LOCAL RULES
OF THE
NINTH DISTRICT COURT OF APPEALS

(Including amendments through February 1, 2017)

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

(A) In 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).

(B) **Subsequent Notices of Appeal and Cross-Appeal**. If a party timely files a notice of appeal, any other party may file a notice of appeal or cross-appeal within the time prescribed by the Ohio Rules of Appellate Procedure. A notice of appeal shall be designated and treated as a notice of cross-appeal if both of the following requirements are met: (i) it is filed after the original notice of appeal was filed in the case; and (ii) it is filed by a party against whom the original notice of appeal was filed.

[Adopted eff. 11-1-01; amended eff. 2-1-17.]

COMMENT

The new language in this Rule addresses several frequent questions asked about cross appeals.

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 do one of the following:

(1) 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. 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.

(2) where counsel has been appointed by a trial court to represent an indigent party, a copy of the entry of appointment may be filed in lieu of filing a motion to waive the cost deposit. Counsel shall include a cover page that complies with App.R.

19(B) with the entry of appointment attached. The filing of the order of appointment shall serve to waive the payment of the cost deposit without further order of this Court, but 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. 3-16-11; amended eff. 2-1-17.]

COMMENT

The deleted language removes the requirement that the affidavit of indigency be notarized within one year of its filing.

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 (i.e., plaintiff, defendant, intervenor), 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; amended eff. 2-1-17.]

COMMENT

The added language is intended to provide additional guidance to parties when completing the docketing statement.

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. MOTIONS TO STAY; BOND

(A) Service required. All motions to stay and applications for granting or reduction of bond must be accompanied by proof of service to all other parties.

(B) Oral argument. All motions and applications will be decided without oral argument, unless the Court otherwise orders.

(C) Briefing. A motion or application shall be accompanied by a memorandum that sets forth specific facts demonstrating why it should be granted. The movant shall discuss whether a bond should be required and, if so, in what amount. The failure to comply with this section may result in the denial of the motion. Within seven days of the filing of the motion or application, an opposing party may file a response addressing whether it should be granted and the amount of bond, if any, that should be required.

(D) Emergency motion or application. If the moving party can demonstrate the existence of emergency circumstances, the Court may grant a temporary stay. If the moving party specifically requests an emergency stay or emergency bond, the motion or application required by section (C) shall be accompanied by an affidavit in which the moving party sets forth the nature of the emergency circumstances and the efforts made to notify the opposing party of the request.

[Adopted eff. 7-1-98; amended eff. 1-1-2010.]

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) Court Reporter. The court reporter is the person appointed by the trial court to transcribe the proceedings for the trial court. *See* App.R. 9(B)(2).

(a) Praecipe.

(i) If the appellant desires a transcript of proceedings to be prepared for inclusion in the record, the appellant must serve the 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) 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 as set forth in App.R. 10(B).

(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.

(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.

(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 make reasonable

arrangements 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; amended eff. 7-20-12; amended eff. 2-1-17.]

COMMENT

This new language is necessary because of changes to App.R. 9 and App.R. 10 which now requires the appellant to "make reasonable arrangements" to prepare a transcript of proceedings and to transmit the record.

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 Court Reporter. The certificate of the court reporter selected by the trial court, pursuant to App.R. 9, 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, _____, court reporter for the [name of court], duly appointed therein, do hereby certify that the foregoing transcript of proceedings, consisting of ___ pages 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, _____, court reporter for the [name of court], duly appointed therein, do hereby certify that the foregoing transcript of proceedings, consisting of ___ pages 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 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.

(D) Electronic Copy of the Transcript. The court reporter should include an electronic copy of the written transcript of proceedings if it is available. *See* App.R. 9(B)(6)(i). As an alternative to including it in the record, the court reporter may email an electronic copy of the transcript to transcript@ninth.courts.state.oh.us and include the case number in the subject of the email address.

[Adopted eff. 7-1-98; amended eff. 3-1-01; amended eff. 1-1-06; amended eff. 7-20-12; amended eff. 2-1-17.]

COMMENT

Consistent with the amendment to App.R. 9, this amendment directs the court reporter to provide the Court with an electronic copy of the transcript of proceedings in addition to filing the printed transcript with the record.

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 two legible copies shall be filed. The original shall not be

bound; it should be secured by a clip or rubber band.

(4) The copies of 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 (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;

(e) If the appeal is an App.R. 11.2 expedited appeal, the cover shall contain the following designation: "App.R. 11.2 Appeal"; and

(f) If the party requests oral argument, "ORAL ARGUMENT REQUESTED" shall be included on the cover of the brief-in-chief as required by App.R. 21 and Local Rule 8.

(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. *See* Appendix B.

(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. The statement of the facts shall be relevant to the assignments of error presented for review. It should always be completely accurate, contain reference to all material facts, both favorable and unfavorable, and each fact stated should be supported by references to the record in accordance with subsection (F) of this rule. *See* Appendix B.

(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 or standards 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) A certificate of service.

(10) An appendix at the end of the brief. Any item included in the appendix must be cited in 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 magistrate decisions containing findings of fact and recommendations which are partially or totally adopted by the court in its final order, and

(v) If it would aid the judges' understanding of an issue on appeal, a map or diagram, properly admitted into evidence and made a part of the trial court record, may be included in the appendix.

(b) Each page in the appendix shall be sequentially numbered. Numbering shall begin with the first item in the appendix and continue through the last item (e.g., A-1, A-2, A-3, etc.). 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) Unreported and unpublished cases, statutes, rules, regulations, ordinances, and constitutional provisions shall not be included in the appendix.

(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 9,000 words. Appellant's reply brief shall not exceed 3,000 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 or Georgia 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 or Georgia 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 citation format.

(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; amended eff. 1-1-2010; amended eff. 7-20-12; amended eff. 2-1-17.]

COMMENT

The amendment reduces the number of copies of briefs that must be filed from four to two. There are also additional non-substantive corrections.

LOCAL RULE 8. ORAL ARGUMENT

(A) Oral Argument Procedure. A case will not be set for oral argument unless a party requests it. If any party requests oral argument, the case will be scheduled for oral argument and all parties who have filed a brief may appear. A party may request oral argument by including the words "ORAL ARGUMENT REQUESTED" prominently on the cover page of the appellant's opening brief or the appellee's brief. *See* App.R. 21(A). If any party requests oral argument, the case will be scheduled for oral argument for all parties.

(1) A party who has requested oral argument cannot waive appearance at oral argument. A party who has not requested oral argument may waive the party's appearance by filing a waiver of oral argument no later than seven days before the date on which oral argument is scheduled.

(2) If no party to an appeal requests oral argument, the Court will submit the case to a panel for decision in due course and the parties will be notified of the date on which the case is submitted.

(3) The Court may, sua sponte, schedule a case for oral argument at which all persons otherwise permitted to argue shall appear and present oral argument. The Court may limit oral argument to specific issues.

(B) Time Allowed for Argument. In accordance with App.R. 21(C), oral argument shall be reduced from thirty (30) minutes per side to fifteen (15) minutes per side. The appellant shall open oral argument and may reserve time for rebuttal. In a case with more than one party on a side who intend to present oral argument, the parties aligned on that side will share the 15 minutes allotted to that side.

(C) 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 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.

(D) 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 Court files the notice of oral argument. No untimely motion for continuance will be granted unless the moving party demonstrates exceptional circumstances that justify the continuance.

(E) Supplemental Authority. If counsel or a party at oral argument intends to rely on authorities not cited in the brief, 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. The Notice should not include argument or be in the form of a brief.

[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; amended eff. 1-1-2010; amended eff. 7-20-12; amended eff. 2-1-17.]

COMMENT

The first proposed change to this rule clarifies the Court's policy for scheduling oral argument. The second change expresses the Court's policy for dividing oral argument time in cases with cross appeals or where there are multiple parties aligned on one side of the appeal. The final change modifies the Court's practice for accepting supplemental authority.

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.

(C) **Service on parties formerly represented by counsel.** If a party who had previously been represented by counsel intends to appear pro se when filing a post-judgment motion, the party shall file a notice with the clerk of courts to direct the clerk to serve journal entries and court notices on the party at the party's address specified in the notice rather than on the former counsel of record.

(D) Proposed Journal Entries Not Required. Parties should not file proposed journal entries with motions. The Court will prepare all journal entries.

[Adopted eff. 7-1-98; amended eff. 1-1-04; amended eff. 1-1-06; amended eff. 2-1-17.]

COMMENT

New section (C) addresses a situation that arises when a previously-represented party begins to represent himself. The clerk's office may serve orders on counsel of record rather than serving it on the pro se party who filed the motion. The new section instructs parties that they must file a notice to direct the clerk to serve the party with court orders rather than serving it on the prior attorney.

Section (D) explains that there is no requirement for litigants to file proposed journal entries.

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 denied but may be resubmitted with the proper forms.

(2) Limitations on Compensation. Payments for services will not exceed the schedule of fees established by each county pursuant to law unless counsel also files a motion for extraordinary fees with reasons supporting the request.

(3) Time for Filing. All applications for payment of attorney's fees shall be filed with the clerk of the appellate court within 14 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; amended eff. 2-1-17.]

COMMENT

The changes in this Rule are intended to clarify the Court's processing of fee applications.

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 February 1, 2017, 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; amended eff. 1-1-2010; amended eff. 7-20-12; amended eff. 2-1-17.]

LOCAL RULE 14. ADMISSION PRO HAC VICE

(A) An attorney who is not licensed to practice law in the State of Ohio who seeks permission to appear pro hac vice in this Court must first register with the Supreme Court Office of Attorney Services pursuant to Gov.Bar R. XII.

(B) After the attorney completes the registration requirements and receives a Certificate of Pro Hac Vice Registration, the attorney must file a Motion for Permission to Appear Pro Hac Vice with this Court. The motion must succinctly state the qualifications of the attorney seeking admission, include the certificate of registration furnished by the Supreme Court Office of Attorney Services, and shall contain all of the information required by Gov.Bar R. XII(2)(A)(6)(a) through (e).

[Adopted eff. 7-1-00; amended eff. 1-1-08; amended eff. 7-20-12.]

LOCAL 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 examples of 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 act set by the Appellate Rules, Local Rules, or an order of this Court, including, for example, to comply with in forma pauperis requirements, comply with a show cause order, or to extend a deadline previously set by this Court.

(C) The following are examples of 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;

(5) Notices of oral argument;

(6) Orders to deny motions because of a procedural defect in the motion.

[Adopted eff. 10-05-05; amended eff. 2-1-17.]

COMMENT

The proposed changes are intended to harmonize the Local Rule with Civ.R. 53. By explaining that the enumerated motions and orders are examples rather than limits, the authority granted to the Court's Magistrate will be consistent with the authority allowed by App.R. 34 and Civ.R. 53.

LOCAL RULE 16. MEDIATION

(A) Scheduling.

(1) The Court's Mediation Attorney will review the notice of appeal, the trial court's judgment from which the appeal is taken, and the docketing statement in all civil and administrative appeals to determine whether a mediation conference will be scheduled. Any party may telephone the Mediation Attorney to make a confidential request for mediation or to request that a scheduled mediation be cancelled.

(2) When an appeal is selected for a mediation conference, the Mediation Attorney will notify the attorneys of record, or the parties if unrepresented, of the date, time, and location of the mediation. At the discretion of the Mediation Attorney, conferences may be conducted by telephone when practicable.

(3) When possible, the conference will be held in the county from which the appeal originates. At the discretion of the Mediation Attorney, conferences may be conducted in another county within the District or by telephone.

(B) Purposes and Conduct of the Mediation Conference.

(1) The goals of the mediation conference are to (a) explore settlement possibilities (b) to simplify the issues in the appeal if settlement is not achieved, and (c) to address any procedural problems which exist, may arise, or are anticipated in connection with the appeal.

(2) Counsel, parties, and any other persons whose consent is necessary to discuss settlement (including insurance adjusters) are required to attend the mediation conference. "Counsel," for purposes of this Rule, means an attorney who is not only conversant with the case but upon whose advice the party relies. Persons excused in advance by the Mediation Attorney from attending in person shall be available by telephone.

(3) In the discretion of the Mediation Attorney, the parties may be required to provide a written mediation statement in advance of the mediation conference. Any such mediation statements are considered mediation communications and are subject to

the privilege and confidentiality provisions set forth in this Rule. As such, they are to be sent to the attention of the Mediation Attorney in lieu of filing with the respective Clerk of the Court of Appeals.

(C) Extensions of Time to Transmit Record and File Briefs. The Mediation Attorney will attempt to schedule mediation conferences as expediently as possible after the notice of appeal is filed. The scheduling of a mediation conference, however, does not automatically stay the time in which the transcript of proceedings must be transmitted or the briefs must be filed. Prior to the mediation conference, any party may telephone the Mediation Attorney and request an extension of time in which to transmit the record or file the brief and assignments of error until after the mediation conference has been conducted. Thereafter, extensions of time may be recommended by the Mediation Attorney upon a party's oral request.

(D) Privilege and Confidentiality. The definitions contained in R.C. 2710.01 apply to mediation in the Court of Appeals. 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 confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to disclosure

[Adopted eff. 1-1-08; amended eff. 1-1-10; amended eff. 2-1-17.]

COMMENT

The changes to this Rule serve three purposes. First, they simplify the language for ease of reading. Second, they clarify the Court's practice, especially as it relates to initial telephone conferences. Third, they delete or modify provisions that are inconsistent with recent court decisions or to harmonize them with Supreme Court practice rules.

LOCAL RULE 17. RECORDS RETENTION

Pursuant to Sup.R. 26(G), this Court adopts as its records retention schedule Sup.R. 26, 26.01, and 26.02.

[Adopted eff. 1-1-10.]

LOCAL RULE 18. EXTENSIONS OF TIME FOR FILING BRIEFS

(A) First extension – by certification of extension of time.

(1) A party may extend the time for filing the party's brief for up to 20 days, or 10 days in cases involving the termination of parental rights, by filing a certification of extension of time.

(a) A party may obtain one automatic extension of time to file the party's brief by filing a certification.

(b) The certification shall state that no previous extensions have been obtained

by that party in that case, be signed, and served on all other parties to the appeal.

(c) The certification shall be effective only if it is filed with the Clerk within the time prescribed by the Ohio Rules of Appellate Procedure for filing the party's brief. The certification shall state affirmatively the new due date for filing the party's brief. A certification that is not timely filed or otherwise does not comply with this Rule shall not be effective to extend the time for filing the party's brief.

(d) No certification may be filed for a reply brief.

(2) Calculation of certified due date.

(a) **Appellant's Brief**. Appellant's brief is due 20 days after the date on which the clerk of courts has mailed the App.R. 11(B) notice, or the next business day if the 20th day is a Saturday, Sunday, or holiday. App.R. 18(A). Appellant may obtain one 20 day extension of the due date, or 10 days if the case involves the termination of parental rights, by filing a certification of extension as set forth in this Rule. If the new due date falls on a Saturday, Sunday, or holiday, the due date specified in the certification of extension shall extend to the next business day.

(b) **Appellee's Brief**. Appellee's brief is due 20 days after the date of service of appellant's brief. App.R. 18(A). Three days may be added to this period if the appellant's brief was served by mail. App.R. 14(C). Appellee may obtain one 20 day extension of time from the date the brief is due, or 10 days from that due date if the case involves the termination of parental rights. If the new due date is a Saturday, Sunday, or holiday, the due date specified in the certification of extension shall extend to the next business day.

(3) The filing of a complying certification of extension of time acts to automatically extend the time for filing the brief, without the filing of an order granting an extension. If a party files a noncomplying certification, the Court may strike it and dismiss the appeal, not permit the party to file a brief, or deny oral argument.

(B) Second extension – by motion.

(1) A party may seek a second extension of time to file a brief by filing a motion for extension of time with the Court.

(2) Second extensions of time to file a brief are not favored, and the Court will not grant a party a second extension unless the party has demonstrated that there are extraordinary circumstances necessitating the extension.

(3) If a party demonstrates extraordinary circumstances, the Court will grant an extension of time not to exceed 20 days.

(C) Effect of extension of time upon other aligned parties. When one party receives an

extension of time, whether by certification or motion, the extension shall apply to all other parties on that side.

[Adopted eff. 3-16-11; amended eff. 2-1-17.]

COMMENT

The new section clarifies that if one party receives an extension, it extends the time for filing for all aligned parties so there is no need for filing multiple motions.

LOCAL RULE 19. ELECTRONIC FILING (E-FILING)

(A) Electronic-filing (e-filing).

(1) The clerk of courts is authorized to prepare and maintain operating procedures and instructions for electronic filing. Except as specifically provided elsewhere in these Rules, other rules or statutes, or where expressly authorized by an entry of this Court, all documents submitted for filing shall be electronically filed if the clerk of courts has implemented a mandatory e-filing system.

(2) **Exceptions to e-filing.**

(a) **Pro Se Filers.** Parties not represented by counsel are not required to utilize the e-filing system and may file documents in paper form.

(b) **Leave to File in Paper Form.** An attorney who wants to file a specific document or all documents in a given case in paper form may file a motion requesting leave to so file. The motion for leave may be filed in paper form and shall set forth the exceptional circumstances justifying the request.

(c) **Paper Form Documents.** Documents filed in paper form shall be scanned by the clerk of courts and uploaded to the e-filing system by the clerk. The uploaded electronic version of the document shall constitute the original document.

(B) Initiating Pleadings. Complaints, petitions, applications, and notices of appeal may be e-filed or filed in paper form.

(C) Document Format. E-filed documents for the Court of Appeals must be submitted as searchable PDF documents.

(D) Signatures.

(1) **Attorney's/Filing Party's Signature.** Documents filed electronically with the clerk that require an attorney's or a filing party's signature shall be signed with a signature of "/s/ (name)."

(a) The format for an attorney's signature is:

/s/Attorney Name
Attorney Name
Supreme Court ID Number 1234567
Attorney for (Appellant/Appellee/Relator/Respondent) XYZ Corporation
ABC Law Firm
Address
Telephone
Email
Fax

(b) This signature on an electronically filed document is deemed to constitute a legal signature on the document for purposes of the signature requirements imposed by the Ohio Rules of Superintendence, Rules of Civil Procedure, Rules of Criminal Procedure and/or any other law.

(2) **Multiple Signatures.** When a document requires two or more signatures:

(a) The filing party or attorney shall first confirm in writing that the contents of the document are acceptable to all persons required to sign it. The filer will indicate the agreement of all other counsel and/or parties at the appropriate place in the document, usually on the signature line.

(b) The filing party or attorney shall then file the document electronically, identifying all of the signatories, e.g., /s/ Jane Doe, /s/ John Smith, etc.

(3) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, this Court shall order the filing stricken.

(E) Time for e-filing. Documents filed electronically shall be considered as filed with the clerk of courts when the document submission is complete. The clerk's e-filing system will acknowledge date and time on all submissions. An electronic filing may be submitted to the clerk 24 hours a day, 7 days a week. Any document filed after 11:59 p.m. Eastern Standard Time or Eastern Daylight Time shall be deemed to have been filed on the next court day.

(F) Rejection of electronic filing. Any document filed electronically that requires a filing fee may be rejected by the clerk of court unless the filer has complied with the mechanism established by the court for the payment of filing fees.

[Adopted eff. 2-11-17.]

COMMENT

This new Local Rule authorizes the clerk of courts to accept electronic filing.

LOCAL RULE 20. FAX FILING

(NOTE: The only appellate clerk of courts to accept fax filings is the Lorain County Clerk of Courts. Nothing in this Local Rule is intended to require any clerk of courts to accept fax filings.)

(A) Fax filing. The clerk of courts is authorized, but not required, to prepare and maintain operating procedures and instructions for fax filing. If a clerk of courts accepts fax filings, documents in appeals and original actions, including the notice of appeal or complaint, may be transmitted by fax to the clerk of court for filing, consistent with the procedures outlined by the clerk of courts. A document filed by fax is the original document; a copy of the document should not also be mailed or hand-delivered to the clerk for filing.

(1) **Procedural requirements.**

(a) **Fax cover page.** All documents sent by fax shall be accompanied by a cover page containing the following information:

(i) the name of the Court;
(ii) the caption of the case;
(iii) the case number;
(iv) the title of the document being filed;
(v) the date of transmission;
(vi) the name, address, telephone number, facsimile number, Supreme Court registration number, and e-mail address of the person filing the fax document.

(b) **Faxed documents without a complying cover page.** If a document is sent by fax to the Clerk of Court without the cover page information listed above, the Clerk will:

(i) Enter the document in the Case Docket and file the document, if possible.

(ii) If the faxed document does not contain sufficient information to file the document, the Clerk of Court will deposit the document in a file of failed faxed documents (which will be retained for 14 days) with a notation of the reason for the failure and the document shall not be considered filed with the Clerk of Courts.

(iii) The Clerk of Court is not required to send any form of notice to the sending party of a failed fax filing. However, if practicable, the Clerk may attempt to inform the sending party of a failed fax filing.

(c) **Attorney's/Filing Party's Signature.** Documents filed by fax with the clerk that require an attorney's or a filing party's signature may be signed or signed with a signature of "/s/ (name)."

(i) The format for an attorney's signature is:

Signature or /s/Attorney Name
Attorney Name

Supreme Court ID Number 1234567
Attorney for (Plaintiff/Defendant) XYZ Corporation
ABC Law Firm
Address
Telephone
Email
Fax

(ii) This signature on a fax filed document is deemed to constitute a legal signature on the document for purposes of the signature requirements imposed by the Ohio Rules of Superintendence, Rules of Civil Procedure, Rules of Criminal Procedure and/or any other law.

(d) **Multiple Signatures.** When a stipulation or other document requires two or more signatures:

(i) The filing party or attorney shall first confirm in writing that the contents of the document are acceptable to all persons required to sign the document. The filer will indicate the agreement of all other counsel and/or parties at the appropriate place in the document, usually on the signature line.

(ii) The filing party or attorney shall then file the document electronically, identifying all of the signatories, e.g., /s/ Jane Doe, /s/ John Smith, etc.

(e) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, this Court shall order the filing stricken.

(f) Fax filings shall not exceed twenty (20) pages in length.

(B) **Time of filing.** Documents filed by fax shall be considered as filed with the clerk of courts when the document submission is complete. Each page of any document received by the Clerk will be automatically imprinted with the date and time of receipt. A fax filing may be submitted to the clerk 24 hours a day, 7 days a week. Any document filed after 11:59 p.m. Eastern Standard Time or Eastern Daylight Time shall be deemed to have been filed on the next court day.

(C) Fax filings may not be sent directly to the Court's main office for filing but may only be transmitted directly through the fax equipment operated by the appropriate Clerk of Courts.

(D) The Clerk of Courts may, but need not, acknowledge receipt of a fax.

(E) The risks of transmitting a document by fax to the Clerk of Courts or delay in the document being filed shall be borne entirely by the sending party.

(F) No additional fee shall be assessed for fax filings.

(G) **Rejection of fax filing.** Any document filed by fax that requires a filing fee may be

rejected by the clerk of court unless the filer has complied with the mechanism established by the court for the payment of filing fees.

[Adopted eff. 2-11-17.]

COMMENT

This new Local Rule authorizes the clerk of courts to accept fax filing. This Rule is not intended to require the clerks to accept fax filings but authorizes the practice if the clerks implement it.

LOCAL RULE 21. ACCELERATED CALENDAR

(A) Accelerated calendar adopted. The Court adopts an accelerated calendar. The proceedings in an appeal placed on the accelerated calendar shall be governed by this Rule and by the Ohio Rules of Appellate Procedure, including the procedures specific to accelerated appeals set forth in App.R. 3, 10, and 11.1.

(B) Placing an appeal on the accelerated calendar.

(1) Based upon a review of the Docketing Statement, or a motion filed by any party, the Court shall issue a scheduling order placing an appeal on the accelerated calendar, if appropriate. If no scheduling order is issued, the appeal shall proceed on the regular calendar.

(2) The following factors may be considered in support of assignment of an appeal to the accelerated calendar:

(a) No transcript is required or the transcript has already been prepared and filed in the trial court;

(b) The transcript and other evidentiary materials consist of 100 or fewer pages; or

(c) The record was made in an administrative hearing and filed with the trial court.

(3) An appeal will not be assigned to the accelerated calendar if any of the following applies:

(a) A brief in excess of 15 pages 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; or

(c) The appeal concerns multiple or complex issues.

(4) If an appeal is placed on the accelerated calendar, the record shall be filed within 20 days after the filing of the notice of appeal.

(C) Removing an appeal from the accelerated calendar. The Court may remove an appeal from the accelerated calendar and place it on the regular calendar upon its own initiative at any time. Any party may move, within ten days after the filing of the notice of appeal, for an appeal to be placed on the regular calendar.

(1) The motion shall be supported by a memorandum setting forth the specific reasons for the requested designation. Within seven days after the motion is filed, a party opposing removal from the accelerated calendar may file a response.

(2) Good cause for removal includes, but is not limited to, the unique, complex, or precedential nature of the issues presented. Good cause for removal does not include the length of the appeal record alone.

(3) The motion does not toll or extend the time for filing the record or briefs set forth in the scheduling order, if the Court has designated the appeal to proceed on the accelerated calendar.

(D) Briefs filed in an accelerated appeal.

(1) A brief filed in an appeal placed on the accelerated calendar shall not exceed 15 pages in length, excluding the cover page, table of contents, and appendices. In all other respects, the brief shall conform to App.R. 16 and 19 and Loc.R. 7, except that the optional word count provision cannot be used to determine the brief's length.

(2) The appellant must file and serve its brief within 15 days after the clerk has served the notice required by App.R. 11(B) indicating that the record is filed.

(3) The appellee must file and serve its brief, if any, within 15 days after service of appellant's brief.

(4) No reply brief may be filed.

(E) Briefs filed in an accelerated appeal involving a cross-appeal. In cases in which a cross-appeal has been perfected, the appellant shall file a brief not to exceed 15 pages. Appellee/cross-appellant shall file a single brief not to exceed 30 pages in length, a maximum of 15 pages of which shall respond to the appellant's assignments of error, and a maximum of 15 pages of which shall address the assignments of error of the cross-appellant. The cross-appellee shall then file a brief not to exceed 15 pages, the entirety of which shall respond to the assignments of error asserted in the brief of the cross-appellant. No additional briefs shall be submitted except by leave or order of the Court.

(F) Oral argument in an accelerated appeal. App.R. 21 and Loc.R. 8 shall govern oral argument in an appeal placed on the accelerated calendar.

(G) Decision in an accelerated appeal. Pursuant to App.R. 11.1(E), the Court may state the reasons for its ruling on each assignment of error in brief and conclusionary form. *See* Form 3, Ohio Rules of Appellate Procedure. The decision in an accelerated calendar appeal shall not be published.

(H) Accelerated Calendar Designation on briefs and motions. Parties shall designate that an appeal has been placed on the accelerated calendar by noting "Accelerated Calendar" following or below the case number on the caption of each brief, motion, or other paper filed in the case.

[Adopted eff. 2-11-17.]

COMMENT

This new Local Rule adopts an accelerated calendar. App.R. 11.1(A) recognizes that an "accelerated calendar is designed to provide a means to eliminate delay and unnecessary expense in effecting a just decision on appeal by the recognition that some cases do not require as extensive or time consuming procedure as others." Most of Ohio's appellate districts have adopted an accelerated calendar. By adopting an accelerated calendar, this Court will provide the parties with the opportunity to select whether their appeal should proceed on the regular calendar or, if appropriate, on the accelerated calendar.

SPECIMEN DECISION AND JOURNAL ENTRY

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF_____	)	C.A. NO.
	)	
	)	
Appellant	)	
	)	
v.	)	
	)	APPEAL FROM JUDGMENT
	)	ENTERED IN THE
	)	COURT, _____ COUNTY, OHIO
Appellee	)	CASE NO.

DECISION AND JOURNAL ENTRY

Dated:

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:

Rev. 2/1/17

Appendix A

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_____

Date of judgment appealed _____
Was the time to appeal extended
by App.R. 4(B)? ___ Yes ___ No

CALENDAR DESIGNATION

THIS APPEAL SHOULD BE ASSIGNED TO:

_____ Regular Calendar.

_____ Accelerated Calendar. *See* Loc.R. 21.

_____ Expedited Calendar (generally for appeals involving termination of parental rights). *See* App.R. 11.2.

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, a certified copy of the docket and journal entries, and a full or partial transcript of proceedings prepared for this appeal by a court reporter appointed by the trial court, who I served with a praecipe that I also filed with this court. If only a partial transcript of proceedings is requested, see App.R. 9(B).

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 a court reporter appointed by the trial court and a statement of the evidence or case pursuant to App.R. 9(C) or (D). If only a partial transcript of proceedings is requested, see App.R. 9(B).

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 appealed 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 designation__________ Attorney's name__________ Attorney's registration number__________ Address of counsel or party__________ __________ Phone__________ Fax__________ Email __________	Party's name__________ Party's designation__________ Attorney's name__________ Attorney's registration number__________ Address of counsel or party__________ __________ Phone__________ Fax__________ Email __________
Party's name__________ Party's designation__________ Attorney's name__________ Attorney's registration number__________ Address of counsel or party__________ __________ Phone__________ Fax__________ Email __________	Party's name__________ Party's designation__________ Attorney's name__________ Attorney's registration number__________ Address of counsel or party__________ __________ Phone__________ Fax__________ Email __________
Party's name__________ Party's designation__________ Attorney's name__________ Attorney's registration number__________ Address of counsel or party__________ __________ Phone__________ Fax__________ Email __________	Party's name__________ Party's designation__________ Attorney's name__________ Attorney's registration number__________ Address of counsel or party__________ __________ Phone__________ Fax__________ 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

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

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

Probable issues for 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

_____ Defendant's Appeal by Leave of Court _____ State's Appeal by Leave of Court

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CIVIL CASE

Type of action in trial court? _____

Did the judgment dispose of all claims by and against all parties? _____ Yes _____ No

If not, is there a determination that there is "no just reason for delay?" Civ.R. 54(B). _____ Yes _____ No

Have the parties previously participated in mediation of this dispute? _____ Yes _____ No

Would a mediation conference 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

_____ 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)

Appendix B

Introduction

Local Rule 7 sets out the procedural requirements for preparing an appellate brief in the Ninth District Court of Appeals. This Appendix supplements the Court's Local Rules by providing guidance about what the Court would prefer to read in briefs filed with the Court. Additional information regarding brief writing and oral argument is available on the Court's web site – www.ninth.courts.state.oh.us.

Local Rule 7(B)(4) - Statement of the Issues Presented

The statement of the issues should be a succinct, clear, and accurate statement of the arguments made in the body of the brief. To be most helpful to the reader, each issue should be a separate paragraph of less than 75 words. Ideally, each will be between 60 and 75 words. The first sentence of each issue should be a legal premise. This should be followed by facts demonstrating why the legal premise is applicable in this case. Finally, each should close with a question.

The word "whether" should not appear anywhere in the issue. Bryan Garner has called this "the deep issue" and listed the following principles for stating a good one:

> (i) You must not try to cram everything into one sentence. Use separate sentences.
>
> (ii) You must hold each issue to 75 or fewer words. (Otherwise, you'll lose focus and readers will lose patience.)
>
> (iii) You must interweave facts into the issue--and keep them in chronological order.
>
> (iv) The last sentence, which ends with a question mark, must flow directly from what precedes it. But remember that everything in the 75-word statement makes up the issue.

Bryan A. Garner, *The Elements of Legal Style* 184 (2002). The following is an example of the type of issue the Court wants to see:

> The excited utterance exception allows a declarant's statement to be admitted if it is made under the stress of a startling event. Officer Johnson testified that he talked to Smith 30 minutes after Smith had made a 911 call reporting that he had been assaulted. Smith told Officer Johnson, "Bob hit me with a baseball bat." Was Officer Johnson's testimony repeating what Smith told him admissible as an excited utterance?

Local Rule 7(B)(6) - Statement of the Facts

The appellant's brief must include a statement of the facts relevant to the assignments of error. The statement must include references to the record where the facts can be found. It should provide the reader with the facts relevant to understanding the assignment of error. It does not need to review every fact introduced in the earlier proceedings – only those facts relevant to the assignments of error presented in this appeal. It should address all material facts, including those that are favorable and unfavorable to each party's arguments.

The statement of facts should be completely accurate. If a brief asserts as a fact something that is not accurate or appears deliberately distorted, the writer risks confusing the reader and losing credibility. A complete statement of the material facts serves as a valuable "road map" for the reader. The following examples involve a motion to suppress evidence. The Court prefers the second example because it refers to the parties by names (not simply "appellant"), cites to the transcript of proceedings for each factual statement, and sets forth all material facts, including some that are unfavorable.

Example One – A Less Helpful Statement of the Facts

Officer Smith testified first. He said that he stopped a blue car on October 22, 2009, at 6:47 p.m., driven by Bill Douglas in which appellant was a passenger. The car was speeding and driving erratically. He said he asked them to get out of the car and Douglas passed field sobriety tests. Smith wrote a warning but did not give it to him because he said he tried to find a K-9 unit to come to the scene but, after a long wait, he was unable to locate one. He said that Douglas consented to a search and he found drugs under the driver seat. Lab tech Johnson testified next. She said she tested the drugs and they tested positive for cocaine. Appellant testified next in his own defense. He said he did not know the drugs were under the driver's seat. He said he only asked Douglas for a ride home after work and he did not know anything about the drugs in the car. The trial court denied the motion to suppress and appellant pled no contest. (Tr. at 125).

Example Two – A More Helpful Statement of the Facts

Appellant, Tom Jones, asked his co-worker, Bill Douglas, for a ride home after work. (Tr. at 100). Jones had never been in Douglas's car before this day. (Tr. at 100). On the ride home, Officer Smith stopped the car, a 1976 Cadillac El Dorado. (Tr. at 101). Smith asked Jones and Douglas to exit the vehicle. (Tr. at 101). Smith told Douglas he stopped the car because he was speeding and driving recklessly. (Tr. at 30).

Smith wrote a warning as he called for a K-9 unit. (Tr. at 36). Approximately 45 minutes after writing the warning (Tr. at 108), Douglas said he had nothing to hide and consented to a search of the vehicle. (Tr. at 33). Officer Smith discovered a package under the driver's seat. (Tr. at 35). Smith asked who the package belonged to, and both Jones and Douglas denied any knowledge of it. (Tr. at 36). Smith arrested both men. (Tr. at 38).

At the police station, police searched Jones and Douglas and took their personal items. (Tr. at 40). Officer Smith discovered a white powder on money that Jones handed him. The powdery substance tested positive for cocaine. (Tr. at 42).

Jones moved to suppress evidence. (Tr. at 3). Following a hearing, at which Jones challenged the legality of the detention, the trial court denied the motion to suppress. (Tr. at 125). Jones entered a no-contest plea, and the trial court sentenced him.