

## **PROPOSED AMENDMENTS TO LOCAL RULES (LOC.APP.R. 20 and Loc.App.R. 46)**

**Comments Requested:** The Court of Appeals of Ohio, Eighth Appellate District will accept public comments until June 3, 2022 on the proposed amendments to Loc.App.R. 20 and Loc.App.R. 46.

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](mailto:emo@8thappeals.com) not later than June 3, 2022. Please include your full name and mailing address in any comments submitted by e-mail.

### **Summary of Proposed Amendments:**

#### **Loc.App.R. 20:**

<ul style="list-style-type: none"><li>- Loc.App.R. 20(C): The changes to the second paragraph in Section C were proposed to ensure that the panel who is assigned the public records writ retains discretion and may grant an alternative writ and dispose of the matter quickly rather than automatically sending it to mediation. With the new amendment, mandamus actions for public records will not be automatically referred to mediation.</li></ul>
<ul style="list-style-type: none"><li>- Former Loc.App.R. 20(D): This section (automatic stay) was deleted because it caused confusion among the attorneys that their case was automatically stayed for 60 days, even if the mediation concluded earlier. This stay provision is essentially an internal tracking mechanism and may be less than 60 days if the matter does not settle in mediation.</li></ul>
<ul style="list-style-type: none"><li>- New Loc.App.R. 20(D): Language added to clarify that counsel of record for each party as well as the parties must attend the mediation. Language also added to emphasize that if a party to the action does not have full authority to settle the case, then a person with authority to settle the case up to the stated demand shall attend the mediation.</li></ul>

**Loc.App.R. 46:**

<ul style="list-style-type: none"><li>- Expands the appointed counsel list to include attorneys appointed counsel in juvenile and termination of parental rights cases. (Section (B))</li></ul>
<ul style="list-style-type: none"><li>- Clarifies that appointed counsel seeking reimbursement for fees must attach two documents to the application for fees: (1) a completed financial disclosure form AND a copy of the judgment entry appointing counsel to the appeal. (Section (C))</li></ul>
<ul style="list-style-type: none"><li>- Clarifies that applications for payment of attorney's fees shall be filed with the clerk of the appellate court. (Section (C))</li></ul>
<ul style="list-style-type: none"><li>- Clarifies the timing of when to file an application for fees: no earlier than the date the decision is journalized and no later than 30 days after the decision is journalized. (Section (C))</li></ul>
<ul style="list-style-type: none"><li>- Emphasizes the importance of filing a timely application and that failure to timely file a properly completed application may result in reduction or non-payment of fees unless a motion showing good cause the late application is filed. (Section (C))</li></ul>
<ul style="list-style-type: none"><li>- Notifies appointed counsel that reimbursement shall not exceed the schedule of fees established by Cuyahoga County Counsel unless appointed counsel also files a motion for extraordinary fees with reasons supporting the request. (Section (D))</li></ul>
<ul style="list-style-type: none"><li>- The rate of compensation is no longer included in the body of the rule. Instead, the rates are referenced in the Appendix and found on the court's website. This allows the court to easily update when the rates change. (Section (D))</li></ul>

**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.**

## **RULE 20. MEDIATION CONFERENCE**

The following procedures and requirements apply to mediation conferences held in the Eighth District Court of Appeals.

### **(A) Cases Eligible for Mediation.**

- (1) General. The court has discretion to encourage parties to use mediation in any civil appeal or original action filed in this court.
- (2) Exceptions. Mediation is prohibited in the following:
  - (a) As an alternative to prosecution or adjudication of domestic violence;
  - (b) In determining whether to grant, modify, or terminate a protection order;
  - (c) In determining the terms and conditions of a protection order;
  - (d) In determining the penalty for violation of a protection order.
- (3) Nothing in this division shall prohibit the use of mediation in a subsequent divorce or custody case, even though that case may result in the termination of the provisions of a protection order; or in a juvenile court delinquency case, even though the case involves juvenile-perpetrated domestic violence.

**(B) Purposes of Mediation Conference.** The primary purpose is to explore settlement possibilities through mediation. Additionally, any other matters that the mediator determines may aid in handling the disposition of the proceedings will be considered.

**(C) Scheduling.** The court's mediation attorney shall review the notice of appeal, the trial court's judgment from which the appeal is taken, and the praecipe and docketing statement in all civil and administrative appeals to determine whether a mediation conference will be scheduled. ~~All mandamus actions involving compliance with R.C. 149.43, Ohio's Public Records Act, will be referred automatically to the mediation program and will be scheduled for a mediation if deemed advisable.~~

Mandamus actions involving compliance with R.C. 149.43, Ohio's Public Records Act, may be referred to the mediation program by the assigned panel.

In addition, any party may request mediation by contacting the court mediator or by written motion to the court. Such requests may be made confidentially if the

requesting party desires. Such requests should be submitted as soon as possible after initiation of the appeal or original action. Requests for a mediation may or may not be granted by the court. Also, the court may, in its discretion, order the parties to mediate any action before the court at any stage in the proceedings.

- (1) Notice. If a mediation is scheduled, the court will notify the attorneys, or the parties if unrepresented, of the date, time and location of the mediation. Mediations will be held within 21 days after the filing of the notice of appeal or complaint, or as soon thereafter as practicable.
- (2) Mediation Form. Within ten days of receiving notice of the scheduled mediation, counsel for the appellant and appellee or self-represented individuals must complete and return the confidential mediation form to the court mediator. (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.) The confidential mediation form, along with the instructions for completing and submitting the form, are found on the court's website at <http://appeals.cuyahogacounty.us>. The mediation attorney will not disclose this form or its contents to the other parties, unless the submitting party consents to such disclosure.

~~(D) Automatic Stay of Filing Deadlines. Unless otherwise provided by court order, referral of a case for mediation automatically stays the filing of the 9(B) record and/or merit brief for 60 days.~~

~~(E) Attendance. Unless otherwise instructed by the court, the following persons must attend the mediation conference in person: counsel of record for each party as well as the parties. If a party to the action does not have full authority to settle, then a person with authority to settle the case up to the stated demand shall attend the mediation. necessary for full settlement authority including insurance adjustors, and self-represented litigants. "Counsel," for purposes of this rule, means the attorney with primary responsibility for the case and upon whose advice the party relies.~~

~~(F) Uniform Mediation Act. The R.C. 2710 "Uniform Mediation Act" (UMA), is incorporated by reference and adopted by this court through this local rule.~~

**(G) Privileged Communications and Confidentiality.**

- (1) 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. Any filing with this court that contains any

reference to a Mediation communication, as defined in O.R. C 2710.01, shall be stricken. 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 in writing. 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.

**(HG) Prehearing Conference.** The court's mediation attorney may set cases for prehearing conferences under App.R. 20 in order to simplify the issues in an appeal or original action if a settlement is not possible or for case management purposes. The UMA, which applies to mediations, does not apply to prehearing conferences.

**(HH) Noncompliance Sanctions.** If a party or attorney fails to comply with the provisions of this rule or the provisions of the mediation conference order, the administrative judge or the merit panel, as applicable, 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.

**(JI) Referral to Resources.** The court administrator as well as the court's mediation office shall maintain resources for mediation parties, including victims and suspected victims of domestic violence, encouraging appropriate referrals to legal counsel and other support services such as Children Services, domestic violence prevention, counseling, substance abuse, and mental health services.

## **RULE 46. APPOINTED COUNSEL**

(A) **Motions.** Motions for appointment of counsel for an indigent party and for the transcript at state's expense should be filed, ~~wherever~~ whenever possible, as a single motion. A copy of the Affidavit of Indigency shall be 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, juvenile, and termination of parental rights 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, juvenile, and termination of parental rights cases in which counsel has been appointed for an indigent party must be completed on the forms prescribed by the Ohio Public Defender Commission. Counsel shall attach to the application a financial disclosure form and a copy of the judgment entry appointing counsel to the appeal. The application and financial disclosure forms can be found on the court and Ohio Public Defender's websites. Such applications must be submitted to the court for payment no later than 30 days after the decision in the case has been journalized.

Applications for payment of attorney's fees shall be filed with the clerk of the appellate court no earlier than the date the decision is journalized and no later than 30 days after the decision is journalized. The Ohio Public Defender does not reimburse counties for fees paid pursuant to an untimely or improperly completed application. Accordingly, the failure to timely file a properly completed application may result in reduction or non-payment of fees unless a motion showing good cause for the late application is filed. The form includes the application, entry, and certification by the court for assigned counsel fees as required by the County Fiscal Officer 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. Reimbursement for appointed counsel fees shall not exceed the schedule of fees established by Cuyahoga County Council pursuant to R.C. 2941.51, unless appointed counsel also files a motion for extraordinary fees with reasons supporting the request. (The Schedule of Fees is posted on the court’s website and set forth in Appendix B.)

The rate of compensation for appointed counsel, as authorized by Cuyahoga County Council, is set forth in the following schedule:

	<u>Hourly Rate</u>
Death sentence.....	\$95
Other appellate level proceedings	
In court.....	\$60
Out of court.....	\$50

	<u>Maximums</u>
Aggravated murder — death sentence.....	\$15,000
Aggravated murder with or without specifications.....	\$4,500
Murder .....	\$2,250
Voluntary manslaughter, involuntary manslaughter, negligent homicide, aggravated vehicular homicide, and vehicular homicide.....	\$1,250
All other felonies.....	\$1,125
Misdemeanors (except those noted above).....	\$875
Other and juvenile.....	\$875

**APPENDIX B**

**SCHEDULE OF FEES**

The amount of reimbursement in criminal matters is based on the level of the offense(s) of which the appellant was convicted, not the level of the offense(s) contained in the indictment. The amount of reimbursement in juvenile and termination of parental rights appeals are reimbursed at a flat rate up to the maximum provided in the Schedule of Fees.

The rate of compensation for appointed counsel, as authorized by Cuyahoga County Council, is set forth in the following schedule:

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