

IN THE TENTH DISTRICT COURT OF APPEALS

LOCAL RULES
OF THE TENTH DISTRICT COURT OF APPEALS
AS AMENDED THROUGH ~~JULY 1, 2017~~ July 1, 2021
FOREWORD

Commented [EDW1]: Proposed effective date for these amendments

The following Rules have been promulgated by the Judges of the Tenth District Court of Appeals, pursuant to Section 5(B), Article IV, Ohio Constitution, to supplement the Ohio Rules of Appellate Procedure and the Ohio Rules of Civil Procedure, for the purpose of promoting the administration of justice, and increasing the efficiency of the operation of the Court and shall be construed to be consistent with said Appellate Rules and Civil Rules.

RULE 1

ELECTRONIC FILING (e-Filing)

(A) **Mandatory e-Filing**

Except as specifically provided elsewhere in these rules, by other rule or statute, or where expressly authorized by an entry of this Court, all documents submitted for filing shall be electronically filed using the Franklin County Clerk of Court's "e-Filing System."

(B) **Pleadings for which Untimely Filing May Deprive the Court of Jurisdiction**

Complaints, notices of appeal, and motions to certify a conflict filed pursuant to App.R. 25 may be e-filed or filed in paper form.

(C) **Pro Se Filers**

Parties not represented by counsel are not required to utilize the e-Filing system and may file documents in paper form.

(D) **Leave to File in Paper Form**

An attorney wishing to file a specific document or all documents in a given case in paper form may file a motion requesting leave to so file. Such motion may itself be filed in paper form and shall set forth the exceptional circumstances justifying the request.

(E) Paper Form Documents

Documents filed in paper form shall be scanned and uploaded to the e-Filing System by the Franklin County Clerk of Courts. In such case, the uploaded electronic version of the document shall constitute the original document.

(F) 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 may be signed: (1) in longhand and a scan of the signed document e-filed, (2) with a digital or e-signature available in several popular document management programs, or (3) with a conformed signature of "/s/ (name)."

Any of the above signature forms on an electronically filed document is deemed to constitute a legal signature of the attorney or party on the document for purposes of the signature requirements imposed by the Ohio Rules of Superintendence, Rules of Appellate Procedure, Rules of Civil Procedure, Rules of Criminal Procedure and/or any other law.

(2) Multiple Signatures

When a stipulation or other 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 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.

(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) Third-Party Signatures

Documents containing signatures of third parties (i.e., affidavits, stipulations, etc.) shall be electronically filed only as scanned-in images.

(4) Judge/Judicial Officer Signature

Electronic documents may be signed by a Judge, Magistrate, or Court Administrator by means of an electronic signature. An electronic signature shall consist of a digitized image of the signer's longhand signature superimposed over the Court's official seal. Such electronic signature may be affixed to a document only through the signer's secure e-Filing account. All decisions, orders, decrees, judgments and other documents signed by means of an electronic signature shall have the same force and effect as if the signer had affixed his or her signature to a paper copy of the document.

(G) Time of Filing

All time referenced herein refers to the time applied by the clerk's time stamping system. Documents may be submitted 24 hours a day, seven days a week. The date and time reflected in the confirmation notice from the e-filing system informing the e-filer that the document submitted for filing has been received shall serve as the date and time of filing, if the filing is later accepted by the clerk. Documents submitted to the e-filing system on or before 11:59 p.m., and subsequently accepted by the clerk, are deemed filed on the day submitted. Documents submitted to the e-filing system at 12:00 midnight, and

subsequently accepted by the clerk, are deemed filed on the day submitted. This rule shall be read in conjunction with Civ.R. 6, which provides that a filing deadline that falls on a Saturday, a Sunday, or a legal holiday is extended to the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

For purposes of proceedings before this court, documents submitted to the e-filing system by the Court of Appeals or any lower court or tribunal after 4:59 p.m. on a business day or on a Saturday, a Sunday, or a legal holiday shall be deemed to have been filed on the next business day irrespective of the time stamp applied to the document.

(H) Filing Fees

The Clerk of the Tenth District Court of Appeals shall under no circumstances reject a filing due to the inability of the filer to pay a filing fee at the time of filing. In accordance with App.R. 13(A)(3), the Court at a later time may dismiss a case for non-payment of the applicable filing fee.

RULE 2

APPLICABLE RULES

(A) Appeals

The Ohio Rules of Appellate Procedure, as supplemented hereby, shall govern procedure in appeals to this Court.

(B) Original Actions

The Ohio Rules of Civil Procedure, as supplemented hereby, shall govern procedure in original actions filed in this Court.

(C) Appeals from the Environmental Review Appeals Commission

Appellate Rules 11(A), 11(B), 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 26, 27, 28, 29 and 30, as supplemented hereby, shall apply to and govern procedure in appeals to this Court from the Environmental Review Appeals Commission pursuant to R.C. 3745.06, except as may be otherwise provided by law.

(D) Form of Filings

All pleadings, briefs, and other papers filed or presented to the Court for consideration in appeals and original actions shall be in writing. Writing for purposes of e-Filed documents means that said documents when printed must produce a clear black image in at least 16 point type, and otherwise comply with App.R. 19. [To compensate for the large typeface, any page limit for a pleading set forth in the Ohio Rules of Appellate Procedure, which is not otherwise specifically addressed herein, shall be doubled in length.](#)

The clerk shall forthwith call to the attention of the Court Administrator any document filed that does not comply with these rules or is filed out of rule.

(E) Service

Pursuant to App.R. 13(C), copies of all documents filed by any party and not required to be served by the clerk shall, at or before the time of filing, be served on all other parties to the case. The e-mail notice of filing generated by the e-Filing System does not constitute service in the Tenth District Court of Appeals. Service may be made by personal service, by mail, or, where the opposing party is an e-filing account holder, by attaching a copy of the pleading being served to an e-mail sent to an e-mail address registered in the e-filing system. Service on a party represented by counsel shall be made on counsel. Proof of service, indicating how service was made, shall be attached to every filing. With respect to response time, the additional three days discussed in App.R. 14(C) shall only be added when

service is made by mail and shall not apply where service is made on the responding party by personal service or e-mail.

CASE MANAGEMENT PLAN: RULES 3-14

RULE 3

DESIGNATION OF COUNSEL:

ADMISSION PRO HAC VICE

(A) **General Requirements**

Every notice of appeal, pleading, motion, and brief filed shall have typed or printed thereon, the name, address, attorney registration number, and telephone number of counsel filing the same, or, if the party is not represented by counsel, shall list both the party's full residential street address as well as the party's full residential mailing address at which pleadings or notices may be served, and when the counsel is a firm of attorneys, a particular attorney with the firm, having primary responsibility for the case, shall also be indicated. In addition, every notice of appeal shall have typed or printed thereon the name and address of counsel of record of all other parties known to appellant. If counsel desires to withdraw, counsel shall submit an application showing good cause for withdrawal, along with proof of service of said application upon counsel's client, and the name and address of any substitute counsel, or, if none, the name and address of counsel's client.

(B) **Admission Pro Hac Vice**

This Court may permit any attorney who is not licensed to practice law in the state of Ohio but is duly licensed to practice law in any other state or the District of Columbia, to represent, pro hac vice, a party in any appeal pending or to be filed in this Court. A party wishing to appear, pro hac vice, shall file a motion requesting permission to so

appear. Such motion shall be accompanied by a copy of the certificate of pro hac vice registration furnished by the Supreme Court of Ohio's Office of Attorney Services, shall include all of the information required by Gov. Bar R. XII(2)(A)(~~3~~7), and shall be served by the filing attorney on all known parties and attorneys of record.

Commented [EDW2]: Updating to reflect the change in the Gov.Bar.R. number.

(1) Any party to a proceeding may object to a motion of an attorney to appear pro hac vice by filing a response to the same within ten days after service of the motion.

(2) An attorney granted permission to appear pro hac vice in a pending proceeding shall inform this Court of any disciplinary action taken against the attorney since the date permission to appear pro hac vice was granted.

RULE 4

NOTICE OF APPEAL

(A) **Premature Notice of Appeal**

Pursuant to App.R. 4, a notice of appeal prematurely filed before actual entry of the judgment or order appealed from shall be treated as filed after such entry and on the day thereof. When a notice of appeal is so prematurely filed, it shall be retained by the clerk of the trial court, and the copy thereof, together with a copy of the docket entries, shall not be forwarded to the clerk of this Court, pursuant to App.R. 3(E), until after such entry. The clerk of the trial court shall notify appellant, or his counsel, that the notice of appeal was prematurely filed.

(B) **Notice of Appeal in Consolidated Cases**

Where an appeal is taken from a matter consolidated below, a separate notice of appeal shall be filed for each case determined below, whether by separate or joint judgment

entries. The clerk of this Court shall separately file, docket, and assign a number for each case regardless of whether a separate or joint notice of appeal has been filed.

(C) Notice of Appeal in Bindover Cases

When a notice of appeal is filed in a criminal case that originated in juvenile court, but was transferred for criminal prosecution, the notice of appeal shall be filed in the criminal case number, but shall include both the criminal and juvenile case numbers to aid the clerk of this court in transmission of the record.

(D) Deposit for Costs

At the time of filing the notice of appeal, the party filing the appeal or cross-appeal shall deposit with the clerk of the trial court the sum of \$75 in payment of the filing fee and as security for the payment of costs which deposit shall be forwarded by the clerk of the trial court to the clerk of this Court with the copy of the notice of appeal. Failure to make the required deposit shall be grounds for dismissal of the appeal unless leave to make late payment is granted. If the party filing the appeal, by affidavit, shows inability by reason of indigency to pay or secure costs, no deposit shall be required.

RULE 5

APPELLATE MEDIATION

CONFERENCE

(A) Uniform Mediation Act and Definitions

~~This Rule applies to all civil and administrative appeals in this Court.~~

~~The R.C. 2710 "Uniform Mediation Act" (UMA), including all definitions found in R.C. 2710.01, are incorporated by reference and adopted by this court through this local rule.~~

Commented [EDW3]: The amendments to LOC.R. 5 are intended to update the rule and bring our court into compliance with amended Sup.R. 16.21.

(B) ~~Transmission of Documents from Clerk of the Trial Court~~ Applicability

~~(1) This Rule applies to all non-criminal appeals in this Court. Mediation shall be~~
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prohibited, however, in the following instances:

- (a) As an alternative to the prosecution or adjudication of domestic violence;
- (b) In determining whether to grant, modify or terminate a protection order;
- (c) In determining the terms and conditions of a protection order;
- (d) In determining the penalty for violation of a protection order.

~~(2) Nothing in this division shall prohibit the use of mediation in a subsequent divorce or custody case even though the case may result in the termination of the provisions of a protection order; or in a juvenile court delinquency case, even though the case involves juvenile-perpetrated domestic violence.~~

(C) Appellate Mediation Conference

~~Within seven days after service of appellant's or cross-appellant's docketing statement, each appellee may, if desired, file with the clerk of the Court of Appeals, with service on all other parties, a statement report, not to exceed five pages, containing any~~

~~information which may assist the Court and parties in clarifying the issues or settling the appeal or cross appeal.~~

~~(1) Appeals to which this Rule applies shall be reviewed by a mediator of the Court to determine if an appellate mediation conference, pursuant to App.R. 20, would be of assistance to the Court or parties. Any party may request an appellate mediation conference; however, the request need not be granted.~~

~~(2) If an appeal is selected for an appellate mediation conference, upon notice, the attorneys, and the parties if requested, shall attend the appellate mediation conference before a mediator of the Court, to consider the possibility of settlement, the simplification of issues, and such other matters as may aid in the disposition of the proceedings by the Court.~~

~~(3) Any case selected for an appellate mediation conference which has been assigned to the accelerated calendar shall be removed from the accelerated calendar and assigned to the regular calendar.~~

(D) Confidentiality

~~(2) If an appeal is selected for conference, upon seven days notice from the Chief District Mediator, the attorneys, and the parties if requested, shall attend a prehearing conference before the Chief District Mediator, to be held within 14 days after the filing of~~

~~the notice of appeal, or as soon thereafter as practicable, to consider the possibility of settlement, the simplification of issues, and such other matters as may aid in the disposition of the proceedings by the Court. Any case selected for conference which has been assigned to the accelerated calendar shall be removed from the accelerated calendar and assigned to the regular calendar.~~

~~(3) Except to the extent disclosed by the prehearing conference order entered pursuant to Section E of this Rule, information contained in statements or comments made during the prehearing conference shall be regarded as disclosed solely for purposes of settlement negotiations, and shall neither be treated as admissions, nor as limiting the disclosing party in presenting or arguing that party's case.~~

(1) All mediation communications related to or made during the mediation process, including communications made before and after the appellate mediation conference, are subject to and governed by the UMA. 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 sanctions for any improper disclosures made in violation of this rule. Disputes regarding confidentiality should first be addressed with the mediator when possible.

(2) 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.

(3) All mediation communications are confidential with the following exceptions:

(a) Parties may share all mediation communications with their attorney;

(b) Certain threats of abuse or neglect of a child or an adult;

(c) Statements made to plan or hide an ongoing crime or that reveal a felony.

E) Non-compliance Sanctions

(E) ~~Prehearing Conference Order~~ Non-compliance Sanctions

If a party or attorney fails to comply with the provisions of this Rule or the provisions of the

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If a party or attorney fails to comply with the provisions of this Rule or the provisions of the Appellate Mediation Conference Order, this court may impose sanctions which may include, but are not limited to, the award of reasonable expenses or costs caused by the failure, including attorney fees. The court may also assess all or a portion of the appellate costs or dismiss the appeal.

(F) Referral to Resources

The court administrator shall maintain resources for parties to an appellate

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Children Services, domestic violence prevention, counseling, and substance abuse and mental health services.

(G) Evaluation, Comments and Complaints

It is the policy of the Court to use mediation to benefit the parties, to assist in reaching resolutions of cases, and to provide a process that is timely and flexible that maintains the trust and confidence of the public. Any mediation participant may submit written comments, complaints, or feedback to the Court Administrator regarding the performance of the court's mediators.

RULE 6

ACCELERATED CALENDAR

Pursuant to App.R. 11.1, this Court hereby adopts an accelerated calendar, which shall operate as follows:

- (A) Each appellant and cross-appellant shall file a docketing statement with the clerk of the trial court at the same time as the filing of the notice of appeal. The purpose of the docketing statement is to determine whether an appeal will be assigned to the accelerated or regular calendar. The clerk will provide docketing statement forms as prescribed by the Court. The clerk of the trial court shall transmit a copy of the docketing statement with the notice of appeal to the clerk of the Court of Appeals and to the appellee with a copy of the notice of appeal.
- (B) If all appellants or cross-appellants fail to file a docketing statement with the notice of appeal, the appeal shall be placed upon the accelerated calendar unless, within seven

days after the filing of the notice of appeal, the appellee files a docketing statement with the clerk of the Court of Appeals requesting assignment of the appeal to the regular calendar.

(C) If the appellee objects to the assignment of the appeal requested by the appellant on the docketing statement, appellee may, within seven days after the notice of appeal is filed, move the Court for a procedural order pursuant to App.R. 15(B) and Loc.R. 7(B) to assign the appeal to the calendar not requested by appellant.

(D) The Court may assign an appeal to the accelerated or regular calendar at any stage of the proceeding.

(E) An appeal may be assigned to the accelerated calendar if any of the following apply:

(1) No transcript is required (*e.g.*, summary judgment or judgment on the pleadings).

(2) The transcript consists of 50 or fewer pages, or is of such length that its preparation time will not be a source of delay.

(3) An agreed statement is submitted in lieu of the record.

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

(5) All parties to the appeal agree to an assignment to the accelerated calendar, which will be assumed if no docketing statement is filed.

(F) Unless otherwise ordered by the Court, an appeal shall not be assigned to the accelerated calendar if any of the following apply:

(1) A brief in excess of 30 pages (see Loc.R. 8) is necessary to set forth adequately the facts and argue the issues in the case.

(2) The appeal concerns a unique issue of law of substantial precedential value in the determination of similar cases.

(G) In its discretion, the Court may issue a memorandum decision or a full opinion, and may forward either to the Supreme Court Reporter for inclusion in the official reports. Issuance of a full opinion does not remove an appeal from the accelerated calendar.

RULE 7

MOTIONS

(A) General Requirements

Pursuant to App.R. 15(A), all motions must be in writing, served upon opposing counsel, and filed (with proof of service) with the Clerk of the Court of Appeals, who shall note the filing and cause the motion to be filed and docketed. Every motion must set forth in detail both the relief requested and the reasons justifying the granting of such relief. All motions, other than motions for procedural orders under App.R. 9(E), App.R. 10(C), App.R. 14(B), App.R. 17, and Rules 7 and 8(A) of this Court, must be accompanied by a memorandum setting forth the reasons and authorities in support of the motion. Except with respect to such procedural motions, any party may file a response in opposition to a motion within ten days after service of the motion, and any party may file a reply in further support of a motion within seven days after service of the opposition, after which time, the motion shall be submitted to the Court for determination whether or not a response has been filed, except that with respect to motions authorized by App.R. 7, App.R. 8, or App.R. 27, or R.C. 3745.06, responses shall be filed within two days after service of the motion, and replies shall be filed within two days after service of a response. No oral hearing shall be held upon any motions, except that the Court may, if it deems it desirable,

conduct a hearing or an informal conference with respect to motions authorized by App.R. 7, App.R. 8, App.R. 27, or R.C. 3745. 06.

(B) Motions for Procedural Orders

Pursuant to App.R. 15, a motion for a procedural order authorized by Civ.R. 6(B), App.R. 3(F), App.R. 9(E), App.R. 10(C), App.R. 14(B), App.R. 17, and Rules 5, 6, 7, 8 and 11 of this Court, and any other motion for a similar procedural order, shall forthwith upon filing, without waiting for a response thereto, be referred to the Court Administrator, who shall immediately review the same and recommend the action to be taken thereon to the Duty Judge, who shall dispose of the motion in accordance with App.R. 15(C), and Rule 19 of this Court, except that the Court Administrator may approve requests for extension of time not to exceed 90 days for filing the record on appeal and not to exceed 20 days for the filing of the brief of any party provided the Court Administrator determines that there is a reasonable basis for such extension.

RULE 8

BRIEFS

(A) General Requirements

All briefs shall be in writing and shall contain the matter provided by App.R. 16, be in the form provided by App.R. 19, and be filed within the times provided by App.R. 18, except as otherwise provided herein. When the appellant's brief is filed before the record is filed, the appellee's brief shall be filed no later than 20 days after the date on which the record is filed.

(1) The body text of a brief must be set in a plain, legible typeface of at least 16 points, such as Times New Roman or Arial. Footnotes are discouraged, but where necessary must be set in the same typeface as used in the body of the brief. The body text of a brief must be double-spaced, but quotations of 50 words or more may be single spaced and blocked. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(2) Briefs shall present the statement of the case and the argument with accuracy, brevity, and clarity, and include only that which is essential to a ready and accurate understanding of the issues raised by the assignments of error. The title page of briefs shall include the appropriate designation "REGULAR CALENDAR" or "ACCELERATED CALENDAR" beneath the case number assigned to the appeal or action.

(3) Citation to authority in a brief shall be included in the body text and conform to the Manual of Citation issued by the Supreme Court of Ohio's Reporter of Decisions.

(B) Length of Briefs

A brief must be paginated. In a matter assigned to the Regular Calendar, a principal brief shall not exceed 60 pages and a reply brief shall not exceed 20 pages. In a matter assigned to the Accelerated Calendar, a principal brief shall not exceed 30 pages and no reply brief is permitted. The page limits for principal briefs shall not be exceeded without prior leave of the Court obtained in accordance with paragraph (C) of this Rule. In no circumstances shall a reply brief in excess of 20 pages be permitted. The cover page, table of contents, table of cases, statement of the assignments of error, statement of the issues, and any addendum/appendix do not count toward these page limitations. Briefs

in excess of 30 pages filed in a matter assigned to the Accelerated Calendar may be stricken or the matter may be reassigned to the Regular Calendar at the Court's discretion.

(C) Motion for Leave to File Long Brief.

For good cause shown and in extraordinary circumstances, the Court may grant a party leave to file a principal brief in excess of the page limitation set forth in paragraph (B) above. Application for leave to file a brief in excess of these limits shall be by motion filed no later than seven days prior to the time for filing the brief. Such motion shall specify the number of extra pages requested and the reasons why the extra pages are required. Such motion shall be considered in accordance with Rule 6 of this Court, but will be granted in only rare circumstances.

(D) Cross-Appeals

The brief in support of a separate appeal or a cross-appeal shall be filed within the time provided in App.R. 18(A) for the filing of the brief in support of an appeal, except that if a notice of cross-appeal states that the cross-appeal is conditioned upon the granting of relief to appellant, the cross-appellant's brief may be filed with the cross-appellant's (appellee's) answer brief to the brief of appellant.

(E) Addendum/Appendix Disfavored

The inclusion with a brief of an addendum or appendix is generally disfavored. Documents such as the trial court decision and judgment entry, lower court pleadings, evidentiary materials, and generally accessible legal authority need not be attached to a brief. Any addendum/appendix that is filed shall include a table of contents for reference purposes indexed to the numbered items contained therein.

RULE 9

RECORD

(A) Motions for Extension of Time to Transmit Record

(1) All motions for extension of time to transmit the record on appeal, pursuant to App.R. 10(C), shall be made to this Court, rather than to the trial court. No entry of the trial court attempting to extend time for transmitting the record will be recognized by this Court, and it remains the duty of the appellant to cause timely transmission of the record or to seek an extension of time from this Court if good cause therefor exists.

(2) Applications for extension of time to transmit the record shall be made by written motion setting forth good cause therefor. If the extension request is necessitated by the inability of the court reporter to timely transcribe the transcript of the proceedings below, the application for extension of time shall be accompanied by an affidavit of the court reporter so stating.

(B) When Clerk to Transmit Record

The record shall be transmitted by the clerk of the trial court at the time specified by App.R. 10(B) and this Rule, unless this Court has granted an extension of time and certified a copy thereof to the clerk of the trial court.

If at least one of the designations required to be filed by App.R. 9(B) is not made with an appellant's notice of appeal (that is, appellant files a notice of appeal and nothing additional), the clerk of the trial court shall transmit the record on appeal ten days after the filing of the notice of appeal, unless within that time another party also files a notice of appeal and complies with App.R. 9(B).

(C) Return of Record to the Trial Court by Order of this Court

If the record or any part thereof is required by the trial court for use following the transmittal thereof to the clerk of this Court, the trial court, or any party to the appeal, may request, in writing filed with the clerk of the appellate Court, that the record or a portion thereof, not retained pursuant to App.R. 10(D), be returned to the clerk of the trial court for temporary use by that court. If this Court grants the request, the clerk of this Court shall forthwith forward the record to the clerk of the trial court. The clerk of the trial court shall return the record to the clerk of this Court not later than the time specified in the order.

RULE 9.1

SUBMISSION OF EVIDENCE ON APPEAL

The court of appeals does not accept new evidence on appeal that is offered to expand upon the record of evidence heard by the trial court, or otherwise offered to support or rebut the adjudicative facts determined by the trial court.

The court of appeals may admit additional evidence pertaining to the following matters: Standing of a party to prosecute or defend the appeal; mootness of the appeal due to intervening events; timeliness of the appeal when a party alleges that this was affected by technical or clerical errors by the clerk of court; fact-finding in connection with a request for stay, injunctive relief, or award of attorney fees; and alleged ineffective assistance of appellate counsel under App.R.26(B)(8).

If the court decides to consider such evidence, it may refer the matter to a magistrate pursuant to App.R.34(B) for hearing and oversight of the evidentiary process.

RULE 10

Commented [EDW4]: This rule is intended to clarify when this court may take evidence in an appeal.

DISMISSALS FOR FAILURE TO PROSECUTE APPEAL

Unless the appellant demonstrates that no undue delay and no prejudice to appellee has been caused by the failure to comply with the Rules, the following shall be deemed good cause for dismissal of an appeal pursuant to App.R. 3(A), 11(C), or 18(C):

- (A) Failure to file with the notice of appeal the appropriate filing in accordance with App.R. 9(B).
- (B) Failure to timely order in writing from the court reporter any necessary transcript of proceedings.
- (C) Failure to cause the record on appeal to be timely transmitted to the clerk of this Court.
- (D) Failure to timely file the brief and assignment of error.
- (E) Any other noncompliance with the Appellate Rules or the Rules of this Court.

RULE 11

ORAL ARGUMENT IN APPEALS

- (A) Oral argument shall be scheduled without request or motion in all appeals other than those in which a party is both incarcerated and self-represented. Each side will be allowed 15 minutes for oral argument, unless otherwise ordered by the court. A party may file a motion for additional oral argument time not later than the date on which the party's brief is due. The party seeking affirmative relief shall have the right to open and close the argument and the further right to divide the time allotted as desired.
- (B) Any party who wishes to waive oral argument shall file a notice of waiver of oral argument with the Court and serve the same on opposing counsel with proof of service

before the date scheduled for the argument. In the event that such notice is filed within 48 hours of the scheduled argument, counsel shall also notify the Court by telephone.

(C) If a more expeditious submission of the appeal than permitted by scheduling for oral argument is desired, parties may submit the case on the briefs by stipulation filed no later than the time of, or for, the filing of the appellant's brief, but no later than 20 days after the transmission of the record on appeal to this Court. When such stipulation is filed within such time, the appeal shall be submitted to the Court for determination at the earliest feasible time after the time for, or of, the filing of the reply brief, whichever is earlier. Appeals submitted on the briefs after expiration of the above time shall be submitted to the Court for determination at the time scheduled for oral argument.

RULE 12

JUDGMENT ENTRIES AND RECONSIDERATION

In appeals and original actions, the Court shall prepare its own judgment entries in accordance with App.R. 22 and Civ.R. 58, respectively. Judgment entries in both appeals and original actions shall require only the signature of the judge who prepared the decision on behalf of and for all judges therein, thusly: "A, B, & C Judges by B Judge." Where a decision is per curiam, the entry shall be signed by all judges concurring in the judgment.

Pursuant to App.R. 26, applications for reconsideration in appeal cases may be filed not later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App.R. 30(A). Pursuant to S.Ct. Prac. R. 7.01(A)(5), the filing of a timely application for reconsideration tolls the time for filing of a notice of appeal with the Supreme Court of Ohio from a judgment of this Court. ~~To compensate for the larger 16 point type required by Loc.R. 2(D),~~

Commented [EDW5]: This language is made unnecessary by the change to Loc.R. 2(D).

~~the ten page limit applicable to applications for reconsideration and opposing memoranda under App.R. 26(B)(4) is increased to 20 pages.~~

RULE 13

ORIGINAL ACTIONS

(A) How Instituted

An original action, other than habeas corpus, shall be instituted by the filing of a complaint. Service shall be made, and such action shall proceed as any civil action under the Ohio Rules of Civil Procedure.

(B) Deposit for Costs

At the time of filing the complaint in an original action in this Court, the relator shall deposit with the clerk of this Court the sum of \$100, as security for the payment of costs. When serving a complaint pursuant to Civ.R. 4, or court order, the clerk shall cause service copies to be produced in lieu of such copies being furnished by the filer, and shall charge a fee of \$1.00 per copy produced against the funds on deposit.

A party claiming to be indigent shall file with their complaint a motion for leave to proceed in forma pauperis supported by an affidavit ~~or certification sufficient to establish showing indigency and indicating their actual financial condition and the disposition of any request for similar leave sought in any other court.~~ The motion shall comply with Loc.R. 7 of this Court. Upon filing of the motion, the clerk shall forthwith forward a copy to the Court Administrator and the motion shall be determined in accordance with Loc.R.

Commented [EDW6]: The OPD form permits an affidavit or other "certification" of indigency.

7(B). ~~The Court will sua sponte dismiss any complaint found to be frivolous, malicious or abusive.~~

(C) Alternative Writs

In the absence of extraordinary circumstances, no alternative writ will be issued in an original action, other than a habeas corpus action.

(D) Motion to Dismiss

When a motion to dismiss is filed a brief in support must be filed therewith.

(E) Brief in Opposition to Motion to Dismiss; Reply Brief

Any brief in opposition to a motion to dismiss shall be filed within 14 days of the filing of such motion . The moving party may file a reply brief in further support of a motion to dismiss within seven days after service of the brief in opposition.

Commented [EDW7]: The change from 15 to 14 days here and from 10 to 7 days below are required to bring our local rule into compliance with Civ.R. 6(C) and 7(B)(2).

(F) Oral Argument on Motion to Dismiss

All motions will be ruled upon without oral argument before the Court, except where the Court requests such argument.

(G) Presentation of Evidence

To facilitate the consideration and disposition of original actions, counsel should, whenever possible, file an agreed statement of facts.

When the evidence to be considered consists of all or part of an official record or the record of proceedings before an administrative agency, such as the Industrial Commission claim file, a stipulated or certified copy, rather than the original, must be submitted

pursuant to Civ.R. 44, and Evid.R. 902 and 1005. Unless the parties enter into a stipulation concerning the evidence to be submitted to the Court and attach to the stipulation legible copies of such evidentiary materials relevant to the determination of the action, each party shall file with the Court legible certified copies of evidentiary materials the party feels relevant to the issues before the Court. An original public record will not be accepted for filing as evidence. Evidentiary materials in original actions shall not be e-Filed, but shall be filed in traditional paper form. Two copies of the stipulated evidence, or of each parties' evidence in the event that a stipulation cannot be agreed upon, shall be filed with clerk of this Court.

(H) Time for Briefs

The brief of the relator shall be served and filed within 15 days after completion of the presentation of evidence, pursuant to Section G; the brief of the respondent shall be served and filed within 15 days after service of the brief of the relator; and any reply brief shall be served and filed within five days after service of the brief of the respondent.

(I) Service of Copy of Brief

Service of a copy of any brief shall be made upon opposing counsel forthwith, and proof of service shall be filed with the clerk. Such service shall be made in compliance with Rule 2(E) of this Court.

(J) Briefs

Briefs shall conform to App.R. 19 and Loc.R. 8 and shall not exceed 30 pages in length without prior leave of court. The brief of the plaintiff shall contain, under appropriate headings, and in the order here indicated:

(1) 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.

(2) A statement of the issues presented.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case. There shall follow a statement of the facts relevant to the issues presented.

(4) An argument. The argument shall contain the contentions of the plaintiff with respect to the issues presented, and the reasons therefor, with citations to the authorities and statutes relied on.

(5) A short conclusion, stating the precise relief sought.

The brief of the respondent shall conform to the foregoing requirements 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 respondent is dissatisfied with such statements of the plaintiff.

(K) Election Matters

Because of the necessity of a prompt disposition of an original action relating to a pending election, and in order to give the Court adequate time for full consideration of such case, in any such action filed within 90 days prior to the election, the answer day shall be five days after service of summons, and the reply brief of plaintiff must be filed within five days after the filing of the answer. All briefs must be filed no later than five days after the filing of plaintiff's brief. Only in exceptional cases will time be extended, even though opposing counsel has consented thereto.

(L) Oral Argument

In any original action in this Court, oral argument may be had only on approval of a request therefor, provided that the Court may, if it so desires, require such oral argument in any case. Any request for oral argument must be made in writing, by either party, at the time of the filing of the party's original pleading and shall be conspicuously set forth on the front cover of such pleading. Where such request is granted, the party seeking affirmative relief shall have the right to open and close the argument and the further right to divide the time allotted as desired.

(M) Reference to Magistrate

(1) Original actions in this Court may, either upon motion of a party or of the Court, be referred by the Court to a magistrate, pursuant to Civ.R. 53. Unless otherwise indicated in the order of reference to a magistrate, the magistrate shall have all the powers specified in Civ.R. 53, and the proceedings and decision of the magistrate and objections thereto shall be governed by Civ.R. 53. Sections D through M of this Rule apply to proceedings before the magistrate.

(2) Within 14 days of the filing of a magistrate's decision, a party may file written objections to the magistrate's decision. Any other party may also file objections not later than ten days after the first objections are filed. A memorandum in support shall be served and filed with objections. Any memorandum in opposition shall be served and filed within 14 days after service of objections; no reply memorandum shall be permitted. Objections will be submitted to the Court as a part of its regular hearing calendar. Requests for oral argument on objections shall be filed by a party no later than the time set for filing the initial memorandum. A request for oral argument on objections shall be conspicuously set forth on the front cover page of a party's objections or memoranda in opposition thereto.

Memoranda in support of or opposition to objections shall not exceed 30 pages without prior leave of court. The cover page, table of contents, table of cases, and any addendum/appendix do not count toward these page limitations.

Commented [EDW8]: This change makes it clear that our rule about what counts toward page limits in appellate briefs also applies to briefs in support and contra objections.

RULE 14

MOTIONS TO CERTIFY A CONFLICT

Motions to certify to the Supreme Court because of conflict with a judgment of another Court of Appeals, upon the same question, shall be filed not later than ten days after the clerk has both mailed to the parties the judgment or order of the Court that creates a conflict with a judgment or order of another Court of Appeals and made a note on the docket of the mailing, as required by App.R. 30(A). The motion to certify shall set forth specifically the rule of law upon which the alleged conflict exists in such form that could be set forth in a journal entry in accordance with S.Ct. Prac. R. 8.02(B), in the event the motion is granted. App.R. 15 shall apply to such motions to certify and to briefs in support of and opposition to such motions. The filing of a motion to certify does not toll the time for filing of a notice of appeal with the Supreme Court of Ohio from a judgment of this Court.

RULE 15

APPLICATIONS FOR EN BANC CONSIDERATION

An application for en banc consideration filed pursuant to App.R. 26(A)(2) shall initially be submitted to the three-judge panel that issued the more recent of the two decisions alleged to be in conflict. If any member of the original three-judge panel is a

visiting judge, an alternative judge shall be selected from the available full-time members of the Court to sit on the three-judge panel initially reviewing the application for en banc consideration. If, following review of the application, the three-judge panel unanimously finds that no conflict exists the panel shall issue a decision so finding and deny the application for en banc consideration. If any member of the three-judge panel finds that a conflict does exist, the application for en banc consideration shall be submitted to the en banc court for determination. Pursuant to S.Ct. Prac. R. 7.01(A)(6), the filing of a timely application for en banc consideration tolls the time for filing of a notice of appeal with the Supreme Court of Ohio from a judgment of this Court.

RULE 16

CONSOLIDATED CASES

Cases involving related transactions and the same or similar principles of law may be consolidated at the discretion of the Court either upon motion or sua sponte. Upon the filing of notices of appeal from cases which were consolidated below and for which consolidation on appeal is also appropriate, the appellant shall immediately file a motion in this Court requesting consolidation of the appeals and the filing of a joint transcript of proceedings and joint briefs. If the appellant fails to do so, the appellee may file a motion for consolidation, or the Court may sua sponte order consolidation of the appeals.

Once two or more cases have been consolidated in the Court of Appeals, the first case shall be deemed the "lead case." Thereafter, all filings and entries pertaining to the consolidated matter shall contain all case numbers, with the lead case number appearing first, but shall be filed in only the lead case. Upon such filing, the clerk of this Court shall file and docket the filing in each consolidated case. Dispositive motions pertaining to fewer

than all cases within a consolidated matter shall contain only the case numbers to which they pertain and shall be docketed in only those cases.

RULE 17

PRESIDING JUDGE

(A) **Selection and Term**

Pursuant to Rule 3(B) of the Supreme Court Rules of Superintendence for the Courts of Ohio, the Court shall annually elect a Presiding Judge who shall serve a term of one year commencing the first day of January.

(B) **Powers and Duties**

The Presiding Judge shall perform all duties incumbent upon the office. Pursuant to Rule 3.01, of the Supreme Court Rules of Superintendence for the Courts of Ohio, the Presiding Judge shall call and conduct an annual meeting, and other meetings as necessary, of the judges of the Court for the purpose of discussing and resolving administrative problems of the Court. The Presiding Judge shall preside over all such meetings of the Court, and any other meetings and sessions of the Court en banc.

In the absence of the Presiding Judge, the Administrative Judge shall perform the duties of the Presiding Judge.

RULE 18

ADMINISTRATIVE JUDGE

(A) **Selection and Term**

Pursuant to Rule 4(B) of the Supreme Court Rules of Superintendence for the Courts of Ohio, the Court shall annually elect an Administrative Judge who shall serve a term of one year commencing the first day of January.

(B) Powers and Duties

Pursuant to Rule 4.01 of the Supreme Court Rules of Superintendence for the Courts of Ohio, the Administrative Judge shall have full responsibility and control over the administration, docket and calendar of the Court, and for the termination of all cases in the Court without undue delay and in accordance with the time guidelines set forth in Rule 39 of the Supreme Court Rules of Superintendence of the Courts of Ohio. The Administrative Judge shall have the authority to call, conduct, and set an agenda for meetings of the Court for purposes of discussing and resolving administrative or other issues.

In the absence of the Administrative Judge, the duties shall be performed by the Presiding Judge.

RULE 19

DUTY JUDGE

(A) Selection and Term

The Court shall assign a Duty Judge for each week of the year.

(B) Powers and Duties

The Duty Judge shall, subject to Loc.R. 7, rule upon all requests for extension of time and other motions and matters that may be ruled upon by a single judge. The Duty Judge may refer any such motion or matter to a three-judge panel.

In the absence of the Duty Judge, the duties of the Duty Judge shall be performed by, in order of precedence, the Presiding Judge, the Administrative Judge, or the most senior available judge.

RULE 20

APPOINTED COUNSEL

(A) Selection of Counsel

The Court shall maintain a list of qualified attorneys who have notified the Court of their interest in serving as appointed counsel in cases before this Court. The list generally shall be arranged in order based upon when counsel notified the Court of his or her interest in serving as appointed counsel. Counsel shall be selected from the list in a continual rotation, except that the Court may consider the experience and expertise of counsel in making an appointment.

(B) Appointed Counsel Fees

(1) Applications by appointed counsel ~~in criminal cases~~ for attorney fees and expenses on appeal shall be completed on the form prescribed by the Ohio Public Defender. Such applications shall be filed with the Court no earlier than the date the case was submitted to the Court on the merits or no later than 30 days after the date of the filing of the judgment entry. For all fee applications filed after such later date: a) counsel shall file with the fee application a motion demonstrating good cause for late filing, and b) the Court shall reduce the amount of fees allowed by a percentage equivalent to the

reimbursement percentage, then in effect, for the Ohio Public Defender payments to the Treasurer of Franklin County pursuant to R.C. 120.33.

(2) The rate of compensation for appointed counsel, as set by the Franklin County Board of Commissioners, is \$60 per hour for time in court and \$50 per hour for time out of court, subject to the following maximum amounts for the following offense classifications:

Aggravated Murder (sentence other than death)	\$5,000
Murder	\$3,000
Felonies/S.B. 2 & H.B. 1 Appeals	\$1,500
Misdemeanors	\$1,000
Other/Juvenile	\$1,000

(3) Additional payment for extraordinary fees may be granted upon motion demonstrating the extraordinary services provided.

(C) Expenses

Payment for reasonable expenses associated with providing representation shall be made when submitted on the attorney's fee certificate and approved by the Court. Expenses reasonably incurred shall not exceed \$100 without prior Court approval. Necessary expenses in excess of \$100 may be allowed only if approved in advance, and only to the extent of such prior approval.

(D) Appeal to the Supreme Court of Ohio

A party wishing to have counsel appointed for purposes of appealing a decision of this Court to the Supreme Court of Ohio shall file a motion seeking such appointment.

Said motion shall include a brief memorandum in support setting forth the basis or bases for such appeal.

RULE 21

BROADCASTING OR RECORDING OF COURT PROCEEDINGS/MEDIA

Anyone wishing to broadcast, televise, record, or photograph proceedings of the Tenth District Court of Appeals shall complete an APPLICATION TO BROADCAST, TELEVISION, RECORD, OR PHOTOGRAPH PROCEEDINGS form and file it with the clerk of this Court. If multiple parties seek to televise or record video of Court proceedings, the party whose application is filed with the clerk of this Court first shall be given permission to conduct such televising or video recording with the requirement that any video feed or video recording shall be shared with all other entities who have been given permission to televise or video record the Court's proceedings.

RULE 22

COURT SECURITY

The Tenth District Court of Appeals of Ohio is charged with dispensing justice, resolving disputes, and protecting the constitutional rights of those who appear before the Court.

Accordingly, appropriate levels of security should exist in the Court to protect the integrity of Court procedures, protect the rights of individuals before it, deter those who would take violent action against the Court or litigants, sustain the proper decorum and dignity of the Court, and assure that Court facilities are secure for all those who visit and work there.

Therefore, pursuant to Rule 9 of the Supreme Court Rules of Superintendence, the Court establishes as follows:

(1) The Court has appointed a Court Security Advisory Committee, consisting of one representative of each of the following groups: judges, court administration, Board of County Commissioners, and other groups as deemed appropriate by the Court.

(2) The Court has implemented a local Security Policy and Procedure Plan which plan has addressed the Ohio Court Security Standards adopted by the Supreme Court of Ohio on October 17, 1994.

(3) The Local Court Security Advisory Committee shall adopt a Security Operations Manual, which manual shall establish written directives for the purpose of ensuring security within the Court while maintaining accessibility to the community.

RULE 23

EFFECTIVE DATE AND APPLICABILITY

These Amended Rules shall take effect July 1, 2021. They shall govern all proceedings in actions brought after the effective date and also to all further proceedings in actions then pending, except as otherwise set forth herein or to the extent that, in the opinion of the Court, the application in a particular action pending when these amended rules take effect would not be feasible or would work injustice.

Commented [EDW9]: Proposed effective date update.