

**LOCAL RULES
OF THE
NINTH DISTRICT COURT OF APPEALS**
[Including Amendments through January 1, 2008]

LOCAL RULE 1. GENERAL PROVISIONS

(A) **Application of Rules of Civil Procedure.** In cases on appeal when the Ohio Rules of Appellate Procedure or these local rules cannot be applied, the Ohio Rules of Civil Procedure will apply, unless they are clearly inapplicable.

(B) **General Definitions.** As used in these rules, unless the context otherwise requires or the court otherwise orders:

(1) “Appellant” is any party who has filed a notice of appeal.

(2) “Appellee” is any party to the proceedings from which the appeal is taken whom appellant designates as an appellee on the docketing statement or who, upon written motion of the party, is given leave by the court to proceed as an appellee in the appeal.

(3) As used in these rules, “appellant” includes a cross-appellant, “appellee” includes a cross-appellee, and “appeal” includes a cross-appeal. “Trial court” includes the court or agency from which the appeal is directly taken.

(4) “Party to the appeal” includes an appellant, cross-appellant, appellee or cross-appellee.

(5) “Counsel of record” includes only those attorneys who are listed on the docketing statement as representing an appellant or appellee or who have filed a notice of appearance in the case on behalf of such a party.

[Adopted eff. 7-1-98; amended eff. 1-1-04.]

LOCAL RULE 1.1. FILING DOCUMENTS

The clerks of the courts of common pleas of the counties of Lorain, Medina, Summit and Wayne serve as the clerks of this court of appeals in their respective counties pursuant to R.C. 2303.03. All documents required to be filed in this court shall be filed with the clerk of the court of appeals of the county in which the appeal or original action originated. Items sent directly to this court at its headquarters in Akron, Ohio, will not be considered filed.

[Adopted eff. 11-1-01.]

LOCAL RULE 1.2. NOTICES OF APPEAL IN CERTAIN CIVIL CASES

When filing a notice of appeal more than thirty days from journalization of a final judgment in a civil case in which the appellant claims that the trial court did not properly serve notice of the final judgment, the appellant shall attach to the notice of appeal a certified copy of the trial court docket. If the appellant fails to comply with this subsection, the court may dismiss the appeal without notice to the parties. See App.R. 4(A); Civ.R. 58(B).

[Adopted eff. 11-1-01.]

LOCAL RULE 2. COSTS DEPOSITS

(A) Appeal. At the time of filing a notice of appeal in the trial court, the appellant or cross-appellant shall deposit with the clerk of courts the sum of \$125 as security for the payment of costs that may accrue in the court of appeals. The clerk of the trial court shall forward such deposit to the clerk of the court of appeals with the copy of the notice of appeal and other papers as required by Loc.R. 3(B).

(B) Original Actions. At the time of filing a complaint in an original action (quo warranto, mandamus, habeas corpus, prohibition, or procedendo), the relator shall deposit with the clerk of the court of appeals the sum of \$125 as security for the payment of costs that may accrue in the action. If a party seeks the attendance of a witness through a subpoena, the party shall first deposit with the clerk of the court of appeals \$20 for each witness.

(C) Actions Brought by Indigents. If the party bringing the appeal or original action, or the party seeking the attendance of a witness, claims to be unable to pay a deposit, the party shall file a motion to waive the payment of the deposit and an affidavit of indigency that contains financial information to support the party's claim that the party is unable to make the deposit. The party must use the affidavit of indigency approved by the Ohio Public Defender's Office; the affidavit must have been notarized within one year of the date of filing with this court. If the affidavit is filed by an inmate of a state institution, it shall be accompanied by a certificate of the superintendent or other appropriate officer of the institution setting forth the amount of available funds, if any, that the inmate has on deposit with the institution. The court's grant of a waiver of the deposit does not waive the liability to pay the court costs as ordered by the court at the termination of the appeal or original action.

(D) Failure to Pay Deposit. If the party bringing the appeal or original action, or the party seeking the attendance of a witness, files with the clerk a sworn affidavit of inability to secure costs by prepayment, the clerk shall receive and file the appeal, complaint, or subpoena the witnesses without security deposits. After notice to all of the parties, the court may dismiss the case at any time if the deposit is not paid or a waiver of the payment of the deposit pursuant to subsection (C) has not been obtained.

[Adopted eff. 7-1-98, amended eff. 1-1-06.]

LOCAL RULE 3. DOCKETING STATEMENT

(A) Duty of the Appellant. Each appellant shall file a completed docketing statement on the form prescribed by this court, which is reproduced in the appendix, with the clerk of the trial court at the same time as filing the notice of appeal. The clerk will provide docketing statement forms as provided by the court. If no forms are readily available, the appellant may copy the form, provided it is copied legibly and in its entirety, or the form may be printed from the court's web site. The appellant shall file an original plus sufficient copies of the docketing statement to permit the clerk of the trial court to send a copy to the clerk of the court of appeals and to each person or entity who was a party in the proceedings from which the appeal is taken.

(1) Parties.

(a) Enumeration of Parties. Each appellant shall include on the docketing statement and, if necessary, on a separate sheet attached to the docketing statement, the names of all persons or entities who were named as parties to the proceedings from which the appeal is taken, each party's designation in those proceedings, the name of the attorney representing the party, his or her registration number, address and phone number, or, if the party is not represented by counsel, the address and phone number of the party.

(b) Designation of Parties. The appellant shall designate as an appellee any party to the proceedings below whose interests may be adversely affected by reversal of the judgment or order from which the appellant appeals. All other parties to the proceedings shall retain, throughout the appeal, the designation used by the trial court (plaintiff, defendant, etc.), unless otherwise ordered by this court. Any party designated as an appellee by the appellant may move the court to withdraw from the appeal. Any party not designated as an appellee by the appellant may move the court to proceed as an appellee.

(2) Trial Court Judgment Entry.

(a) Attachment to Docketing Statement. The appellant shall attach to the docketing statement a copy of the final judgment entry of the trial court or agency from which the appeal is taken and any other orders that demonstrate that this court has jurisdiction to hear the appeal. If copies do not show a legible time-stamp, the appellant must include other evidence of the date on which each entry or order was journalized by the clerk of the trial court or, if the appeal is taken from an order of another agency, was finalized by that agency pursuant to law.

(b) Attachment to Brief. Attachment of the final judgment entry and other orders to the docketing statement does not relieve the party of the obligation to attach a copy of the same entry or orders to the brief, pursuant to Loc.R. 7.

(B) Duty of the Clerk of the Trial Court. The clerk of the trial court shall transmit a copy of the notice of appeal, the docketing statement with the judgment attached, and a copy of the praecipe to the court reporter, if any, to the clerk of the court of appeals and to counsel of record for each party to the proceedings from which the appeal is taken, or, if a party is not represented, to the party within three (3) business days after the filing of the notice of appeal.

(C) Failure to File a Docketing Statement. If the appellant fails to file a docketing statement pursuant to this rule, the court may dismiss the appeal.

[Adopted eff. 7-1-98; amended eff. 1-1-04; amended eff. 1-1-06.]

LOCAL RULE 3.1. CHANGE OF ADDRESS

(A) Notification of Change of Address. If the address listed on the docketing statement for any party to the appeal or for counsel of record is incorrect or changes during the course of an appeal, the party or attorney shall file a written notice of change of address with the clerk of the appellate court. The notice shall include the case numbers of all cases pending in the court of appeals in which the person is a party to the appeal or the attorney is counsel of record.

(B) Duty of Appellate Clerk upon Notification of Change of Address. The clerk of the appellate court shall note upon the docket of each case the change of address of the party or attorney and shall forward a copy of the notice to the court of appeals at its headquarters in Akron, Ohio.

[Adopted eff. 7-1-98; amended eff. 1-1-04.]

LOCAL RULE 4. BOND

All applications for granting or reduction of bond must be accompanied by proof of service of notice of the application to opposing counsel. A hearing on the application will be scheduled only after prior consultation with the court.

[Adopted eff. 7-1-98.]

LOCAL RULE 5. THE RECORD ON APPEAL

(A) Duty of the Appellant. It is the duty of the appellant to arrange for the timely transmission of the record, including any transcripts of proceedings, App.R. 9(C) statement, or App.R. 9(D) statement, as may be appropriate, and to ensure that the appellate court file actually contains all parts of the record that are necessary to the appeal.

(1) Official Court Reporter. The official court reporter is the person appointed by the trial court to transcribe the proceedings for the trial court.

(a) Praecipe.

(i) If the trial court has an official court reporter, and the appellant desires a transcript of proceedings to be prepared for inclusion in the record, the appellant must serve the official court reporter with a praecipe that designates the dates and parts of the proceedings to be included. A copy of the praecipe, which has been signed by the court reporter, shall be filed in the trial court with the notice of appeal. See App.R. 9(B).

(ii) No praecipe to the court reporter is necessary if the docket of the trial court reflects that the transcript was filed with the trial court, either as an exhibit to an original paper filed in the trial court, or independent of any other filings, provided it was submitted to the trial court for its consideration in the matter then pending before it. For example, no praecipe is necessary if a transcript of proceedings before a magistrate was filed in the trial court with objections to a magistrate's decision.

(iii) No praecipe to the court reporter is necessary if the proceedings were transcribed for, and filed in, a prior appeal; however, if a party desires a transcript of proceedings from a prior appeal to be included in the record of a pending appeal, the party must move the court to supplement the record with that transcript.

(b) Proceedings Recorded by Videotape or Audiotape. Pursuant to App.R. 9(A), a videotape recording of a proceeding that has been certified by the official court reporter may constitute the transcript of proceedings without being transcribed into written form; the parts of a videotape transcript necessary for the court to determine the questions presented, however, must be typed or printed and appended to the appellant's brief. An audiotape recording of a proceeding must be transcribed into written form in all cases.

(2) No Official Court Reporter. If the trial court does not have an official court reporter, regardless of the means by which the proceedings were recorded, the appellant shall proceed under App.R. 9(C) or 9(D). A statement pursuant to App.R. 9(C) or 9(D) must be in written form and approved by the trial court.

(3) Supplementation of the Record after the Record Has Been Filed. No additions may be made to the record after the date on which the notice of the filing of the record is mailed to the parties except upon leave of the court of appeals to supplement the record.

(B) Duty of the Clerk of the Trial Court.

(1) Time for Filing the Record. Unless otherwise ordered by the court of appeals, the clerk of the trial court shall prepare, assemble and transmit the record to the clerk of the court of appeals when the record is complete. The record shall be deemed to be complete under the following circumstances:

(a) When forty days have elapsed after filing of the last notice of appeal, and there is no extension of time for transmission of the record, or

(b) When the transcript of proceedings is filed with the clerk of the trial court, or

(c) When a statement of the evidence or proceedings, pursuant to App.R. 9(C), is settled and approved by the trial court, and filed with the clerk of the trial court, or

(d) When an agreed statement in lieu of the record, pursuant to App.R. 9(D), is approved by the trial court, and filed with the clerk of the trial court.

(e) Where appellant, pursuant to App.R. 9(B), designates that no part of the transcript of proceedings is to be included in the record or that no transcript is necessary for appeal, after the expiration of ten days following service of such designation upon appellee, unless appellee has within such time filed a designation of additional parts of the transcript to be included in the record.

(f) Where the appellant fails to file either the docketing statement or the statement required by App.R. 9(B), ten days after filing the notice of appeal.

(2) **Exhibits.** Unless otherwise directed by the court of appeals, the clerk of the trial court shall not transmit to the clerk of the court of appeals any trial exhibits consisting of weapons, ammunition, money, drugs, or valuables. The list of documents that the trial court clerk transmits with the record (App.R. 10(B)) shall designate which exhibits are not being transmitted pursuant to this rule as well as the custodian and location of the exhibits.

(C) **Duty of the Clerk of the Court of Appeals.** Upon receipt of the record, the clerk of the court of appeals shall file the record and immediately give written notice to all parties of the date on which the complete record was filed. The clerk shall also forward a copy of the notice to the office of the court of appeals located in Akron, Ohio, and shall indicate on the copy of the notice the date that the notice was mailed to the parties.

(D) **Extensions of Time.** The trial court shall not extend the time for transmitting the record, pursuant to App.R. 10(C), more than once and no such extension shall exceed thirty (30) days. Thereafter, any request for extension of time shall be made to the court of appeals.

(E) **Removal of the Record.** The clerk of the court of appeals shall not permit any party or counsel to remove from its possession any part of the original papers, exhibits, or docket and journal entries unless prior permission has been given by the court of appeals to the party or counsel seeking to remove the same. The clerk of courts may permit a party or counsel for such party to remove a transcript of proceedings for a period not to exceed five (5) days; however, when an appeal has been assigned for oral argument, any party or counsel for such party, who has withdrawn the transcript from the clerk's office shall return the transcript to the custody of the clerk not later than five (5) days prior to the date of the argument. The clerk shall record in the docket the date on which the transcript is removed and returned. If counsel or a party fails to timely return a removed transcript of proceedings, the court may prohibit counsel or the party from presenting oral argument.

(F) **Failure to Cause Transmission of the Record.** If the appellant fails to cause the record to be filed with the clerk of the court of appeals in the time provided by this rule, or as extended by the court, the court may dismiss the appeal.

[Adopted eff. 7-1-98; amended eff. 3-1-01; amended eff. 1-1-06.]

LOCAL RULE 6. TRANSCRIPTS OF PROCEEDINGS

(A) Page Limitation. No volume of a transcript of proceedings filed by a court reporter shall be more than two hundred (200) pages in length, except that a volume may extend to a maximum of two hundred fifty (250) pages if such extra pages are necessary to complete the testimony of a witness or to complete a part of the proceedings such as voir dire, opening statements, closing arguments, or jury instructions.

(B) Certificate of Official Court Reporter. The certificate of an official court reporter must be signed by the court reporter and must reflect the court reporter's appointment by the trial court. The following forms are suggested:

(1) Complete Transcript.

I, _____, official court reporter for the [name of court], duly appointed therein, do hereby certify that the ["foregoing transcript of proceedings, consisting of ___ pages," or "videotape transcript submitted herewith,"] together with exhibits, is a true and complete transcript of the proceedings conducted before the Honorable _____, judge of said court, on the ___ day of _____, 20___, as transcribed by me.

Subscribed this ___ day of _____, 20___.

[type name here]

(2) Partial Transcript.

I, _____, official court reporter for the [name of court], duly appointed therein, do hereby certify that the ["foregoing transcript of proceedings, consisting of ___ pages," or "videotape transcript submitted herewith,"] together with exhibits, is a true partial transcript, as transcribed by me, of the proceedings conducted before the Honorable _____, judge of said court, on the ___ day of _____, 20___, including the testimony of the witnesses named in the index to the transcript.

Subscribed this ___ day of _____, 20___.

[type name here]

(C) Transcript Made Record. No transcript of proceedings shall be considered as a part of the record on appeal unless one of the following applies:

- (1)** The official court reporter has certified the transcript as provided in subsection (B) of this rule;
- (2)** The record contains an entry of the trial court appointing the court reporter who has certified the transcript;
- (3)** The transcript is a part of the original papers and exhibits filed in the trial court;

- (4) The transcript has been incorporated into an App.R. 9(C) statement that has been approved by the trial court; or,
- (5) The court of appeals has granted a motion to supplement the record with a transcript that was filed in a prior appeal.

[Adopted eff. 7-1-98; amended eff. 3-1-01; amended eff. 1-1-06.]

LOCAL RULE 7. THE BRIEF

(A) General Requirements for all briefs. Except as otherwise provided in this rule, briefs shall conform strictly to App.R. 19.

(1) Briefs shall be either typewritten or printed by standard typographic or other mechanical printing process in at least a twelve point type. A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined. The type size should be at least as large as that used by the Ohio Supreme Court Reports, Third Edition.

(2) Briefs shall be double spaced except for quoted matter, headings, and assignments of error, which shall be single spaced.

(3) An original and four legible copies shall be filed. The original shall not be bound; it should be secured by a clip or rubber band.

(4) The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open. The Court encourages the use of staples to bind the brief. Paper or plastic covers shall not be used.

(5) Footnotes should be limited to information that supplements the text, but would otherwise be distracting in the body of the brief.

(6) Briefs should minimize use of the terms “appellant” and “appellee” but should use the parties’ actual names or descriptive terms as (for example, “the injured person,” “the employer,” or “the administrator”).

(B) Appellant’s Brief. Appellant’s brief shall contain, under appropriate headings, and in the order here indicated:

(1) A cover page, which shall contain:

(a) The case caption, including the name of the court, the names of the parties together with their respective party designation (e.g., “Appellant” or “Appellee”), the court of appeals’ case number, the name of the trial court and the trial court case number from which the appeal is taken;

(b) The title of the document (e.g., Brief for Appellant);

- (c) The name, address, phone number and Ohio Supreme Court registration number of counsel representing the party on whose behalf the brief is being filed, or, if a party is not represented by counsel, the name, address and phone number of the party filing the brief;
 - (d) The name of the party or parties on whose behalf the document is being filed; and
 - (e) If the appeal is an App.R. 11.2 expedited appeal, the cover shall contain the following designation: “App.R. 11.2 Appeal”.
- (2) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.
 - (3) A statement of the assignments of error. The assignments of error may be single spaced.
 - (4) A statement of the issues presented. The statement of the issues shall be a succinct, clear, and accurate statement of the arguments made in the body of the brief.
 - (5) A statement of the case. The statement shall indicate briefly the nature and history of the case, where it was filed, and the result below.
 - (6) A statement of the facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with subsection (F) of this rule.
 - (7) Argument and law. The argument shall contain the contentions of the appellant with respect to the assignments of error and the supporting reasons with citations to the authorities and statutes on which the appellant relies. Each assignment of error shall be separately discussed and shall include the standard of review applicable to that assignment of error under a separate heading placed before the discussion of the issues.
 - (8) A short conclusion stating the precise relief sought.
 - (9) An appendix at the end of the brief.
- (a) The appendix shall consist of legibly reproduced copies of the following items only:
 - (i) The judgment entry appealed from;
 - (ii) Any opinion of the court announcing the decision reflected by the judgment entry appealed from;
 - (iii) Any written findings of fact and conclusions of law in the record on appeal;
 - (iv) All statutes, rules, regulations, ordinances, and constitutional provisions cited in the brief; and,
 - (v) All magistrate reports containing findings of fact and recommendations which are partially or totally adopted by the court in its final order.
 - (b) Each page in the appendix shall be sequentially numbered (numbering may begin with the first item in the appendix and continue through the last item or numbering may begin from “one” for each

item). References in the brief to any item that is contained in the appendix shall include the specific page(s) to which the court should refer.

(C) **Appellee's Brief.** The brief of the appellee shall conform to the requirements set forth in subsections (A) and (B) of this rule except that a statement of the issues and a statement of the case, or of the facts relevant to the issues, need not be made unless the appellee determines that the statements provided by the appellant are not complete or accurate.

(D) **Reply Briefs.** Reply briefs shall be restricted to matters in rebuttal of the appellee's brief. Proper rebuttal is confined to new matters in the appellee's brief. Reply briefs must conform to the requirements set forth in subsections (A) and (B) of this rule except that the reply brief need not set forth the statement of the issues, statement of the case, statement of the facts, or appendix materials already attached to appellant's or appellee's brief.

(E) **Length of Brief.** A party may choose from one of the following options to determine the appropriate length of the party's brief.

(1) **Page Limit.** Appellant's and appellee's briefs shall not exceed thirty (30) pages. Appellant's reply brief shall not exceed ten (10) pages. Page numbering shall begin on the page containing the statement of the assignments of error, shall continue on the pages containing the statement of the case, statement of the facts, argument, and conclusion, and shall end on the page containing the certificate of service.

(2) **Word Count.** Appellant's and appellee's briefs shall not exceed 14,000 words. Appellant's reply brief shall not exceed 4,700 words.

(a) **Included words.** Headings, footnotes, and quotations count toward the word limitation. The cover page, table of contents, table of authorities, certificate of service, certificate of compliance, and appendix do not count toward the limitation.

(b) Any brief prepared under the word count provision must be printed with all text, including footnotes, appearing in Times New Roman with at least a 14-point typeface.

(c) **Certificate of compliance.** A brief submitted under this section must include a certificate, signed by the attorney or unrepresented party, that the brief complies with the word count limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state the number of words in the brief, as calculated under section (a). The following certificate may be used:

CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with the word-count provision set forth in Ninth District Local Rule 7(E)(2). This Brief is printed using Times New Roman 14-point typeface using _____ word processing software and contains _____ words.

Signature

(F) References to the Record. References to the pertinent parts of the record shall be included in the statement of facts and in the argument section of the brief. If a party fails to include a reference to a part of the record that is necessary to the court's review, the court may disregard the assignment of error or argument. References must be sufficiently specific so as to identify the exact location in the record of the material to which the court must refer and, where applicable, shall include the title of the item, volume or reel number, and page or counter number.

(G) Case Citations. Case citations must include volume number, page number, and the particular page numbers relevant to the point of law for which the case is cited. Where available, case citations must include the webcite and paragraph reference in accordance with the Supreme Court of Ohio's Revisions to the Manual of Citations (2002).

(H) Failure to Comply. A brief not prepared in accordance with these rules, including the general appellate rules, may be stricken with an order for a conforming brief to be filed within a specified time. An appellant's failure to conform may result in dismissal of the appeal; an appellee's failure to conform may result in the brief being stricken and the right to argue being denied.

[Adopted eff. 7-1-98; amended eff. 7-1-00; amended eff. 11-1-01; amended eff. 1-1-06; amended eff. 1-1-08.]

RULE 8. ORAL ARGUMENT

(A) Persons Permitted to Argue. Only counsel of record or a party to the appeal who is not represented by counsel may present oral argument to the court. Counsel of record in any case includes only those attorneys who are listed on the docketing statement, who have filed a notice of appearance in the case, or who are legal interns authorized under the Supreme Court of Ohio's Rules for the Government of the Bar and who have received this Court's permission to appear.

(B) Time Allowed for Argument. In accordance with App.R. 21(B), oral argument shall be reduced from thirty (30) minutes per side to fifteen (15) minutes per side.

(C) Continuance of Argument. No continuance of oral argument will be granted unless a written motion for a continuance is filed within fourteen days from the date that the notice of oral argument is filed. No untimely motion for continuance will be granted unless the moving party demonstrates exceptional circumstances that justify the continuance.

(D) Waiver of Argument. An appellant may waive oral argument by filing a notice of waiver of oral argument with the clerk of the appellate court no later than seven (7) days prior to the date on which oral argument is scheduled. An appellee may waive oral argument by filing a notice of waiver of argument with the clerk of courts no later than three (3) days prior to the date of argument. The notice of waiver must contain proof of service upon opposing counsel and the date that service was made. Within twenty-four (24) hours from the time that the notice of waiver is filed, the party filing the notice shall separately notify the Akron office of the court of appeals, by telephone or fax transmission, that the party has filed a notice of waiver of argument.

(E) Supplemental Authority. If counsel or a party intends to rely on cases decided after the filing of the briefs, counsel or the party shall file a Notice of Supplemental Authority with the new material attached to the Notice. The court may accept the supplemental authority and allow other parties to the appeal to respond to the supplemental authority at oral argument or in writing after oral argument.

[Adopted eff. 7-1-98; amended eff. 7-1-00; amended eff. 1-1-04; amended eff. 1-1-06; amended eff. 1-1-08.]

LOCAL RULE 9. JOURNAL ENTRIES

(A) Form of Decisions. Decisions of the court will be announced on a form provided by the court entitled, "Decision and Journal Entry." Upon receipt by the clerk of the court of appeals, the clerk shall immediately stamp and file the "Decision and Journal Entry," at which time it will become the journal entry of judgment.

(B) Service of Journal Entries and Court Notices. The clerk of court for each county shall mail copies of journal entries, court notices, and the final decision and journal entry to counsel of record for a party to the appeal at the last known business address of counsel as listed in the court of appeals' records. If a party to the appeal is not represented by counsel, the clerk of court shall mail copies of journal entries, court notices, and the final decision and journal entry to the party at the last known address of the party as listed in the court of appeals' records.

[Adopted eff. 7-1-98; amended eff. 1-1-04; amended eff. 1-1-06.]

LOCAL RULE 10. ORIGINAL ACTIONS

(A) Commencement of Action. Service in original actions shall be made and the action shall commence and proceed as a civil case under the Ohio Rules of Civil Procedure, unless those rules are clearly inapplicable. In the absence of extraordinary circumstances, no alternative or preemptive writs will be issued, other than in a habeas corpus action.

(B) Pretrial Proceedings. Whenever possible, original actions shall be decided upon either a motion to dismiss or upon a motion for summary judgment. If a dispositive motion is not filed or has not been filed at the time the answer is filed or due, the court will issue a schedule for the presentation of an agreed statement of facts or stipulations and for the submission of briefs.

(C) Trial. If the action is not decided pursuant to subsection (B), the action may be referred to a magistrate, pursuant to App.R. 34 and Civ.R. 53. Oral testimony will be heard only in cases referred to a magistrate. Court reporters will not be in attendance at a magistrate's hearing unless arranged and paid for by one or more of the parties and appointed by the court.

(D) Habeas Corpus. An action for a writ of habeas corpus shall be similarly submitted whenever practicable and when the interests of justice will not be defeated by delay.

(E) **Briefs.** Parties submitting briefs shall adhere to the form and procedure provided by the Ohio Rules of Appellate Procedure and this court's local rules, except that a "statement of issues presented" will be substituted for the "statement of the assignments of error presented for review" when appropriate. (See, App.R. 16(A)(3)).

[Adopted eff. 7-1-98; amended eff. 1-1-06.]

LOCAL RULE 11. COUNSEL ON APPEAL

(A) **Appearance of Counsel.** Any attorney representing a party on appeal, but who was not listed on the docketing statement, must file a notice of appearance in the case with the court of appeals. An attorney shall include his or her attorney registration number issued by the Supreme Court of Ohio on all documents filed with the court.

(B) **Appointment of Counsel.** Except in appeals pursuant to App.R. 5, a request for appointment of counsel shall be made in the first instance in the trial court. A motion to appoint counsel that is filed in the court of appeals must be accompanied by proof that the trial court denied a request for appointment of counsel.

(C) **Selection of Counsel.** The court shall maintain a list of attorneys who have notified the court of their interest in serving as appointed counsel in criminal cases. Counsel shall be selected in a continual rotation from a list maintained by the court, except that the court may consider the experience and expertise of counsel and counsel's management of his/her current appellate caseload. Whenever possible, the court shall appoint counsel practicing in the county in which the case is filed.

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

(D) **Withdrawal of Counsel.** A motion to withdraw as counsel must be supported by a showing of good cause for withdrawal and accompanied by proof of service of the motion upon the client. The motion shall also show the name and address of any substitute counsel and the name and address of the client.

(E) **Attorney's Fees.**

(1) **Application.** Application by appointed counsel in criminal cases for attorney's fees on appeal shall be completed on the most recent forms prescribed by the Ohio Public Defender, including the application for fees and a financial disclosure/affidavit of indigency form. Incomplete applications, applications submitted without the proper financial disclosure/affidavit of indigency form, or applications submitted on the wrong forms shall be returned to counsel. The affidavit of indigency must have been notarized within one year of the date of filing with this court.

(2) **Limitations on Compensation.** Payments for services will not exceed the schedule of fees established by each county pursuant to law.

(3) **Time for Filing.** All applications for payment of attorney's fees shall be filed with the clerk of the appellate court within ten (10) days of the entry of the decision and journal entry or order that disposes of the appeal.

(4) **Penalties.** The Ohio Public Defender does not reimburse counties for fees paid pursuant to an untimely or improper application. Accordingly, the failure to timely file a proper application and financial disclosure/affidavit of indigency form may result in reduction or non-payment of fees.

[Adopted eff. 7-1-98; amended eff. 1-1-04; amended eff. 1-1-06.]

LOCAL RULE 12. PRESIDING AND ADMINISTRATIVE JUDGES

(A) Presiding Judge.

(1) **Selection and Term.** The presiding judge shall be elected by a majority vote of the judges of this court and designated by a journal entry filed with the Summit County Clerk of Courts. The presiding judge shall serve for a one year period commencing January 1 of each year and may serve consecutive terms.

(2) **Powers and Duties.** The presiding judge shall perform all duties incumbent upon the office, shall have full responsibility and control over matters of case administration and shall preside over any sessions and meetings of the court en banc and over any three-judge panel of which the presiding judge is a member. In the absence of the presiding judge, the administrative judge shall perform the duties of the presiding judge. The judge who is senior in service on the court shall preside on any three-judge panel of which the presiding judge or administrative judge is not a member.

(B) Administrative Judge.

(1) **Selection and Term.** The administrative judge shall be elected by a majority vote of the judges of this court and designated by a journal entry filed with the Summit County Clerk of Courts. The administrative judge shall serve for a one year period commencing January 1 of each year and may serve consecutive terms.

(2) **Powers and Duties.** The administrative judge shall perform all duties incumbent upon the office and shall have full responsibility and control over matters of office and business administration. In the absence of the administrative judge, the presiding judge shall perform the duties of the administrative judge.

[Adopted eff. 7-1-98; amended eff. 1-1-04.]

LOCAL RULE 13. EFFECTIVE DATE

Effective January 1, 2008, all currently existing local rules of this court are repealed and these local rules are adopted. These rules will govern all proceedings brought after the effective date and all pending proceedings, except to the extent that their application in a particular pending action would not be feasible or would work injustice.

[Adopted eff. 7-1-98; amended eff. 1-1-06; amended eff. 1-1-08.]

RULE 14. ADMISSION PRO HAC VICE

(A) The 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. An attorney admitted pro hac vice may file pleadings, memoranda, briefs, or other documents and participate in oral argument before the court.

(B) Admission pro hac vice will be allowed only on motion of an attorney admitted to practice in Ohio and registered with the Clerk of the Ohio Supreme Court for active status. The motion shall briefly and succinctly state the qualifications of the attorney seeking admission. It shall be filed with the first pleading or brief in which the attorney seeks to participate or at least 30 days before oral argument if the attorney seeks only to participate in oral argument. This court may withdraw admission pro hac vice at any time.

(C) The clerk of courts shall reject any filing, other than a notice of appeal, by an attorney who is not admitted to practice in Ohio and who has not complied with section (B) of this rule. The court will not permit an attorney who is not admitted to practice in Ohio to present oral argument, unless prior leave to participate in oral argument has been granted.

[Adopted eff. 7-1-00; amended eff. 1-1-08.]

RULE 15. DESIGNATION OF COURT ADMINISTRATOR AS MAGISTRATE

(A) Pursuant to App.R. 34, the court appoints the Court Administrator to act as Magistrate for the limited purposes of ruling on routine procedural motions and entering routine procedural orders.

(B) The following are routine procedural motions:

(1) Motions to enlarge or reduce the time to file briefs or the record;

(2) Motions to consolidate;

(3) Motions to supplement the record or briefs;

(4) Motions to file non-complying briefs;

(5) Motions to proceed in forma pauperis;

(6) Motions to extend the time to file the docketing statement, comply with in forma pauperis requirements, or comply with a show cause order.

(C) The following are routine procedural orders:

(1) Orders setting briefing schedules;

(2) Show cause orders;

(3) Orders to strike a pleading for failure to comply with the Ohio Rules of Appellate Procedure or this Court's Local Rules;

(4) Orders to deny a transcript of proceedings at State's expense or appointment of counsel where the order was not first sought in the trial court; and

(5) Notices of oral argument.

[Adopted eff. 10-05-05.]

RULE 16. PREHEARING CONFERENCE; MEDIATION

This Court may conduct prehearing or mediation conferences in selected cases.

(A) Scheduling.

(1) Civil and administrative appeals will be reviewed by this Court promptly after the filing of the notice of appeal to determine whether a prehearing conference under Appellate Rule 20 would assist the Court or the parties. In addition, any party may telephone the Court's Mediator to request a prehearing conference to be held or to be canceled. Such request will be confidential if the requesting party desires.

(2) If an appeal is selected for a conference, upon seven days notice from the Court, unless excused, counsel and parties (including insurance adjusters) are required to attend a conference before a conference attorney, to be held within twenty-one (21) days after the filing of the notice of appeal, or as soon thereafter as practicable, to consider the possibility of settlement, the simplification of issues, and such other matters as may aid in the disposition of the proceedings by the court. When possible, the conference will be held in the county from which the appeal originates. Persons excused in advance by the Mediator from attending in person shall be available by telephone. At the discretion of the Mediator, conferences may be conducted telephonically.

(B) Purposes and Conduct of the Conference.

(1) The primary purposes of the conference are to explore settlement possibilities through mediation and to address anticipated procedural matters. Additionally, any other matters that the Court determines may aid in the disposition of the proceedings will be considered.

(2) The statements and comments made in settlement negotiations during the conference are confidential except to the extent disclosed by the conference order under Paragraph (C) and shall not be disclosed by the Mediator nor by parties or their counsel.

(3) If a conference is scheduled, a party may telephone the court's Mediator and request that the court issue a sua sponte order extending the time in which to transmit the record or file the brief and assignments of error. Requests for extensions may also be made orally at the conference and after the conference by telephone if agreed to by all parties.

(C) Conference Order. At the conclusion of the conference, this Court's Presiding Judge, upon recommendation of the Mediator or conference attorney, may enter an order setting forth the actions taken and the agreements reached by the parties.

(D) Noncompliance Sanctions. If a party or attorney fails to comply with the provisions of this Rule or the provisions of the conference order or settlement agreement, this Court may assess reasonable expenses caused by the failure, including attorney fees. This Court may also assess all or a portion of the appellate costs or dismiss the appeal.

[Adopted eff. 1-1-08.]

SPECIMEN DECISION AND JOURNAL ENTRY

STATE OF OHIO)
)ss:
COUNTY OF _____)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
C.A. NO.

Appellant)

v.)

Appellee)

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT, _____ COUNTY, OHIO
CASE NO.

DECISION AND JOURNAL ENTRY

Dated:

This cause was heard upon the record in the trial court. The following disposition is made:

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this court, directing the _____ Court to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals, at which time the period for review shall begin to run. App.R. 22(E).

Costs taxed to _____.

[Judge's name]
FOR THE COURT

_____, J.

_____, J.

CONCUR.

APPEARANCES:

**COURT OF APPEALS OF OHIO
NINTH APPELLATE DISTRICT**

Docketing Statement

Appeal No. _____

A time-stamped copy of the final judgment being appealed must be attached to this statement.

Trial Court Name _____

Trial Court Caption _____

(Name of first plaintiff)

versus

(Name of first defendant)

Trial Court Case Number _____

Trial Court Judge _____

App.R. 11.2 Expedited Appeal YES NO
(circle one)

THE RECORD

Mark the paragraph that applies.

TO THE CLERK OF COURTS: Please immediately assemble and transmit the record in this case. I certify that the paragraph I marked accurately describes the complete record to be filed:

1. _____ The record will consist of **ONLY** the original papers, exhibits, a certified copy of the docket and journal entries, and any transcripts of proceedings that were filed in the trial court prior to final judgment.
2. _____ The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and a full or partial transcript of proceedings prepared for this appeal by an official court reporter, who I served with a praecipe that I also filed with this court.
3. _____ The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and a statement of the evidence or proceedings pursuant to App.R. 9(C) or an agreed statement of the case pursuant to App.R. 9(D).
4. _____ The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and both a transcript of proceedings prepared by an official court reporter and a statement of the evidence or case pursuant to App.R. 9(C) or (D).

If you intend to rely upon a transcript of proceedings filed in an earlier appeal, you must seek permission from the court to supplement the record in this appeal with the transcript filed in the earlier appeal.

A time-stamped copy of the final judgment being appealed must be attached to this statement.

If the order from which this appeal is taken is not final and appealable under R.C. 2505.02, the Court must dismiss the appeal.

THE PARTIES

Please provide the following information for **all** parties to the proceedings in the trial court.

A party who files a notice of appeal is an appellant. A party who would be adversely affected if the judgment below is reversed should be designated as an appellee. All other parties to the action below should retain their trial court designation (plaintiff, defendant, third-party plaintiff, third-party defendant, petitioner, respondent, etc). **See Local Rule 3.**

If a party was not represented by counsel in the proceedings below, please provide the address and phone number of the party. If there are additional parties and/or attorneys, please copy this page, complete the information for the additional parties, and attach it to this statement. Appellant must attach a copy of any order that resolved a claim against any of the parties.

Party's name _____	Party's name _____
Party's designation _____	Party's designation _____
Attorney's name _____	Attorney's name _____
Attorney's registration number _____	Attorney's registration number _____
Address of counsel or party _____ _____	Address of counsel or party _____ _____
Phone number of counsel or party _____	Phone number of counsel or party _____
Email _____	Email _____
Party's name _____	Party's name _____
Party's designation _____	Party's designation _____
Attorney's name _____	Attorney's name _____
Attorney's registration number _____	Attorney's registration number _____
Address of counsel or party _____ _____	Address of counsel or party _____ _____
Phone number of counsel or party _____	Phone number of counsel or party _____
Email _____	Email _____
Party's name _____	Party's name _____
Party's designation _____	Party's designation _____
Attorney's name _____	Attorney's name _____
Attorney's registration number _____	Attorney's registration number _____
Address of counsel or party _____ _____	Address of counsel or party _____ _____
Phone number of counsel or party _____	Phone number of counsel or party _____
Email _____	Email _____

GENERAL INFORMATION

Was a stay requested in the trial court? _____ Yes _____ No
If a stay was requested, how did the trial court rule? _____ Granted _____ Denied _____ Pending
Is oral argument anticipated? _____ Yes _____ No
List case names and numbers of cases pending in this court that involve the same transaction or controversy involved in this appeal:

CRIMINAL CASE

_____ Misdemeanor _____ Felony
_____ Trial _____ Guilty/No contest plea

Charges _____
Sentence _____

Type of Appeal: _____ Defendant's Appeal as of Right _____ State's Appeal as of Right (R.C. 2945.67(A))
_____ Defendant's Appeal by Leave of Court _____ State's Appeal by Leave of Court

Is this an appeal of postconviction relief pursuant to R.C. 2953.21? _____ Yes _____ No

What was the original charge and sentence? _____

Was a hearing held in the trial court? _____ Yes _____ No

Is there a direct appeal from the conviction pending? _____ Yes _____ No

If there is an appeal pending, what is the case name and number? _____

Is this an appeal for review of sentencing pursuant to R.C. 2953.08? _____ Yes _____ No

Was counsel appointed for trial? _____ Yes _____ No

Was counsel appointed for appeal? _____ Yes _____ No

CIVIL CASE

Type of action in trial court _____

Would a prehearing conference or mediation assist in the resolution of this matter? _____ Yes _____ No _____ Maybe

Must this case be expedited as being one of the following types of cases? _____ Yes _____ No

_____ App.R. 11.2(B) or (C) appeals (abortion without parental consent, adoption, and parental rights)

_____ App.R. 11.2(D) appeals (dependent, abused, neglected, unruly, or delinquent child appeals)

_____ Appeal under determination of local fiscal emergency brought by municipal corporation under R.C. 118.04(C)

_____ Election contests as provided in R.C. 3515.08

I CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE ATTACHED A COPY OF THE FINAL JUDGMENT FROM WHICH THIS APPEAL IS TAKEN.

Signature of Counsel (or party if not represented by counsel)