketing statement form. See attached Appendix A.

**EIGHTH DISTRICT COURT OF APPEALS
LOCAL APPELLATE RULE 9
Praecept and Docketing Statement**

Name of Trial Court: _____

Case Caption: _____

Plaintiff,

vs.

Defendant

Trial Court Case Number: _____

Trial Court Judge: _____

Date of judgment appealed: _____

The notice of appeal was filed in compliance with:

- [App.R. 4\(A\)](#) (within 30 days); or
- [App.R. 4\(B\)](#) (time extended); or
- [App.R. 5](#) (delayed appeal)

A. PRAECEPT: REQUESTING THE RECORD

TO THE CLERK OF THE TRIAL COURT:

1. By checking this box, appellant requests that the clerk of the trial court immediately prepare and assemble the original papers and exhibits filed in the trial court and a certified copy of docket and journal entries under App.R. 9(A). **(If appellant only selects this box, appellant acknowledges that no transcript is required to be prepared.)**
2. Check this box if you seek the record in this appeal to include one of the following listed below that is necessary for the resolution of the appeal. **(Please select only one of the following below.)**
 - a. Complete transcript under [App.R. 9\(B\)](#). (Note: the appellant must instruct the court reporter to prepare the transcript.)
 - b. Partial transcript under [App.R. 9\(B\)](#). (Note: the appellant must instruct the court reporter to prepare the transcript.)
 - c. Statement of evidence or proceedings under [App.R. 9\(C\)](#).
 - d. Agreed statement under [App.R. 9\(D\)](#).

B. CALENDAR

Choose the appropriate calendar designation for this case. **Check only one of the following:**

Regular Calendar

This is the appropriate selection if **any** of the following apply:

- Transcript and all other evidentiary materials are more than one hundred pages;
- A brief in excess of 15 pages is necessary to argue the issues adequately;
- Appeal concerns unique issues of law that will be of substantial precedential value in determining similar cases;
- Appeal concerns multiple or complex issues; or
- Do not want accelerated calendar.

Accelerated Calendar (See [LocApp.R. 11.1](#))

An appeal may be assigned to the accelerated calendar if (1) no transcript is required, or (2) the transcript and all other evidentiary materials consist of 100 or fewer pages. If any of the criteria listed above for regular calendar applies, the appeal will not be assigned to the accelerated calendar.

Expedited Calendar (See [App.R. 11.2](#))

This is the appropriate selection if any of the following apply. Please designate the specific category below:

- Abortion-related appeal from juvenile court
- Adoption or parental rights appeal (includes award of temporary custody to the agency)
- Dependent, abused, neglected, unruly or delinquent child appeal
- Prosecutorial appeal from suppression order
- Denial of a bail bond as provided in R.C. 2937.222(D)
- Election contests as provided in R.C. 3515.08

C. GENERAL INFORMATION

1. Was a stay requested in the trial court? Yes No (See [App.R. 7](#) and [App.R. 8](#))
If a stay was requested, how did the trial court rule?
 Granted Denied Pending

2. If this case has previously been before this Court, list prior appellate case number(s):

3. List case names and numbers of cases pending in this court that involve the same transaction or controversy involved in this appeal: _____

4. Probable issues for appeal (if known): _____

5. Have you attached a time-stamped copy of the final judgment being appealed as required under [Loc.App.R. 3\(B\)](#)? Yes

6. Have you been declared a vexatious litigator? Yes No
If yes, did you comply with R.C. 2323.52(F)(2) and seek leave to file?
 Yes No

D. CRIMINAL CASE

(If this is an appeal from a civil case, skip ahead to SECTION E. If a criminal case, complete this section and then skip to the signature block.)

1. Does the sentencing order contain the following **four requirements**:
 - fact of conviction for **each** count;
 - separate sentence for **each** convicted count;
 - signature of trial court judge; and
 - file stamp of the clerk of court? Yes No

2. If a co-defendant(s) was indicted and convicted under the same complaint, list the name(s) of co-defendant(s):

3. Type of Appeal (**Select only one of the following**):

- Defendant's Appeal as of Right State's Appeal as of Right
 Defendant's Delayed Appeal by Leave of Court (See [App.R. 5\(A\)](#))
 State's Appeal by Leave of Court (See [App.R. 5\(B\)](#))

E. CIVIL CASE

1. Specify the type of action in the trial court (e.g. administrative appeal; contract; declaratory judgment; domestic relations; juvenile; medical malpractice; personal injury; probate; etc.):

2. Is the order appealed from a final appealable order:

- a. Did the judgment dispose of all claims by and against all parties?

Yes No

- b. If not, is there a determination that there is "no just reason for delay" per Civ.R. 54(B)?

Yes No

- c. If you are appealing an interlocutory order, specify what authority (e.g. specific provision under R.C. 2505.02, other statute, or case law) that gives this court jurisdiction to hear the appeal: _____

3. Settlement discussions:

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

- None Minimal
 Moderate Extensive

b. Have settlement discussions taken place since the judgment or order appealed from was entered? Yes No

c. Would a mediation conference assist in the resolution of this matter?

- Yes No
 Maybe

I certify that the above information is accurate to the best of my knowledge. I also acknowledge that I must file the Notice of Appeal along with this Praecipe and Docketing Statement in the trial court.

Appellant or Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that a copy of this Praecipe and Docketing Statement was served upon

_____ on ____ / ____ / 20____ in the following

manner: _____.

(Signature)