

## AMENDMENTS TO LOCAL RULES, EFFECTIVE FEBRUARY 1, 2019

### Key to Amendments:

1. Existing language appears in regular type. Example: text.
2. Existing language that has been deleted appears in strikethrough.  
Example: ~~text~~.
3. New language that has been added appears in underline. Example: text.

[Existing language unaffected by the amendments is omitted to conserve space]

### **RULE 3. APPEAL AS OF RIGHT — HOW TAKEN; COST DEPOSIT; CONSOLIDATED APPEALS; CROSS-APPEAL**

[Existing language unaffected by the amendments is omitted to conserve space]

#### **(B) Appeal As Of Right.**

- (1) The notice of appeal must individually name each party taking the appeal and must have attached to it a copy of the judgment or order appealed from (journal entry) signed by the trial judge and ~~bearing the clerk's stamp "Received for Filing" time-stamped~~ with the date of receipt by the clerk and a copy of affidavit of indigency where relevant. The subject attachments are not jurisdictional but their omission may be the basis for a dismissal.
- (2) A party is required to file only one notice of appeal from a judgment entered in cases consolidated in the trial court. The notice of appeal must list all consolidated case numbers. The appeal will proceed under one case number unless otherwise ordered by the court.
- (3) Counsel, or litigants filing notices of appeal on their own behalf, must include current names and addresses for counsel of record for appellees ~~with sufficient copies for service on all counsel~~. In the event an appellee is unrepresented, then the appellee's current address and email ~~and a copy for service on that appellee~~ must be provided. If filing notice of appeal in paper

form, appellant is required to provide the original and one copy as well as the necessary number of copies for service.

**(C) Consolidation Of Appeals.**

- (1) Consolidation Of Appeals. Either on motion or sua sponte, the court may consolidate cases involving related transactions or the same or similar principles of law, even though the parties are not identical. When consolidation has been ordered, the parties with a common interest must try to prepare a common brief with an addendum to cover any proposition that a party deems unique to that party. Any addendum may not exceed 15 pages without leave of court.
- (2) Service In Consolidated Appeals. When appeals are consolidated, the clerk of the court of appeals may limit its notice of journal entries to one notice for each counsel (or party, if not represented by counsel) where identical journal entries are being made in each consolidated appeal. Such service will constitute due notice as to all the consolidated appeals. Costs will ordinarily be assigned to the lowest case number.
- (3) Manner of Filing in Consolidated Appeals. After consolidation of appeals, parties shall file any documents, including motions, briefs, and notices, under the lowest appeal number, indicating on the title of the document all appellate case numbers subject to the consolidation.

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

**(DE) Service by prosecutor.** When a prosecutor takes an appeal either of right or accompanied by a motion for leave to appeal in a felony, misdemeanor, or juvenile delinquency case, and including from an order sealing the record pursuant to R.C. 2952.31, et seq., the prosecutor shall send a notice of the appeal to the Appellate Division of the Cuyahoga County Public Defender's Office via United States mail or by sending an electronic copy to [pdgeneral@cuyahogacounty.us](mailto:pdgeneral@cuyahogacounty.us). The fact of service to the Cuyahoga County Public Defender's Office shall be included within the certificate of service.

**RULE 4. APPEAL AS OF RIGHT — WHEN TAKEN;  
CIV.R. 6o(B) REMANDS**

[Existing language unaffected by the amendments is omitted to conserve space]

(B) The movant must ~~promptly~~ notify the court of appeals of the trial court's ruling on the motion for relief from judgment within seven days of the order being journalized.

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**RULE 5. APPEALS BY LEAVE OF COURT IN CRIMINAL CASES**

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

**RULE 9. THE RECORD ON APPEAL; PRAECIPE; TRIAL CLERK'S  
DUTIES; ABSENCE OF COURT REPORTER**

(A) The appellant must file with the clerk of the trial court, and serve upon each of the parties, the notice of appeal and an attached certificate of service, dated and signed, ~~designating the necessary counsel or parties to be served by the clerk of the trial court~~ This does not preclude the clerk of the trial court's requirement to separately serve the parties of record in accord with App.R. 3(E). The appellant must provide the clerk with the original and one copy as well as the necessary number of copies for service if filing in paper form.

(B) Simultaneously with filing the notice of appeal, the appellant must file with the clerk of the trial court, and serve upon each of the parties, a complete praecipe and docketing statement in accord with the forms set forth in ~~Appendixes A and B~~ to these local rules. The appellant must also provide the clerk with the original and one copy as well as the necessary number of copies for service if filing in paper form. Otherwise, if filing electronically, appellant may rely on the court's electronic transmission facilities to make service under App.R. 13(C)(6) to any party who is registered for electronic service on the court's electronic filing transmission facilities and does not need to provide any copies.

(C) The clerk of the trial court shall effect the following:

- (1) The prompt service of the notice of appeal, praecipe, and docketing statement; and
- (2) The prompt service to the clerk of the court of appeals of a copy of the notice of appeal, and the praecipe, and docketing statement with the filing fee.

(D) In transmitting the record, the clerk of the trial court shall:

- (1) Include on the docket sheet ~~([App.R. 10(B)])~~, the filing date and a brief description of each of the documents filed in the trial court;
- (2) Ascertain that the journal entries have been signed by the judge and file-stamped ~~by the trial court clerk~~; and
- (3) Neatly assemble the original papers.

[Existing language unaffected by the amendments is omitted to conserve space]

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

## **RULE 10. TRANSMISSION OF THE RECORD**

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

~~(A)~~ (1) file a praecipe and docketing statement as provided in Loc.App.R. 9; and (B) (2) cooperate with the clerk of the trial court to Ssecure the transmission of the docket and journal entries and to effect the transmission of the record, including a transcript if applicable, on appeal. and

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

If the appellant fails to timely perform these duties, then the court may, without prior notice, dismiss the appeal for failure to prosecute.

Extensions of time to transmit the record to this court may be granted only by the court of appeals. ~~The appellant must cause timely transmission of the record or seek an extension of time to do so from this court.~~ Applications for extension of time to transmit the record must be made by written motion and must be accompanied by one or more affidavits setting forth facts showing good cause for extension.

Cases dismissed under this rule will be reinstated only for good cause shown.

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

*Notice: ~~This Local Rule applies only to appeals in asbestos cases or in municipal court cases that are maintained on an independent electronic docketing or electronic filing system other than that of the Cuyahoga County Clerk of Courts.~~*

(A) **Appeals In Asbestos Cases. ~~Subject To This Rule.~~** When an asbestos case has been processed at the trial level under a court-ordered or court approved electronic filing system, the parties shall facilitate the docketing of an appeal in this court. The appeal will be assigned to the regular calendar. The documents to be transmitted on appeal will include:

- (1) Any documents or exhibits originally filed in the trial court in hard copy (paper) format;
- (2) Signed and journalized copies of the final appealable orders upon which the appeal is based; and
- (3) Stipulated paper copies of the electronic trial court filings that the parties deem necessary to provide a record for appellate review.

The appellant is responsible for providing the appropriate record, but all parties shall affirmatively cooperate to assist the clerk of the trial court in obtaining and transmitting an agreed record.

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### **RULE 11.1. ACCELERATED CALENDAR**

[Existing language unaffected by the amendments is omitted to conserve space]

#### **(B) Procedure.**

- (1) Each appellant and cross-appellant must complete a praecipe and docketing statement ~~and the praecipe form~~ required by Loc.App.R. 9 (see Appendix A for Praecipe and Docketing Statement Form). ~~The purpose of the docketing statement is~~ This form allows the court to determine whether an appeal will be assigned to the accelerated or regular calendar and the suitability of the appeal for a prehearing mediation conference.
- (2) If the appellee objects to the assignment of the appeal requested by the appellant on the praecipe and docketing statement form, appellee may, ~~within seven days after the praecipe is filed,~~ move the court under App.R. 15(B) to assign the appeal to the calendar not requested by appellant.
- (3) If waiver of argument is desired, then the parties must file a joint motion waiving the argument at least 14 days before the date scheduled for oral argument. However, the court may direct that the case be argued.
- (4) If an appeal is assigned to the accelerated calendar, then:
  - (a) The appellant must cause the record to be filed within 20 days after the filing of the notice of appeal;
  - (b) The appellant must serve and file a brief and assignments of error within 15 days after the record is filed;
  - (c) The appellee must serve and file an answer brief, if any, within 15 days after service of appellant's brief;
  - (d) The court will not accept any reply brief by appellant; and

- (e) Neither brief may exceed 15 pages.
- (5) In its discretion, the court may issue “judgment entry — accelerated calendar” or a full opinion. (*See* App.R. Form 3).
- (6) Upon motion for good cause shown, the court may order a case to be expedited as to transmission of the record, briefing, hearing, and disposition on such schedule and priority as the court may direct.

~~See Appendix A for Praecipe conforming to Loc.App.R. 9. See Appendix B for Docketing Statement conforming to Loc.App.R. 9.~~ *See* App.R. Form 3 for Judgment Entry — Accelerated Docket.

## **RULE 13.2. PRIVACY AND CONFIDENTIALITY**

(A) **Court Records Publicly Available.** Court records are presumed to be open for public access. Sup.R. 45(A). Except as provided below, all documents filed with the clerk of this court will be available for public viewing ~~both~~ by direct access at the office of the clerk, and, in some instances, remotely via electronic transmission and the internet.

### **(B) Personal and Private Information.**

[Existing language unaffected by the amendments is omitted to conserve space]

- (3) Correction of Improperly Filed Personal and Private Information. If personal and private information is improperly included in a filing, either the party who filed the information or the person whose information is disclosed may move the court for leave to replace the filed document with an identical document with the personal and private information removed or redacted in accordance with the procedure outlined in subparagraph 4 below. The proposed replacement document shall be attached to the motion. If the court grants the motion, then the clerk will file-stamp the replacement document, replace the originally filed document with the replacement document, and remove the originally filed document from the electronic docket. ~~return the originally filed document to the~~

~~person who filed it.~~ The clerk will also include a notation of this action on the docket.

- (4) Redaction. In lieu of removing all personal and private information from a document to be filed with the court, a party may redact the document, replacing the personal and private information with references that correlate to specific personal and private information. The parties may, without leave of court, file under seal a Personal Identifier Form that consists of a correspondence table or key that will allow the court to identify the referenced personal and private information. The Personal Identifier Form shall be filed in a separate envelope ~~within the case file,~~ and conspicuously marked as follows:

**“NOTICE: The enclosed personal and private information is non-public. It is for the use of the court, the attorneys of record listed in the case, and the clerk of court’s office only. Any other person must have a court order to view the contents of this envelope.”**

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(D) **Restricted Public Access.** ~~All documents filed with the clerk will be available for direct access at the office of the clerk immediately. However, the clerk of courts will not make any document filed with the court available electronically for a period of at least ten days. Within ten days after a document is filed, Any~~ party may move the court to restrict public access of a filed document to direct access only. While this motion is pending, the clerk will not make the document available electronically. The court will restrict public access to direct access only, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a greater interest after considering the following:

- (1) whether public policy is served by restricting public access;
- (2) whether any federal, state, or common law exempts the document or information from public access;
- (3) whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.

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### **RULE 13.3. JUDGE'S ELECTRONIC SIGNATURE**

Electronic documents may be signed by a judge or magistrate via an electronic signature as defined by R.C. 1306.01, affixed through a secure process approved by the court. An electronic signature will be represented as a digitized image of the judge's or magistrate's handwritten signature ~~superimposed over the court's official seal.~~

All documents signed in this manner shall have the same force and effect as if the judge or magistrate had affixed his or her signature to a paper copy of the document. Electronic submission of such an electronically signed document to the clerk of court by an authorized member of the court's staff shall constitute the filing of the document for all purposes, including, but not limited to, the Rules of Superintendence and the Ohio Appellate Rules.

### **RULE 14. COMPUTATION AND EXTENSION OF TIME**

An appellant desiring an extension of time to file the record, assignments of error, briefs, or any other document shall file a written motion for an extension of time with supporting brief or affidavit setting forth good cause for the extension before the due date to avoid dismissal of the case.

An appellee desiring an extension of time to file additional designation of the record, briefs, or any other documents shall file a written motion for an extension of time with supporting brief or affidavit setting forth good cause for the extension before the due date. Otherwise, the case will be placed on the calendar for oral argument. (*See* App.R. 18(C).)

Any motion for an extension of time shall include the original due date of the document and the total number of extensions, if any, the party has been granted to date. If a request for an extension of time has been granted previously, any subsequent request must be supported by facts which demonstrate why additional time is necessary, and the request will be granted only in exceptional circumstances and in the interest of justice.

### **RULE 16. BRIEFS**

- (A) **Length And Form.** All briefs filed in this court must comply with the requirements of App.R. 16 and 19.

[Existing language unaffected by the amendments is omitted to conserve space]

- (5) Exclusions from Page Limitations: All page limitations are exclusive of the table of contents, the table of authorities, certificate of service, statutes, ~~any other authorities cited~~, and any appendices.

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**(B) Notice of Conceded Error.** When a party concedes an error that is dispositive of the entire appeal, the party conceding the error shall file a separate notice of conceded error ~~either in lieu of or in addition to their~~ a responsive brief. Once all briefing is completed, the appeal will be randomly assigned to a merit panel for review. The appeal will be considered submitted on the briefs unless the assigned panel sets an oral argument date.

~~(C) **Anders Brief with Motion to Withdraw as Counsel.** If appellant's counsel in a criminal appeal files a no merit brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), counsel shall also file a separate motion requesting leave to withdraw in compliance with Loc.App.R. 44(B). Counsel shall serve both a copy of the motion to withdraw and the *Anders* brief upon appellant as well as any further court orders that are issued in the appeal unless and until the motion to withdraw is granted.~~

~~Upon the filing of an *Anders* brief, the court will either grant appellant leave to file a pro se brief and assignment of error that comports with the appellate rules and local appellate rules within 45 days or, in its discretion, the court may assign new counsel. The order will also inform appellant that the court will independently examine the record regardless of whether such a brief is filed.~~

~~If the appellant files a pro se brief, the appellee may respond and the appellant may reply as provided by the appellate rules and local appellate rules. Once briefing is complete, or the 45 day period for filing a pro se brief has lapsed without a brief being filed, the appeal and the motion to withdraw will be assigned to a merit panel for review. The panel will conduct an independent examination of the record to determine if it discloses an issue of arguable merit prejudicial to the appellant. The appeal will be considered submitted on the briefs unless the court sua sponte sets an oral argument date.~~

**(CD) Case Citation.** Citation to authority in a brief shall be included in the body text of the brief, except when the citation supports a proposition made in a footnote, and shall conform to the manual of citation issued by the Supreme

Court of Ohio's Reporter of Decisions that may be found at <http://www.supremecourt.ohio.gov>.

**(DE) Unnecessary Attachments of Legal Authority Disfavored.** Parties are discouraged from attaching to briefs any legal authority generally accessible through online legal research databases. Only if the determination of the assignments of error presented requires consideration of legal authority not accessible through any online resources, shall the relevant parts be reproduced in an attachment or appendix at the end of the brief.

**(E) Failure To Comply.** A brief not prepared in accordance with these rules and the formalities mandated by App.R. 16 and 19 may result in the brief being stricken and the court ordering that an amended brief complying with the rules be filed by a specified date. ~~be returned by the court to counsel to be conformed to the rules within a specified time.~~ An appellant's failure to conform may result in dismissal of the appeal; a cross-appellant's failure to conform may result in dismissal of the cross-appeal; and an appellee's / cross-appellee's failure to conform may result in the brief being stricken and the right to argue being denied.

## **RULE 19. FORM OF BRIEFS AND OTHER PAPERS**

~~RESERVED~~

### **(A) Form of Brief**

- (1.) Reproduction. A brief may be reproduced by any process that yields an image with clear black text in at least 12 point type when printed. This applies to both e-filed documents and those submitted in paper form. E-filed briefs shall be filed in searchable, but not editable, PDF format.
- (2.) Paper Size, Line Spacing, and Margins. The brief must be formatted to fit on 8 1/2 by 11 inch paper when printed. Text must be doubled-spaced between lines, except quotations more than four lines long should be indented and single-spaced. Headings and footnotes may be single-spaced but must be at least 12-point font. Margins must be at least one inch on all four sides.

- (3) Typeface and Type Style. The body of the brief must be set in a plain, legible typeface. The preferred font type is “Georgia.” The style of the brief should be set in a plain, roman style, although italics and boldface may be used for emphasis. Case names must be italicized or underlined.

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

## **RULE 20. PREHEARING MEDIATION CONFERENCE**

[Existing language unaffected by the amendments is omitted to conserve space]

## **RULE 21. ORAL ARGUMENT**

(A) **Notice Of Argument.** The court shall notify each counsel (or party if not represented by counsel) of the time and place of oral argument by:

- (1) (a) ~~sending notice by facsimile, when available; or (b) sending notice by email, when available; or~~  
(b e) sending notice by ordinary mail; and
- (2) Publishing notice in the *Daily Legal News*.

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

[Existing language unaffected by the amendments is omitted to conserve space]

~~(C) **Argument When “Anders” Brief is Filed.** When a “no merit” brief is filed in a criminal case pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), or if an appellant subsequently files a brief as permitted in Loc.App.R. 16(C), the case will be considered submitted on the briefs and will not be scheduled for oral argument, except by an order of the assigned panel. If a party moves for oral argument, the panel may, in its sole discretion, grant the motion and schedule oral argument at the earliest feasible date.~~

**(CD) Time Allowed For Argument.** Each side will be allowed 15 minutes for oral argument but may move to expand the time for good cause. This request must be filed by separate motion at the time the party's brief is filed. If there is more than one appellee, they must divide the 15 minutes absent an order granting additional time.

**(DE) Waiver Of Argument.** A party's motion to waive oral argument will not automatically result in cancellation of the scheduled argument. Oral argument will take place at the scheduled date and time unless the court grants the motion to waive.

- (1) Motion to Waive Oral Argument. A party may file a motion to waive oral argument no less than ten calendar days before the date scheduled for argument. If an appellee wishes to be heard at argument despite an appellant's motion to waive, within five calendar days after the appellant's motion is filed, appellee may move that the argument go forward as scheduled. Absent such a motion by appellee, an appellant's waiver will be deemed a request to waive oral argument as to all parties. A motion to waive filed less than ten calendar days before oral argument may only be granted by unanimous consent of the assigned merit panel.
- (2) Cancellation of Argument When Pro Se Appellant is Imprisoned. When ~~an~~ a pro se appellant ~~who~~ is imprisoned ~~is representing himself or herself on appeal~~, the court will cancel oral argument unless, no fewer than ten calendar days before the date scheduled for argument, (1) counsel files a notice of appearance on the appellant's behalf for the purpose of arguing the appeal, (2) or appellant notifies the court that he or she is able to appear, or (3) appellee files a motion requesting that argument proceed as scheduled.

**(EF) Postponing Argument.**

- (1) Counsel who anticipate being unavailable for oral argument in a pending appeal at any time after briefing is completed but before argument is scheduled must advise the Assignment Commissioner of their unavailability in writing. The notice shall be in letter format, addressed to the Assignment

Commissioner, Ohio Court of Appeals, Eighth Appellate District, 1 Lakeside Avenue, Room 202, Cleveland, Ohio 44113, and shall include the case caption, the appellate case number, and the dates on which counsel anticipates being unavailable for oral argument. The letter may be delivered to the Assignment Commissioner by U.S. Mail, personal delivery, or via email to [assign@8thappeals.com](mailto:assign@8thappeals.com).

- (2) Cases Scheduled For Argument. Once oral argument has been scheduled and notice has been given under subsection (A) of this rule, a case will not be advanced or postponed on motion of a party except for good cause shown.

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

## **RULE 22. ENTRY OF JUDGMENT**

[Existing language unaffected by the amendments is omitted to conserve space]

### **(B) Remand and Dismissal Orders.**

- (1) An order of remand shall contain a specific description of the basis for the remand and shall state the date upon which the record is to be returned to the clerk of this court.
- (2) The clerk of this court shall serve, upon the trial court judge and the administrative judge of the trial court, any order of this court that remands an appeal for correction of the record under App.R. 9(E) or dismisses an appeal for lack of a final appealable order.

**(C) Form of Opinions.** Opinions of this court will not identify or make reference by proper name to the trial judge, magistrates, court officials, administrative personnel, or counsel for the parties involved in the proceedings

below unless such reference is essential to clarify or explain the role of such person in the course of said proceedings.

### **RULE 23. FRIVOLOUS ACTIONS; VEXATIOUS LITIGATORS; SANCTIONS**

(A) If the Eighth District Court of Appeals, sua sponte or on motion by a party, determines that an appeal, original action, or motion is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose on the person who signed the appeal, original action, or motion, a represented party, or both, appropriate sanctions. The sanctions may include an award to the opposing party of reasonable expenses, reasonable attorney fees, costs or double costs, or any other sanction the Eighth District Court of Appeals considers just. An appeal, ~~or~~ original action, or motion shall be considered frivolous if it is not reasonably well-grounded in fact, or warranted by existing law, or by a good faith argument for the extension, modification, or reversal of existing law.

[Existing language unaffected by the amendments is omitted to conserve space]

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

### **RULE 26. EN BANC CONSIDERATION**

[Existing language unaffected by the amendments is omitted to conserve space]

~~(B) **Judicial Request for En Banc Consideration.** Any judge may submit a request to the Administrative Judge for en banc consideration before or within five days after a decision is journalized.~~

(B) **Party Application For En Banc Consideration.** App.R. 26(A)(2) governs parties' applications for en banc consideration. The parties must strictly comply with the time limits of the appellate rule for filing an application, an opposing brief, or a reply brief. The application and opposing brief shall not exceed ten pages. The reply brief shall not exceed five pages. The parties shall electronically file an original and three copies of the application, opposing brief, or

reply brief in accordance with Loc.App.R. 13.1. ~~and shall email the application, opposing brief, or reply to: [enbanc@8thappeals.com](mailto:enbanc@8thappeals.com) at the time of filing. The subject line of the email shall identify the appeal number and the type of document being submitted, whether application, opposing brief, or reply brief. The application or brief shall be attached to the email in Microsoft Word, WordPerfect, or PDF format.~~

(1) Contents of the Application for En Banc Consideration.

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

(b) The application must specifically identify the paragraph(s) of the panel opinion at issue and the paragraph(s) of the prior panel's opinion that conflict on a point of law and explain why en banc is necessary to secure and maintain uniformity of this court's decisions. ~~disclose the dispositive point of law upon which the panel's decision conflicts with the decision of another panel of this court, (b) specifically cite the conflicting authority and the point of law stated therein that conflicts with the present case, and (c) explain why en banc consideration is necessary to secure and maintain uniformity of this court's decisions. Any application that fails to comply with this provision may be summarily dismissed. In addition, the party or counsel who fails to comply with this provision is subject to sanctions.~~

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

**(CØ) Procedure.** The Administrative Judge may summarily dismiss any application for en banc consideration that does not comply with the requirements of App.R. 26(A)(2) and this local rule. When a majority of the en banc court votes to consider a case sua sponte after the panel's decision has been journalized, the Administrative Judge will issue an order indicating the case is being considered for en banc review and additional briefing may be ordered by the court. ~~If a majority of the en banc court votes to consider a case en banc, the Administrative Judge shall call an en banc conference at the earliest convenient date, which may be at the regularly scheduled judges' meeting. When a sua sponte request for en banc~~



~~consideration is granted after the panel's decision has been journalized, the Administrative Judge will also issue an order vacating the panel's decision. Additional briefing and / or oral argument will be permitted only at the court's request. A decision reached by a majority of the en banc court will be binding upon the whole court. In the event a majority of the full-time judges of the appellate district is unable to concur in a decision, the decision of the original panel shall remain the decision in the case.~~

**RULE 44. DESIGNATION AND WITHDRAWAL OF COUNSEL;  
ADMISSION PRO HAC VICE**

**(A) Designation Of Counsel.** Every notice of appeal, pleading, motion, and brief must contain:

[Existing language unaffected by the amendments is omitted to conserve space]

- (5) The name, office address, telephone number and email address ~~facsimile number~~ of counsel representing the party for whom the document is filed (or the party, if not represented by counsel);

[Existing language unaffected by the amendments is omitted to conserve space]

**(C) Admission Pro Hac Vice.**

[Existing language unaffected by the amendments is omitted to conserve space]

- (2) Admission pro hac vice will be allowed only on motion of an attorney admitted to practice in Ohio and registered with the clerk for active status. The motion shall demonstrate compliance with Gov.Bar.R. XII. It ~~shall~~ may be filed at any time, but no later than with the first pleading or brief in which the attorney seeks to participate or at least 30 days before oral argument if the attorney seeks only to participate in oral argument. The court may withdraw admission pro hac vice at any time.

## **RULE 45. EXTRAORDINARY WRITS (ORIGINAL ACTIONS)**

### **(A) General.**

- (1) The court of appeals has original jurisdiction over the extraordinary writs of Habeas Corpus, Mandamus, Procedendo, Prohibition, and Quo Warranto. Section 3, Article IV, Ohio Constitution.
- (2) In all original actions filed in the Eighth District Court of Appeals, these rules shall govern the procedure and the form of all documents filed in the actions.
- (3) The Ohio Rules of Civil Procedure shall supplement these rules unless clearly inapplicable. Where these rules conflict with the Ohio Rules of Civil Procedure, these rules shall control.

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

**(CA) Filing Fee And Cost Deposit.** The clerk will not accept an original action for filing unless the party bringing the action deposits with the clerk of courts the sum of \$175.00. Of that sum, \$150.00 will be security for the payment of costs, and \$25.00 is a fee, authorized under R.C. 2501.16(B), for the operation of the court. But the clerk will receive and file the action without the payment of \$175.00:

- (1) If the ~~plaintiff~~ relator or petitioner files with the clerk a sworn affidavit or affirmation of inability to secure costs by payment;  
or
- ~~(2) If the appellant produces evidence that the trial court determined that the appellant was indigent for purposes of appeal; or~~
- ~~(23)~~ (23) If the requirement of prepayment is otherwise excused by operation of law, *e.g.*, R.C. 109.19 and 325.31(C).

### **(DB) Procedure.**

(1) Commencing An Action.

(a) Original actions commence with the filing of a verified complaint or petition, together with six copies, Counsel shall file the complaint or petition electronically unless seeking leave to file in paper form in compliance with Loc.App.R. 13.1(A)(4). All documents shall conform ~~eonforming~~ to the format requirements of App.R. 19. (See also R.C. Chapter 2731 (Mandamus), Chapter 2733 (Quo Warranto), Chapter 2725 (Habeas Corpus)). ~~All later pleadings and other papers must also be filed with an original and six copies. Pro se litigants are permitted to file the complaint or petition and all subsequent documents electronically or in paper form per Loc.App.R. 13.1(A)(5). If filing in paper form, the verified complaint or petition and all later pleadings must be filed with an original and five copies.~~

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

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

(~~d~~) Except as provided in Loc.App.R. 45(B)(2), the clerk shall issue a summons as well as serve the summons and a copy of the complaint by ~~certified mail~~ the clerk's standard procedure, such as federal express mail, sent to the address of the respondent as indicated on the complaint unless the party filing the action requests another permissible method of service. See Civ.R. 4.1.

(2) Alternative Writ.

(a) If an alternative writ is requested, the ~~plaintiff or relator or~~ petitioner must also submit a separate application for the alternative writ. If the party filing the action requests expedited disposition of an application for an alternative writ, that party must file a written request with the clerk for personal service under Civ.R. 4.1(B) as well as effect personal service and the return of service forthwith unless that party certifies to the court in writing why prompt service is not practicable. If an alternative writ is granted, respondent must comply with relator's request for relief or show cause why respondent is not required to comply with that request.

(b) If an alternative writ is granted, the burden of service is on the ~~plaintiff or~~ relator . If an alternative writ is not granted, then service must be made under the Rules of Civil Procedure. Under unusual circumstances, the court may issue an alternative writ on its own motion.

(c) When an alternative writ is not granted, the action will proceed as any civil action under the Rules of Civil Procedure. When an alternative writ is granted, the court shall issue a schedule for filing stipulations, ~~and~~ briefs, and evidence or shall schedule the action for a "guidelines hearing" ~~at an early date~~. At the guidelines hearing, the court shall set a schedule for filing motions or other papers and for taking evidence.

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

(43) Dispositive Motions. When a party files either a motion to dismiss or a motion for summary judgment, the movant must also file a supporting brief ~~and indicate whether granting the motion will dispose of the entire case.~~ A brief in opposition may be filed within 20 days of the filing of the motion. ~~The brief in opposition must also indicate whether the motion is dispositive.~~

Unless it directs otherwise, the court will rule on motions without oral argument.

- (54) Evidentiary Hearings. If the parties do not stipulate to the evidence, then the court may conduct a hearing or appoint a magistrate to take testimony on issues of disputed fact. The Rules of Evidence will apply to the taking of testimony under Civ.R. 53.
- (65) Dismissal For Failure To Prosecute. Absent a showing of good cause, if no further action has been taken to join the issues within four months after filing of the complaint, then the original action ~~will~~ may be dismissed for failure to prosecute, after notice to counsel of record.
- (76) Election Cases. If an original action relating to an election is filed within 90 days before the election, then the answer is due five days after service of summons. The reply and the brief of ~~plaintiff or~~ the relator must be filed within five days after the filing of the answer.
- ~~Defendant's or r~~ Respondent's brief must be filed no later than five days after the filing of ~~plaintiff's or~~ relator's brief. Only in exceptional cases will time be extended or diminished, even with consent of opposing counsel. The court, in the exercise of its sound discretion, may shorten any time period for the filing of any answer, motion, or response to any motion.
- (87) Habeas Corpus. Actions in Habeas Corpus shall proceed in conformity with this rule, except to the extent that specific procedures are prescribed in R.C. Chapter 2725.
- (98) Recording Of Proceedings. Upon prior written notice to the court, any party may make arrangements for the recording of any evidentiary hearing by any authorized means. *See, e.g.,* Crim.R. 22.

## **RULE 49. EFFECTIVE DATES**

[Existing language unaffected by the amendments is omitted to conserve space]

Effective February 1, 2019, this court amended the following rules: Loc.App.R. 3, 4, 5, 9, 10, 11, 11.1, 13.2, 13.3, 14, 16, 19, 20, 21, 22, 23, 26, 44, 45, and 60. This court further adopted a single praecipe and docketing statement form contained as Appendix A, which supersedes former Appendix A Praecipe and Appendix B Docketing Statement.

## **RULE 60. SECURITY POLICY / FIREARMS AND DANGEROUS ORDNANCE PROHIBITION**

~~No person, including a judge of a court of record of this state, magistrate of a court of record of this state, employee of this court, bailiff or deputy bailiff of a court of record of this state, county prosecutor, assistant county prosecutor, or a secret service officer appointed by a county prosecutor shall knowingly possess, have under their control, convey, or attempt to convey a deadly weapon, firearm, or dangerous ordnance onto the premises of the Cuyahoga County Court House (“Court House”).~~

~~Any person who possesses a valid license to carry a concealed firearm as issued under R.C. 2923.125 or the reciprocity provision contained in R.C. 109.69, and conveys or attempts to convey a firearm into the Court House, shall immediately inform the Cuyahoga County Sheriff (“Sheriff”) of the individual’s possession of a concealed firearm and shall be instructed by the Sheriff of the general prohibition against the possession of any deadly weapon, firearm, or dangerous ordnance within the Court House. The Sheriff shall not take possession of any firearm carried by a properly licensed person, but shall require that the licensee leave the Court House and further instruct the licensee to safely secure the firearm outside the Court House. Admittance of the licensee shall be permitted once the firearm has been safely secured outside the Court House and the licensee passes the security screening procedure as contained in the “Security Policy and Procedures Manual/Plan” as implemented by this court on June 29, 1995, as amended through November 19, 2007.~~

~~A peace officer or an officer of any law enforcement agency of the state of Ohio or another state, a peace officer or an officer of a political subdivision of the~~

~~state of Ohio or another state, or an officer or agent of the United States of America, who is authorized to carry a deadly weapon, firearm, or dangerous ordnance, who possesses or has under that individual=s control a deadly weapon, firearm, or ordnance, and who is acting within the scope of that individual=s duties at the time of possession or control, shall immediately inform the Sheriff of the possession of the deadly weapon, firearm, or ordnance and shall immediately surrender possession of the deadly weapon, firearm, or ordnance to the Sheriff prior to entering the Court House. The Sheriff shall secure the surrendered deadly weapon, firearm, or ordnance within the secured “gun lock boxes” located at the street level entrance and rear parking garage entrance to the Court House. The deadly weapon, firearm, or dangerous ordnance shall be returned to the individual upon leaving the Court House. This Local Rule of Court is not applicable to the Sheriff, to Deputy Sheriffs, or to Cuyahoga County Central Services / Protective Services Officers while they are on official duty within the Court House.~~

~~The Sheriff shall post signs at the street level entrance and the rear parking garage entrance to the Court House, which contain the following language: “Unless otherwise authorized by law pursuant to the Ohio Revised Code and Local Rule of Court, no person shall knowingly possess, have under the person=s control, convey, or attempt to convey a deadly weapon, firearm, or dangerous ordnance onto the premises of the Cuyahoga County Court House. THE CARRYING OF A CONCEALED FIREARM OR THE OPEN CARRY OF A FIREARM, WITHIN THE CUYAHOGA COUNTY COURT HOUSE, IS PROHIBITED BY LOCAL RULE OF COURT AS AUTHORIZED BY OHIO REVISED CODE '2923.123(C)(6).”~~

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

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

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

Name of Trial Court: \_\_\_\_\_

Case Caption: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,

vs.

\_\_\_\_\_  
Defendant

Trial Court Case Number: \_\_\_\_\_

Trial Court Judge: \_\_\_\_\_

Date of judgment appealed: \_\_\_\_\_

The notice of appeal was filed in compliance with:

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

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**A. PRAECEPT: REQUESTING THE RECORD**

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TO THE CLERK OF THE TRIAL COURT:

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



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## B. CALENDAR

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

**Regular Calendar**

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

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

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

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

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

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

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

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**C. GENERAL INFORMATION**

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1. Was a stay requested in the trial court?  Yes  No (See [App.R. 7](#) and [App.R. 8](#))  
If a stay was requested, how did the trial court rule?  
 Granted  Denied  Pending
  
2. If this case has previously been before this court, list prior appellate case number(s):  
\_\_\_\_\_  
\_\_\_\_\_
  
3. List case names and numbers of cases pending in this court that involve the same transaction or controversy involved in this appeal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
4. Probable issues for appeal (if known): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
5. Have you attached a time-stamped copy of the final judgment being appealed as required under [Loc.App.R. 3\(B\)](#)?  Yes
  
6. Have you been declared a vexatious litigator?  Yes  No  
If yes, did you comply with R.C. 2323.52(F)(2) and seek leave to file?  
 Yes  No

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**D. CRIMINAL CASE**

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

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

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

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

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

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**E. CIVIL CASE**

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

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

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

Yes       No

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

Yes       No

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

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3. Settlement discussions:

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

- None                       Minimal  
 Moderate                       Extensive

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

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

- Yes               No  
 Maybe

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

\_\_\_\_\_  
Appellant or Attorney for Appellant

**CERTIFICATE OF SERVICE**

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

\_\_\_\_\_ on \_\_\_\_ / \_\_\_\_ / 20\_\_\_\_ in the following

manner: \_\_\_\_\_.

\_\_\_\_\_  
**(Signature)**