Proposed Amendments to the
Ninth District Court of Appeals
Local Rules

The Ninth District Court of Appeals will accept public comments until January 18, 2021, on the following proposed amendments to the Local Rules for the Ninth District Court of Appeals.

Comments on the proposed amendments should be submitted in writing to:

C. Michael Walsh, Court Administrator
Ninth District Court of Appeals
121 S. Main Street, Suite 200
Akron, Ohio 44308

or

localrules@ninth.courts.state.oh.us

no later than January 18, 2021.

Key to Proposed Amendments:

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

Proposed Local Rule 41.3 is adopted effective January 1, 2021, pursuant to Sup.R. 5, subject to public comment. This provision realigns the Court's Presiding Judge and Administrative Judge roles to be consistent with Sup.R. 3.01 and 4.01 (describing the powers and duties of the Presiding Judge and Administrative Judge).

The most significant proposed change is the reorganization of the Local Rules to follow the numbering scheme used in the Ohio Rules of Appellate Procedure. The revised Local Rule numbers will aid users because the same content will appear in similarly numbered rules in the Ohio Rules of Appellate Procedure and the Ninth District Local Rules. The rule numbers for the Rules of Appellate Procedure are included for reference when reviewing the proposed renumbering.

There are comments to selected rules to explain any significant changes. Text that remains unchanged, but moved to a new rule number, appears in regular type. Thus, only deleted and added language appears in red with strikethrough or underlining, as appropriate.

Appellate Rule 1 – Scope of rules

Local Rule 1 – Scope of Rules

(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.

Appellate Rule 2 – Law and fact appeals abolished

Local Rule 2 – Law and fact appeals abolished

Reserved

Appellate Rule 3 – Appeal as of right – How Taken

Local Rule 3 – Appeal as of right – How Taken

(A) Notice of Appeal

(1) **In Civil Cases.** When filing a notice of appeal more than 30 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).

(2) 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.

(3) 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.

(4) A party is required to file one notice of appeal from each judgment entered in cases that were considered together in the trial court but not consolidated.

(B) Docketing Statement. 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 the trial court 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~~16.

(C) 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 business days after the filing of the notice of appeal.

(D) 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.

(E) 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.~~ 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~~.

Comment

New Loc.R. 3(A)(3) and (4) are intended to explain this Court's current practice in appeals from multiple trial court judgments.

The deleted language in Loc.R. 3(E) reflects that counsel must file a notice of change of address in each case and that the clerk of courts is not required to forward a copy of the notice to the Court's main office.

Local Rule 3.1 – Costs Deposits in appeals and original actions

(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~~C).

(B) **Original Actions.** At the time of filing a complaint in an original action (habeas, corpus, mandamus, prohibition, procedendo, or quo warranto), 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 financial disclosure form/affidavit of indigency approved by the Ohio Public Defender's Office. If the form/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.

Appellate Rule 4 – Appeal as of right-when taken

Local Rule 4 – Appeal as of right-when taken

Reserved

Appellate Rule 5 – Appeals by leave of court

Local Rule 5 – Appeals by leave of court

Reserved

Appellate Rule 6 – Concurrent jurisdiction in criminal actions

Local Rule 6 – Concurrent jurisdiction in criminal actions

Reserved

Appellate Rule 7 – Stay or injunction pending appeal-civil and juvenile actions

Local Rule 7 – Stay or injunction pending appeal – civil and juvenile actions

(A) **Service required.** All motions to stay 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.

Comment

Proposed Local Rule 7 and Local Rule 8 contain the same information that previously appeared in Local Rule 4. That rule combined civil and criminal cases into one provision. This new format divides the former rule to be consistent with the general Appellate Rules.

Appellate Rule 8 – Bail and suspension of execution of sentence in criminal cases

Local Rule 8 – Bail and suspension of execution of sentence in criminal cases

(A) **Service required.** All motions 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 shall be accompanied by a memorandum that sets forth specific facts demonstrating why it should be granted with specific references to the factors in Crim.R. 46. 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.

Comment

Proposed Local Rule 7 and Local Rule 8 contain the same information that previously appeared in Local Rule 4. That rule combined civil and criminal cases into one provision. This new format divides the former rule to be consistent with the general Appellate Rules.

Proposed Local Rule 8 adds that a motion for bond should refer to the factors in Crim.R. 46.

Appellate Rule 9 – The record on appeal

Local Rule 9 – 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) **Transcript of Proceedings**

(1) 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.

(2) Exhibits. In addition to the requirements in App.R. 9, a transcript of proceedings prepared by a court reporter to be included in the record on appeal shall state "NO EXHIBITS IDENTIFIED" if there are no exhibits identified or otherwise referred to in the transcript. This statement shall be in place of the "index to exhibits" required in App.R. 9(B)(6).

(C) **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]

(D) ~~**Transcript Made Record**~~ **Transcript included in the record on appeal.** 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.

(E) 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.

Comment

Proposed Local Rule 9(B)(2) requires a court reporter to either list the exhibits included or, if there are no exhibits identified or otherwise referred to in the transcript, to indicate "NO EXHIBITS IDENTIFIED" in the transcript to aid the parties and Court.

Appellate Rule 10 – Transmission of the record

Local Rule 10 – Transmission of the record

(A) 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.

(B) 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.

(C) **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.

(D) **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 it. ~~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.

Comment

Loc.R. 10(D) is amended to reflect the current practices of the clerks of court in the Ninth District, which do not permit a party or counsel to remove a transcript of proceedings. Deleting this provision will eliminate confusion.

Appellate Rule 11 – Docketing the appeal; filing of the record

Local Rule 11 – Docketing the appeal; filing of the record

(A) **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.

Appellate Rule 11.1 – Accelerated calendar

Local Rule 11.1 – 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~~16, 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~~21 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.

Appellate Rule 11.2 – Expedited appeals

Local Rule 11.2 – Expedited appeals

Reserved

Appellate Rule 12 – Determination and judgment on appeal

Local Rule 12 – Determination and judgment on appeal

Reserved

Appellate Rule 13 – Filing and service

Local Rule 13 – Filing and Service

(A) 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.

(B) 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.

(C) Items sent directly to this court at its headquarters in Akron, Ohio, will not be considered filed.

(D) Service by clerk of court system. A party may use the clerk of court's electronic filing system to complete service. App.R. 13(D).

Comment

Loc.R. 13(D) authorizes the use of the clerk of court's electronic filing system to complete service.

Local Rule 13.1 – 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.]

Local Rule 13.2 – 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.

Appellate Rule 14 – Computation and extension of time

Local Rule 14 – Computation and Extension of Time

(A) First extension for Appellate Briefs – 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.]

Appellate Rule – 15 Motions

Local Rule 15 – Motions

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

Appellate Rule – 16 Briefs

Local Rule 16 – Briefs

(A~~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 signature of counsel or unrepresented party submitting the brief.

(10~~9~~) A certificate of service.

(11~~0~~) 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.

(B~~C~~) **Appellee's Brief.** The brief of the appellee shall conform to the requirements set forth in subsection (A) 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. Appellee's Brief does not need to include an appendix if the materials that would be required are already attached to appellant's brief.

(C~~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 subsection (A) 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.

(D~~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.

(E~~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.

(F~~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.

Appellate Rule 17 – Brief of an amicus curiae

Local Rule 17 – Brief of an amicus curiae

(A) The brief of an amicus curiae shall conform to the requirements of Local Rule 16 and Local Rule 19.

(B) The cover page of an amicus brief shall identify the party on whose behalf the brief is being submitted or indicate that the brief does not expressly support the position of any parties to the appeal.

Comment

This new Local Rule sets forth requirements for amicus briefs. Prior to this, there were no provisions regarding amicus briefs in the Court's Local Rules.

Appellate Rule 18 – Filing and service of briefs

Local Rule 18 – Filing and service of briefs

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

(B) If the clerk of courts permits electronic filing, and a brief is electronically filed, no paper copies of the brief are required to be filed with the clerk of courts.

Appellate Rule 19 – Form of briefs and other papers

Local Rule 19 – Form of briefs and other papers

(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~~3) 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~~4) Footnotes should be limited to information that supplements the text, but would otherwise be distracting in the body of the brief. Footnotes must be double spaced and appear in the same size font as the text in the body of the brief.

(~~6~~5) 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").

(6) Briefs should not use the names of minors or victims or contain personal identifiers. *See* Sup.R. 45.

(B) 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~~19(~~E~~B)(2). This Brief is printed using Times New Roman or Georgia 14-point typeface using _____ word processing software and contains _____ words.

_____
Signature

(C) Other Papers. The formatting requirements set forth in subsection (A) in this Local Rule also apply to other papers filed in the court, including but not limited to motions and applications.

Comment

There are two significant additions to Loc.R. 19(A). First, Loc.R. 19(A)(4) clarifies that footnotes must be double spaced and appear in the same size font as the text in the body of the brief. This is consistent with the existing requirements of Loc.R. 19(A)(1) and (2), but briefs were often prepared with footnotes single-spaced and in smaller font. Second, Loc.R. 19(A)(6) prohibits the use of the names of minors or victims in briefs.

Appellate Rule 20 – Prehearing conference

Local Rule 20 – Prehearing conference; mediation

(A) Ohio Uniform Mediation Act. The Ninth District Court of Appeals incorporates by reference the "Uniform Mediation Act," R.C. 2710.

(B) Mediator Training and Education. The Court's Mediation Attorney shall meet the qualifications of and comply with all training requirements of Sup.R. 16.23 and adopted pursuant to Sup.R. 16.22 governing mediators and mediation.

(C) Cases Eligible for Mediation.

(1) This Court has discretion to encourage parties to use mediation in any civil appeal or any other action filed in this Court that can be legally mediated. This Court may issue an order for mediation on its own motion, upon the motion of counsel, upon the request of a party, or upon referral by the mediator. Any party may telephone the Mediation Attorney to make a confidential request for mediation or to request that a scheduled mediation be canceled.

(2) Mediation is prohibited in cases identified in Sup.R. 16.21.

(D) Nothing in this division shall prohibit the use of mediation in cases where it is authorized by Sup.R. 16.21.

(~~A~~E) 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, or any other relevant appellate or trial court filings ~~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 contact(s). At the discretion of the Mediation Attorney, ~~conferences~~ mediation contacts will ~~may~~ be conducted in person, by telephone, by video, or a combination of telephone, in person, or video conferences ~~when practicable~~.

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

(~~B~~F) 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~~G) 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~~H) Privilege and Confidentiality.

(1) Privilege. Mediation communications are privileged pursuant to ~~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 to the privilege apply as outlined ~~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~~

(2) Confidentiality. Mediation communications are confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to disclosure. This Court may impose penalties for any improper disclosures made in violation of this rule. The following mediation communications are not confidential:

(a) Parties may share all mediation communications with their attorneys;
(b) Certain threats of abuse or neglect of a child or an adult;
(c) Statements made during the mediation process to plan or hide an ongoing crime;
(d) Statements made during the mediation process that reveal a felony.

(3) By participating in mediation, a nonparty participant, as defined by R.C. 2710.01(D), submits to the Court's jurisdiction to the extent necessary for enforcement of this rule. Any nonparty participant shall have the rights and duties under this rule as are attributed to parties, except that no evidence privilege shall be expanded.

(I) The Mediation Attorney shall maintain information for mediation parties, including victims and suspected victims of domestic violence. The Mediation Attorney will have information regarding referrals for legal counsel and other support services such as Children Services, domestic violence prevention, counseling, substance abuse, and mental health services. Any information provided shall not be construed as a recommendation of the resource. The recipient of the information has a duty to investigate the resource independently.

(J) It is the goal of the Court to use mediation to benefit the parties, to assist in reaching a resolution, and to provide a process that is timely and flexible that maintains the trust and confidence of the participants. Any mediation participant may provide comments, complaints, or feedback regarding the performance of the Mediation Attorney to the Mediation Attorney or the Court Administrator.

Comment

The proposed changes to Loc.R. 20 are intended to comply with recent amendments to the Rules of Superintendence. The Court does not intend to modify the mediation program as a result of these proposed changes.

Appellate Rule 21 – Oral argument

Local Rule 21 – 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~~ up to five minutes 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 14 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.

(F) Media broadcasting, recording or photographing court proceedings.

(1) All media representatives who seek to televise, record or photograph specific court proceedings shall request permission from the Court in writing at least three days prior to the date on which the proceedings are scheduled to occur. The Court shall issue a written order authorizing the request in those proceedings that are open to the public, as provided by Ohio law.

(2) The provisions of Rule 12 of the Ohio Rules of Superintendence shall apply, except that not more than one portable camera (television, videotape, or movie) with one operator or more than one audio system in the courtroom shall be permitted. Arrangements for the "pooling" of equipment shall be made as set forth in Sup.R. 12.

(3) Media representatives shall at all times conduct such activity in a manner whereby the participants shall not be distracted or the dignity of the proceedings impaired.

(4) The presiding judge may revoke the permission to broadcast, record, or photograph any proceeding for the failure of any media representatives to conduct themselves accordingly or for failure to comply with Sup.R. 12.

(G) Clerk to send record. When the Court files an order scheduling oral argument or submission on briefs, the clerk of the court of appeals shall forward the record to the Court's main office and note on the docket that the file has been sent.

(H) Precedence of Oral Argument. An oral argument scheduled before the Ninth District Court of Appeals takes precedence over pretrials and trials scheduled before any municipal court or court of common pleas.

Comment

The first sentence of Loc.R. 21(B), regarding the length of time allowed for oral arguments, is no longer necessary in light of the recent amendment of App.R. 21(C) to allow each side 15 minutes for oral argument. The second sentence of Loc.R. 21(B) is amended to reflect the Court's practice that appellant may reserve up to five minutes for rebuttal.

Loc.R. 21(F) sets forth the provisions of this Court's Media Standing Order regarding media broadcasting, recording, or photographing oral arguments. Including this in the Local Rules will make it easier for the media to locate.

Loc.R. 21(H), which mirrors similar language that appears in the Ohio Supreme Court Rules of Practice, recognizes that oral argument in the court of appeals takes precedence over trial court matters. This provision should reduce the number of oral argument continuances and allow for more efficient scheduling of oral arguments.

Appellate Rule 22 – Entry of judgment

Local Rule 22 – Entry of judgment

(A) Form of Decisions. Decisions of the court will be announced on a form provided by the court entitled, "Decision and Journal Entry."

(B) 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.

(C) The court of appeals may transmit by fax or other electronic means to the court of appeals clerk any decision, judgment entry, or order which will be accepted as the original and the signatures of the judges shall be accepted as originals consistent with Civ.R. 5(E).

Appellate Rule 23 – Damages of delay

Local Rule 23 – Damages of delay

Reserved

Appellate Rule – 24 Costs

Local Rule 24 – Costs

Reserved

Appellate Rule 25 – Motion to certify a conflict

Local Rule 25 – Motion to certify a conflict

Reserved

Appellate Rule 26 – Application for reconsideration; application for en banc consideration; application for reopening

Local Rule 26 - Application for reconsideration; application for en banc consideration; application for reopening

(A) En banc consideration.

(1) When a decision of this Court implicitly or explicitly overrules an earlier decision of this Court by a two-to-one vote of the panel, a party may move for en banc consideration or the Court may sua sponte order en banc consideration, as outlined below.

(2) By a party. A party's application for en banc consideration must be filed within ten days of the filing of the decision. En banc consideration is not favored and will not be ordered unless necessary to secure or maintain the uniformity of decisions within the District on an issue that is dispositive in the case. *See* App.R. 26(B). The application and brief in support shall not exceed ten pages. Within ten days of service of the application for en banc consideration, a party opposing the motion may file an opposing brief that shall not exceed ten pages. The party making the application for en banc consideration may file a reply brief, not to exceed five pages, within seven days of service of the answer brief in opposition. An original and three copies of any application for en banc consideration, opposing brief, or reply brief are required.

(3) By the Court. Any Judge on the Court may make a request to the Court's Presiding Judge that a case be considered en banc. The request must be made within ten days of the release of the decision. If a request is made, the Presiding Judge shall issue an order

inviting the parties to file briefs, not to exceed ten pages, addressing whether they believe the issue should be considered en banc.

(4) Procedure.

(a) The author judge of the decision shall inform the members of the en banc court of a party's request for en banc consideration. If a majority of the en banc court votes in favor of en banc consideration, the Presiding Judge shall call an en banc conference to take place at the earliest convenient date, which may be at the regularly scheduled judges' meeting. The parties will be requested to file supplemental briefs on the conflicting issues. Briefs shall be limited to not more than ten pages. An original and six copies of the briefs shall. be filed pursuant to a briefing schedule set by the Presiding Judge. Oral rehearing en banc will not be allowed except by majority vote of the en banc court.

(b) Notice of the en banc conference will be accompanied by the panel's released decision as well as the court's previous decisions in question, relevant decisions of other appellate districts, supplemental and original briefs of the parties, and such other materials essential to display the conflicting considerations. A discussion of the issues will take place at the en banc conference.

(c) If the en banc majority decides to adhere to the released decision, the Presiding Judge shall designate a judge from the en banc majority to draft an appropriate order, which will be circulated for comment or dissent in accordance with customary practice. If the en banc majority decides to overrule the panel's decision, the Presiding Judge shall designate a judge from the en banc majority to draft the En Banc Decision. The En Banc Decision shall be circulated among all of the judges of the Court for comment or dissent in accordance with customary practice. The En Banc Decision will contain an appropriate reference to the en banc procedure.

Comment

Proposed Loc.R. 26(A) sets forth the text of this Court's existing En Banc Consideration Standing Order.

Appellate Rule 27 – Execution, mandate

Local Rule 27 – Execution, mandate

Reserved

Appellate Rule 28 – Voluntary dismissal

Local Rule 28 – Voluntary dismissal

Reserved

Appellate Rule 29 – Substitution of parties

Local Rule 29 – Substitution of parties

Reserved

Appellate Rule 30 – Duties of clerks

Local Rule 30 – Duties of clerks

(A) **Service of Journal Entries and Court Notices.** The clerk of court for each county shall serve ~~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 serve ~~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.

(B) **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.

Appellate Rule 31 – Reserved

Local Rule 31 – Reserved

Appellate Rule 32 – Reserved

Local Rule 32 – Reserved

Appellate Rule 33 – Reserved

Local Rule 33 – Reserved

Appellate Rule 34 – Appointment of magistrates

Local Rule 34 – Appointment of magistrates

(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.~~

Comment

The deletion of Loc.R. 34(B) and (C) is intended to eliminate redundant and unnecessary language. Loc.R. 34(A) limits the Court's magistrate to ruling on routine procedural motions and entering routine procedural orders. Sections (B) and (C) provide unnecessary examples; they can be eliminated to simplify and shorten the Local Rules.

Appellate Rule 41 – Rules of courts of appeals

Local Rule 41.1 – 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).

Local Rule 41.2 – 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 clerk of the court of appeals. An attorney shall include the attorney's ~~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 be 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. Appointed counsel must also demonstrate that counsel has moved the trial court to appoint new counsel for the appeal.

(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.

(a) Appointed counsel must use the current version of the form issued by the Ohio Public Defender.

(b) Appointed counsel must attach the current version of the financial disclosure/affidavit of indigency form. The form must either be signed by the represented party or the appointing judge. An entry appointing counsel cannot be filed instead of a financial disclosure form.

(c) 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 28 ~~14~~ days of the entry of the decision and journal entry or order that disposes of the appeal.

(4) Untimely or improper application ~~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.

Comment

The proposed additions are intended to provide guidance to appointed counsel who intends to withdraw and to appointed counsel who move for appointed counsel fees. The time for filing the

application is extended to 28 days, Loc.R. 41.2(E)(3), and the requirements for an application, and common mistakes, are outlined in Loc.R. 41.2(E)(1).

Local Rule 41.3 – Presiding Judge and Administrative Judge

(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 have the powers and duties set forth in Sup.R. 3.01. ~~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 have the powers and duties set forth in Sup.R. 4.01. ~~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.~~

Comment

Proposed Local Rule 41.3 is adopted effective January 1, 2021, pursuant to Sup.R. 5, subject to public comment. This provision aligns the Court's Presiding Judge and Administrative Judge roles to be consistent with Sup.R. 3.01 and 4.01.

Local Rule 41.4 – 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).

Local Rule 41.5 – Records Retention

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

Appellate Rule 42 – Title

Local Rule 42 - Title

These rules shall be known as the Local Rules of the Ninth District Court of Appeals and may be cited as "Ninth District Local Rules" or "Loc.R."

Appellate Rule 43 – Effective Date

Local Rule 43 – Effective date

Effective _____, 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.]