

**The Ohio Court of Appeals
Fifth District**



LOCAL RULES

Effective March 1, 2021

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INTRODUCTION

The Fifth Appellate Judicial District is comprised of the following fifteen counties: Ashland, Coshocton, Delaware, Fairfield, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark, and Tuscarawas.

RULE 1. COSTS DEPOSITS

(A) Original Actions. No complaint in an original action (mandamus, prohibition, procedendo, quo warranto, or except where prohibited by R.C. 2725.28 or other law, habeas corpus) shall be accepted for filing in this Court of Appeals unless the party bringing the action shall first have deposited with the Clerk of the Court of Appeals of the county in which the action is to be brought the sum of eighty-five dollars (\$85) as security for the payment of the costs that may accrue in the action.

Subpoenas shall not issue for witnesses in actions in habeas corpus unless an additional deposit of ten dollars (\$10) per witness is deposited as security for costs with the Clerk of the Court of Appeals of the county in which the action is brought together with the praecipe for subpoena.

(B) Appeals. Within ten days after filing the notice of appeal or cross-appeal, appellants or cross-appellants shall comply with section (C) of this rule or shall deposit with the Clerk of the Court of Appeals of the county in which the appeal is filed the sum of ninety dollars (\$90) as security for the payment of costs that may accrue in the appeal. Any personal check given for deposit shall be made payable to the "Clerk of the Court of Appeals."

This deposit for costs may be made with the clerk of the trial court when the notice of appeal is filed in that court, and any deposit so made shall be forwarded by that clerk to the Clerk of the Court of Appeals along with the copy of the notice of appeal and other papers required by App.R.3(D).

Failure to make this deposit for costs shall not prevent the filing of a notice of appeal in the trial court.

Failure to make this deposit for costs within ten days of the filing of the notice of appeal is failure to prosecute the appeal for which the appeal may be dismissed pursuant to App.R. 3(A).

(C) Actions Brought by Indigents. If the party bringing an original action, bringing an appeal, or seeking the attendance of witnesses files with the Clerk of the Court of Appeals evidence of indigency (a financial disclosure form establishing indigency or evidence the trial court determined the appellant was indigent for purposes of appeal, such as a copy of the entry of appointment), then the requirements of Sections (A) and (B) of this rule shall not be effective. Evidence of indigency must be filed for each and every notice of appeal and original action. The party asserting to be indigent is under a continuing duty to notify this Court if the party becomes financially able to secure and pay costs of the action. The Court will impose costs pursuant to App.R. 24 at the conclusion of the case, even if the prepayment of the deposit is waived pursuant to this Rule.

(Former Rule 2 adopted effective May 1, 1981; amended effective September 1, 1981; July 1, 1983; January 1, 1993; August 30, 1995; amended and renumbered as Rule 1 effective May 1, 1997; amended effective January 1, 2008; amended effective January 1, 2015; amended effective January 1, 2019.)

RULE 2. CLERKS OF THIS COURT; FILING DOCUMENTS; PROPOSED JUDGMENT ENTRY REQUIRED

(A) Clerks of this Court. The Clerks of the Courts of Common Pleas of the counties comprising the Fifth Appellate Judicial District are the Clerks of this Court of Appeals in their respective counties pursuant to R.C. 2303.03.

(B) Filing Documents. Motions, records, briefs, and all other documents required to be filed in this Court or with the Clerk of this Court shall be filed with the Clerk of the Court of Appeals of the county in which the trial of the action appealed took place or, in the case of original actions, with the Clerk of the Court of Appeals of the county in which the complaint is filed, such county properly being any county where this Court may obtain personal jurisdiction over the parties.

Documents mailed, faxed, or delivered directly to the offices of the judges in Canton will not be considered filed either when mailed or when received.

(C) Electronic Filing. The provisions of this local rule are adopted under App.R.13(A). Documents may be filed with the appropriate Clerk of Courts by facsimile transmission subject to the following conditions:

(1) Applicability. Only motions to this Court and their responses, subsequent to a notice of appeal or original action complaint, may be transmitted by facsimile to the appropriate Clerk of this Court for filing. No other pleadings, including the notice of appeal or briefs, shall be filed via facsimile or other electronic transfer.

(2) Original Filing

(a) A document received and filed by facsimile shall be accepted by the Clerk of Court as the effective original filing. The source document and additional copies need not follow by mail for purpose of filing. The person making the fax filing must, however, maintain in his or her records and have available for production on request by the Court the source document, filed by fax for with original signatures as otherwise required under applicable rules, together with the original copy of the facsimile cover page used for the subject filing.

(b) The source document filed by fax shall be maintained by the person making the filing until the case is closed and all opportunities for post-judgment relief are exhausted.

(3) Definitions. As used in these rules, unless the context requires otherwise:

(a) Facsimile Transmission means the transmission of a source document by a facsimile machine that encodes a document into optical or electronic signals, transmits and reconstructs the signals to print a duplicate of the source document at the receiving end.

(b) Fax is an abbreviation for “facsimile” and refers, as indicated by the context, to facsimile transmit or to a document to transmitted.

(4) Cover Page

(a) All documents sent by facsimile shall be accompanied by a cover page containing the following information: (See Appendix for example.)

- (i) The name of the Court
- (ii) The caption of the case
- (iii) The case number
- (iv) The assigned judge(s), if applicable
- (v) The title of the document being filed
- (vi) The date of transmission
- (vii) The transmitting facsimile number
- (viii) An indication of the number of pages included in the transmission, including cover page
- (ix) The name, address, telephone number, facsimile number, Supreme Court registration number, and e-mail address of the person filing the fax document, if available, and
- (x) If applicable, a statement explaining how costs are being submitted.

(b) 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 with a notation of the reason for the failures; in this instance, the document *shall not* be considered filed with the clerk of courts.

(c) 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.

(5) Signature. Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. Any party who files a signed document by fax represents that the physically signed source document is in his/her possession or control. Documents may be filed with a signature or with the notation “/s/” followed by the name of the signing person where the signature appears in the signed source document. If it is established that any document was transmitted without authority, the Court shall order the filing stricken.

(6) Exhibits.

(a) Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the Court orders otherwise, the missing exhibit shall be filed with the Court, as a separate document, not later than five (5) court days following the filing of the facsimile document. Failure to file the missing exhibits as required may result in the Court striking the document and/or exhibit.

(b) Exhibits filed in this manner shall be attached to a cover sheet containing the caption of the case, which sets forth the name of the court, title of the case, the case number, and the title of the exhibit being filed (e.g., Appellant Smith's Notice of Filing Exhibit "A" to Appellant Smith's Motion to Dismiss), and shall be signed and served in conformance

with the rules governing the signing and service of pleadings in this Court. (See Appendix for Example).

(7) Time of Filing

- (a)** Facsimile transmissions may be made on the basis of 24 hours per day, 7 days per week. Each page of any document received by the Clerk will be automatically imprinted with the date and time of receipt. The date and time imprinted on the document will determine the time of filing, provided the document is deemed accepted by the Clerk and the Clerk of Court's office is open for business at the time of receipt. If a document is received on a date and time of which the Clerk of Court's office is not regularly scheduled to be open for business, the document shall be deemed to have been filed on the next day and time the Clerk's office is regularly scheduled to be open.
- (b)** Fax filings may NOT be sent directly to the Court for filing but may only be transmitted directly through the facsimile equipment operated by the appropriate Clerk of Courts.
- (c)** The Clerk of Court may, but need not, acknowledge receipt of a facsimile transmission.
- (d)** The risks of transmitting a document by facsimile to the Clerk of Courts or delay in the document being time-stamped shall be borne entirely by the sending party. Anyone using facsimile filing is urged to verify receipt of such filing by the Clerk of Court through whatever technological means are available

(8) Fees and Costs

- (a)** No document requiring prepayment of a fee or cost deposit shall be filed by facsimile, unless an acceptable method of payment has been paid or arranged to be paid pursuant to terms acceptable to the respective Clerk. Documents tendered to the Clerk without payment of court costs or fees, or without arranging payment terms with the Clerk will not be filed.
 - (b)** No additional fee shall be assessed for facsimile filings.
- (9)** Facsimile filings shall not exceed twenty (20) pages in length. The filer shall not transmit service copies by facsimile.
- (10)** Effective date. These local rules shall be effective January 1, 2008, and shall govern all proceedings in actions brought after they take effect and also further proceedings in pending actions, except to the extent that, in the opinion of the Court, their application in a particular action pending on the effective date would not be feasible or would work an injustice, in which event, the former procedure applies.

(D) Electronically Signed Court Documents

- (1)** The following definitions shall apply to this rule:
 - (a)** "Electronic" and "electronic signature" have the same meaning as used in section 1306.01 of the Ohio Revised Code.

(b) The term “Document” includes decisions, journal entries, notices, orders, opinions and any other filing by a Judge, Magistrate or Court Administrator of this Court.

(2) All court documents signed by means of an electronic signature, whether transmitted to the Clerk of Courts electronically or via paper, shall have the same force and effect as if the signer had affixed his or her signature to a paper copy of the document.

(3) Electronic transmission of a court document with an electronic signature by a Judge or Magistrate that is sent in compliance with procedures adopted by the Court shall, upon the complete receipt of the same by the Clerk of Court, constitute the date and time of receipt of the document, provided that the Clerk of Court’s Office is open for business at the time of receipt. If a document is received at a date and time when the Clerk of Court’s Office is not regularly scheduled to be open for business, the document shall be deemed to have been received at the next day and time the Clerk’s Office is regularly scheduled to be open.

(E) Proposed Judgment Entry Required. All motions shall be submitted for filing accompanied by a proposed judgment entry suitable for use if the motion is granted. (Adopted effective August 30, 1995; amended effective May 1, 1997; amended effective January 1, 2008; amended November 19, 2014; amended (renumbered) effective January 1, 2019.)

RULE 3. DESIGNATION OF COUNSEL; APPLICATION FOR LEAVE TO WITHDRAW AS COUNSEL

(A) Designation of Counsel. Every notice of appeal, pleading, motion, and brief filed shall have typed or printed on it the name, address, and telephone number of the filing counsel (or the party, if not represented by counsel). The attorney registration number shall follow the name of filing counsel on all documents filed with this Court.

Notice or motions to appear as co-counsel with the counsel of record shall be made by the counsel of record.

(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 pre-qualified 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 ensure that appointments are equitably distributed among counsel on the appointment list.

(D) 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.

Incomplete applications, applications submitted without the proper financial disclosure form, or applications submitted on the wrong forms shall be returned to counsel and could result in reduction or non-payment of fees. Untimely applications may also result in reduction or non-payment of fees.

(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, accompanied by a proposed judgment entry suitable for use if the motion is granted.

(E) Application for Leave to Withdraw as Counsel. Counsel who has entered an appearance with this court, whether appointed or retained, may not withdraw representation without leave of this court. Counsel seeking to withdraw shall file a written motion which shall:

(1) Show good cause for the request.

(2) Include notice that a party has 14 days from filing of the motion to withdraw to file any objection to the motion.

(3) Be signed by the client, signed by the client's new counsel (if any), or contain a certification that the motion was served upon the client by certified or express mail and by regular mail.

(4) Include the address of the client's new counsel, or if none, the name and address of the client.

(Adopted effective September 11, 1984; amended effective August 30, 1995; amended effective May 1, 1997; amended effective July 1, 1999; amended effective January 1, 2008; amended effective January 1, 2015; amended effective January 1, 2019.)

RULE 4. ORIGINAL ACTIONS

(A) How Instituted. Service in original actions shall be made and the action shall commence upon the filing of a complaint and proceed as a civil case under the Ohio Rules of Civil Procedure unless those rules are clearly inapplicable.

(B) Evidence. Unless consent of the Court is otherwise obtained, the evidence in all original actions, except in habeas corpus, shall be submitted to the Court by means of an agreed statement of facts, affidavits, stipulations, depositions or exhibits; oral testimony will not be heard.

Court stenographers will not be in attendance at the trial of the action unless arranged for and employed by one or more of the parties and appointed by the Court, except as otherwise ordered by the Court due to exceptional circumstances.

(Adopted effective May 1, 1997; amended effective January 1, 2008; amended effective June 1, 2012.)

RULE 5. DISMISSALS FOR FAILURE TO PROSECUTE THE 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, *sua sponte*, for failure to prosecute:

- (A) Failure to cause the record on appeal to be timely transmitted to the clerk of this court.
- (B) Failure to timely file the brief or otherwise fail to comply with all the provisions of App.R. 16 or Loc.App.R.9
- (C) Failure to timely file a fully completed docketing statement pursuant to Loc.App.R.6.

(Adopted effective May 1, 1997; amended effective March 31, 2011.)

RULE 6. DOCKETING STATEMENT; ACCELERATED CALENDAR

- (A) **Docketing Statement.** Each appellant and cross-appellant shall file a fully completed docketing statement, typed or legibly printed, at the same time as filing the notice of appeal or cross-appeal. A docketing statement is not fully completed unless a time-stamped copy of the judgment being appealed is attached. The party prosecuting an appeal shall serve a copy of the completed docketing statement together with the notice of appeal on the opposing party.

The clerk of the trial court shall provide docketing statement forms as prescribed by this Court. (See Appendix for Docketing Statement Form). Docketing statements of a form other than the one shown in the Appendix will not be allowed. The clerk of the trial court shall send a copy of the docketing statement to the Court of Appeals along with a copy of the notice of appeal.

- (B) **Accelerated Calendar.** Pursuant to App.R.11.1, this Court has adopted an accelerated calendar. The Court shall determine from the docketing statement whether the appeal will be assigned to the accelerated or regular calendar. If the appeal is assigned to the accelerated calendar, oral arguments shall not be scheduled and the matter will be determined upon submission of all briefs.

If appellee or cross-appellee objects to the assignment of the appeal to the accelerated calendar, appellee or cross-appellee may file an objection with this Court within thirty days of the filing of the docketing statement and the case shall be assigned to the regular calendar.

(Adopted effective September 30, 1995; amended effective May 1, 1997; amended effective January 1, 2008; amended effective March 31, 2011; amended effective March 1, 2021.)

RULE 7. EXPEDITED CASES

- (A) A criminal appeal by the state as of right or a civil appeal of the type listed under section (G)(3) of the Docketing Statement must be expedited by this Court. Therefore, all parties shall give their prompt attention to such appeals and prosecute them diligently. Requests for extensions of time to transmit the record or to file the briefs should be minimized.
- (B) Oral arguments on expedited cases, once scheduled, will not be continued absent a showing of extraordinary circumstances. Oral Arguments will be scheduled on the earliest available date and, if necessary to expedite, will be held in any county within the Fifth Appellate District.

(Adopted effective May 1, 1997; amended effective March 31, 2011; amended effective March 1, 2021.)

RULE 7.5 MEDIATION

The Court has established a mediation program for litigants who have a case pending in the Court. The Court incorporates by reference R.C. Chapter 2710, the "Uniform Mediation Act" (UMA) into this local rule. Under App.R. 20, the Court's pre-mediation and mediation conference procedures will operate as follows:

(A) Cases Eligible for Mediation. The Court has discretion to encourage parties to use mediation in any civil or original action filed in this Court, except those types of cases excluded in Section (B) below. A mediation may be initiated in the following ways:

(1) Initiation by Court. The court's mediator will review the notice of appeal, the trial court's judgment entry or order and the docketing statement in all civil and administrative appeals to determine whether a pre-mediation conference is appropriate. The court's mediator will also review original actions, except writs of habeas corpus, for purposes of mediation. If appropriate, the court's mediator will contact the parties to discuss the scheduling of a pre-mediation conference.

(2) Request by Party. Any party may telephone the Court to request a mediation or may do so on the Court's Docketing Statement. Upon request, the request for mediation will be confidential. Requests shall be made as soon as possible after initiation of the appeal or original action, generally within ten (10) days from the filing date of the appeal or original action. However, requests for mediation made by a party beyond the ten (10) day deadline will also be accepted as long as such request is not for purposes of delay. Requests for mediation may or may not be granted by the Court.

(B) Cases Not Eligible for Mediation. Mediation is prohibited in the following: (1) as an alternative to the prosecution or adjudication of domestic violence; (2) in determining whether to grant, modify, or terminate a protection order; (3) in determining the terms and conditions of a protection order; (4) in determining the penalty for violation of a protection order; (5) in habeas corpus original actions; and (6) in permanent custody cases.

Nothing in this division shall prohibit the use of mediation in a subsequent divorce or custody case, even though that 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) Purpose and Procedure. The court mediator will conduct the mediation. The attorneys primarily responsible for the case, as well as their clients (including insurance adjusters), are required to attend the mediation in person, or with the approval of the court mediator, by telephone or video conferencing. "Attorneys," for purposes of this rule, mean the attorneys with primary responsibility for the case and upon whose advice the party relies. Any person excused in advance by the court mediator from attending in person shall be available by telephone.

(1) Goals of Mediation. The goals of the mediation are: (1) to explore settlement possibilities, (2) to simplify the issues in the appeal if settlement is not achieved, and (3) to consider any procedural problems that exist, may arise, or can be anticipated in connection with the appeal. Additionally, any other matters that the court mediator determines may aid in handling the disposition of the proceedings will be considered.

(2) Timing of Mediation. The Court will attempt to schedule the mediation before any additional expense is incurred by the parties in proceeding with the appeal that is, before the transcript of proceedings, if any, is filed or before appellant's brief is due, if no transcript of proceedings is to be filed.

(D) Stay of Filing Deadlines. Upon referral of a case to mediation, the Court may elect to stay all filing deadlines for up to sixty (60) days. The Court will not decide any motions filed with the clerk of courts while a case is stayed unless expressly permitted by these rules or by court order. Only the following documents may be filed while a mediation stay is in effect: (1) Motion to lift the mediation stay; (2) Response to a motion to lift mediation stay; (3) Motion or Stipulation to Dismiss the case; and (4) Notice related to counsel.

(E) Confidentiality. All mediation communications related to or made during the mediation process are subject to and governed by the Uniform Mediation Act (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 penalties for any improper disclosures made in violation of this rule. Disputes regarding confidentiality should first be addressed with the mediator where possible.

By participating in mediation, a nonparty participant, as defined in 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.

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

(a) Parties may share all mediation communications with their attorneys or vice versa.

(b) The mediator shall inform the Court or report to the proper authorities certain information, including the following:

- (i)** Certain threats of abuse or neglect of a child or an adult;
- (ii)** Statements made during the mediation process to plan or hide an ongoing crime;
- (iii)** Statements made during the mediation process that reveal a felony.

(F) Continuances. It is the policy of this Court to determine matters in a timely manner. Continuances of scheduled mediations shall be granted only for good cause shown after a mutually acceptable future date has been determined. If the rescheduled date is more than sixty (60) days after the referral to mediation and the granting of a stay, the mediation may proceed; however, the matter will not be stayed for purposes of the rescheduled mediation.

(G) Noncompliance Sanctions. If a party or attorney fails to comply with the provisions of this rule or the provisions of the pre-mediation conference order, the Court may hold a party in contempt and/or assess reasonable expenses caused by the failure, including attorney fees. The Court may also assess all or a portion of the appellate costs or dismiss the appeal or original action. Such sanctions may be imposed by the Court sua sponte or at a party's request.

(H) Referral to Resources. The court administrator shall maintain resources for mediation parties, including victims and suspected victims of domestic violence, encouraging appropriate referrals

to legal counsel and other support services such as children services, domestic violence prevention, counseling, substance abuse, and mental health services.

(I) Evaluation, Comments, and Complaints. It is the policy 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 people. Any mediation participant may submit written comments, complaints, or feedback regarding the performance of the mediator to the court administrator.

(Adopted effective July 1, 2020)

RULE 8. THE RECORD

(A) Extensions of Time for Filing the Record. The trial court shall closely limit its extensions of time for transmission of the record (App. 10 (C)), shall overrule any motion for an extension of time where good cause is not set forth and shown, and in no event shall any such order operate to extend such time beyond the eightieth (80th) day after the filing of the notice of appeal.

(B) Inability of Court Report to Supply a Necessary Part of the Record. Motions filed with this Court to supplement the record or for an extension of time to transmit the record, needed by reason of a claimed inability of the court reporter to supply a necessary part of the record, must be accompanied by an affidavit of the court reporter stating the circumstances relied on as justifying the extension, the date of the notice of appeal, and the date of service of the praecipe to the court reporter ordering the transcript.

(C) Evidence Consisting of Weapons, Ammunition, Money, Drugs, or Valuables. The clerk of the trial court shall not, unless directed to do so by this Court upon a motion by a party, transmit any trial exhibits consisting of weapons, ammunition, money, drugs, or valuables. The list of documents that the trial clerk transmits with the record (App.R. 10(B)) shall designate which exhibits are not being transmitted pursuant to this rule and the custodian of the exhibits.

(Adopted effective October 1, 1981; amended effective May 1, 1997.)

RULE 9. THE BRIEFS

(A) Contents of Brief. In addition to the requirements of App.R. 16, the brief of appellant shall contain clear copies of the following:

- (1)** These documents, as applicable, shall be included as the first exhibits to the brief.
 - (a)** The judgment entry appealed from; (Handwritten judgment entries are inappropriate and shall be considered by this Court except for uniform traffic citations. See Ohio Traffic Rules);
 - (b)** Any opinion of the trial court announcing the decision reflected by the judgment entry appealed from;
 - (c)** Any written fact findings and conclusions of law signed and/or adopted by the trial judge contained in the record on appeal; and

(2) Where a summary judgment is appealed, a statement on a separate page following the assignments of error, declaring whether the claim is that judgment is inappropriate as a matter of law on the undisputed facts or that a genuine dispute exists as to a material fact or facts, coupled with a separate statement of the specific fact issue or issues claimed in the trial court to have been material and genuinely disputed. See *North v. Pa. Ry. Co.*, 9 Ohio St.2d 169, 224 N.E.2d 757, syllabus 2.

(B) Length of Briefs. In addition to the requirements of App.R. 16, no brief by any party in an appeal or original action, excluding appendices, table of contents, table of cases, statement of assignments of errors, and statement of the issues shall exceed thirty pages, unless, upon a motion requesting an increase of a specific number of pages and the showing of good cause, this Court orders otherwise. No reply brief shall exceed fifteen pages.

(C) Mechanical Requirements. All documents shall be single-sided and the text shall be at least 12-point, double-spaced, non-condensed type. Footnotes and quotations may be single spaced; however, they shall also be in 12 point, non-condensed type. As used in this provision, “non-condensed type” shall refer to Times New Roman type or Arial.

(D) Font Requirements. The text of all documents shall be at least 12-point, double-spaced, non-condensed type. Footnotes and quotations may be single spaced; however, they shall also be in 12-point, non-condensed type. As used in this provision, “non-condensed type” shall refer to Times New Roman type or Arial.

(E) Length of Time for Filing a Brief. In extension of App.R. 14(B), motions for enlargement of time to file a brief shall state the number of previous extensions granted pursuant to that rule. A motion to file a brief *instanter* must state that the brief was delivered to the clerk for filing with the motion to file *instanter*.

(F) Filing and Service of Briefs on Cross-Appeal. In extension to App.R. 18, a cross-appellant shall serve and file the cross-appellant brief within the same time guidelines that apply to an appellee brief. The cross-appellee/appellant shall serve and file the cross-appellee brief and may serve and file an appellant reply brief within twenty days after service of the cross-appellant brief. The cross-appellant may serve and file a reply brief within ten days after service of the cross-appellee's brief.

(G) Anders Brief with Motion to Withdraw as Counsel. In a criminal appeal in which counsel has been appointed for the appellant, counsel may file a no error brief under the procedure identified in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). An *Anders* brief must contain potential assignments of error as well as law and argument with references to the record. When appellant's counsel files an *Anders* brief, counsel shall simultaneously file a separate motion requesting leave to withdraw as counsel. Counsel shall serve the client with the motion to withdraw and the *Anders* brief. Service on the client shall be indicated in the proof of service.

Upon the filing of an *Anders* brief, the court will issue an Order that grants appellant leave to file a pro se brief and assignment(s) of error that comports with the appellate rules and local appellate rules within 45 days.

If the appellant files a pro se brief, the appellee may respond and the appellant may reply as provided by the Appellate Rules and Local Appellate Rules. Once briefing is complete, or the 45-day period for filing a pro se brief has lapsed without a brief being filed, the appeal and the motion to withdraw will be assigned to a merit panel for review. The panel will conduct an independent

examination of the record to determine if it discloses an issue of arguable merit prejudicial to the appellant. The appeal will be considered submitted on the briefs unless the court sua sponte sets an oral argument date. Should the panel find arguable merit, the Court shall order the appointment of new counsel and the matter will proceed accordingly.

(Former Rules 4, 5, and 7 adopted effective October 1, 1981; amended effective May 29, 1984; August 30, 1995; amended and renumbered as Rule 9 effective May 1, 1997; amended effective January 1, 2008; amended effective March 31, 2011; amended effective February 1, 2012; amended effective June 1, 2012; amended effective January 1, 2019; amended effective July 1, 2020.)

RULE 10. ORAL ARGUMENTS

(A) Request for Oral Argument Required. A case will not be set for oral argument unless a party requests it.

1. 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).
2. If any party requests oral argument, the case will be scheduled for oral argument and all parties who have filed a brief may appear.
3. If no party requests oral argument, the Court will submit the case to a panel for decision and the parties will be notified of the submission.
4. 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 Allocated. In accordance with App.R. 21(B), oral arguments shall be reduced from thirty minutes per side to fifteen minutes per side.

(C) Incarcerated Parties Proceeding Pro Se. Pursuant to App.R. 21(A), an appellate court is not required to schedule oral argument, even if requested, if any of the parties is both incarcerated and proceeding pro se. Accordingly, oral argument shall not be scheduled in such cases.

(D) Application upon Adoption. This rule shall apply to all appeals instituted on or after March 1, 2021. Any appeal pending before the court prior to March 1, 2021 may avail themselves of this revised rule or rely upon the previous Local Rules, Practices and Orders of this Court.

(Adopted effective July 30, 1995; amended effective January 1, 2019; amended effective March 1, 2021.)

RULE 11. DELIVERY OF COPIES OF ORDERS, JUDGMENTS, AND MEMORANDUM OPINIONS

(A) Parties. In extension of App.R. 30(A), immediately upon the entry of an order or judgment of this Court, the Clerk of this Court shall deliver a copy of the order or judgment and a copy of any accompanying memorandum-opinion to all counsel and to any party not represented by counsel and shall make a note of the delivery in the appearance docket of the Court of Appeals.

(B) Judge. The Clerk of this Court shall deliver a copy of any order or judgment entry terminating an appeal and a copy of any accompanying memorandum-opinion to the judge whose judgment was appealed.

(Adopted effective April 2, 1981.)

RULE 12. CONSOLIDATION OF APPEALS

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*.

When consolidation has been ordered, the parties of each side shall endeavor to prepare a common brief with an allowance for special addenda to cover any proposition deemed essential by a particular party.

When consolidation is ordered, the consolidation order shall specify a controlling case number. The Clerk shall place all pleadings and entries filed subsequent to the consolidation order only in the controlling case number's file.

All pleadings filed in a consolidated case must show each of the case numbers of all the consolidated cases with the controlling case number shown first. The clerk shall place the consolidation order in the file of each of the consolidated case numbers. Any order closing a particular case shall be placed by the clerk in the file of that particular case.

All time constraints for filings shall be determined under the designated controlling case number.

(Adopted effective May 1, 1997.)

RULE 13. PRESIDING JUDGE AND ADMINISTRATIVE JUDGE

A presiding judge and an administrative judge shall be elected pursuant to Supt. R. 3 and 4. The election shall be designated by judgment entry signed by three judges of this Court and filed with the Clerk of this Court in Stark County. Such designations and duties shall continue until further order of this Court.

(Adopted effective February 10, 1981; amended effective March 31, 2011.)

RULE 14. NOTIFICATION OF PROPOSED CHANGES TO THE LOCAL RULES OF COURT

This Court shall send to each Clerk of this Court for each county in the Fifth Appellate District a copy of the proposed changes to these Local Appellate Rules. The respective clerks shall post the proposed changes in a conspicuous public place in the office of the clerk, make copies available for distribution to members of the bar and shall send notification of receipt and a copy of the proposed changes to each judge (common pleas, municipal, probate, etc.) in the county for which the clerk serves. The proposed changes shall be open to public comment for a period of thirty days after which time this Court will consider any comments received in adopting said changes to these Local Appellate Rules.

(Adopted effective May 1, 1997.)

RULE 15. COURT SECURITY

The Fifth District Court of Appeals is charged with dispensing justice, resolving disputes, and protecting the constitutional rights of those who appear before the Court. Appropriate levels of security should exist in the court to protect the integrity of the Court procedures, protect the rights of individuals before it, sustain the decorum and dignity of the Court and assure that Court facilities are secure for all those who visit and work there.

(Adopted effective September 1, 1995; amended effective May 1, 1997; amended effective March 31, 2011.)

RULE 16. TITLE

These rules shall be known as the Local Rules of the Fifth District Court of Appeals of Ohio and may be cited as 5th Dist.Loc.R. _____. Adopted effective January 1, 2015.

FACSIMILE FILING COVER PAGE

NAME OF COURT: _____

FAX NUMBER: _____

SENDING PARTY INFORMATION:

NAME: _____

SUPREME COURT REGISTRATION NO. (If applicable): _____

OFFICE/FIRM: _____

ADDRESS: _____

TELEPHONE NO.: _____

FAX NUMBER: _____

E-MAIL ADDRESS (If applicable): _____

CASE INFORMATION:

TITLE OF THE CASE: _____

CASE NUMBER: _____

TITLE OF THE DOCUMENT: _____

JUDGE(S): _____

FILING INFORMATION:

DATE OF FAX TRANSMISSION: _____

NUMBER OF PAGES (Including this page): _____

STATEMENT EXPLAINING HOW COSTS ARE BEING SUBMITTED, IF APPLICABLE: _____

Effective January 1, 2008

IN THE COURT OF APPEALS FOR ** COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JOHN SMITH :
Plaintiff-Appellant : CASE NO. **
-vs- :
BILL JONES : JUDGES:
Defendant-Appellee : (If panel has been assigned)

APPELLANT SMITH'S NOTICE OF FILING EXHIBIT "G"
TO
APPELLANT SMITH'S RESPONSE TO APPELLEE'S MOTION TO DISMISS

Appellant Smith, through counsel hereby files Exhibit "G" to Appellant Smith's Response to Appellee's Motion to Dismiss. The referenced pleading was filed by facsimile transmission with the Court on [date]. Exhibit "G" could not be accurately transmitted by fax and is, therefore, being timely filed as a separate document with the Court pursuant to Loc.R.

***.

Respectfully submitted,

Attorney Name (S.Ct. Reg. No.)
Office/Firm
Address
Telephone No.
Facsimile No.
E-mail
Counsel for Appellant John Smith

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of File Exhibit "G" was sent by ordinary U.S. mail on [date] to counsel for Appellee Bill Jones, [name and address of recipient].

Effective January 1, 2008

Attorney Name
Counsel for Appellant John Smith

OHIO FIFTH DISTRICT COURT OF APPEALS
DOCKETING STATEMENT

Plaintiff-Appellant Appellee (Circle Designation)

Appeal No. _____
Trial Court No. _____
Trial Court Judge _____

Plaintiff's Counsel _____
Phone _____
Email _____

-vs-

Defendant's Counsel _____
Phone _____
Email _____

Defendant –Appellant Appellee (Circle Designation)

NOTICE: ORAL ARGUMENT MUST BE REQUESTED, PER LOCAL RULE 10(A) AND APP.R. 21(A).

Defendant-Appellant Appellee (Circle Designation)

Time to Appeal extended per App.R. ()Yes () No
Specify Reason: _____

A. DATES: Of the judgment(s) being appealed _____

B. () A time-stamped copy of the judgment entry or order which makes your case appealable as well as a copy of all other judgment entries being appealed is attached. THIS IS A REQUIREMENT. FAILURE TO DO SO MAY RESULT IN A DISMISSAL.

C. PROBABLE ISSUES FOR REVIEW: _____

D. THIS APPEAL SHOULD BE ASSIGNED TO: (Check One)

- () The regular calendar.
- () The accelerated calendar. See Loc. R. 6(B) and App.R. 11.1
- () The expedited calendar. See Sections F(4) (State's Appeal as of Right) and G(3) (certain civil cases) of this docketing statement, Loc. R. 7 and App. R. 11.2

E. THE RECORD: This Docketing Statement serves as a praecipe to the clerk to prepare and transfer the docket and journal entries. Please Indicate the Type of Record to be Filed: (Check One)

- () Docket and Journal Entries Only, no transcript of proceedings
- () Transcript has been prepared already. It is a () Full or () Partial Transcript. If partial, see App.R. 9(B)
- () Statement of the record pursuant to App.R. 9(C)
- () Agreed Statement of the Record pursuant to App.R. 9(D)
- () Transcript of Proceedings. () Less than or () Greater than 100 pages
() Full or () Partial transcript has been ordered. If partial, see App.R. 9(B)

WARNING: If a transcript of proceedings is needed, a copy of the notice of appeal and an appropriate praecipe must be served by Appellant on the court reporter. A copy of the praecipe to the court reporter shall be filed with this Court showing service of the notice of appeal and praecipe upon the court reporter.

Please state with particularity which exhibits and/or evidence, other than paper exhibits or documentary evidence not of unusual bulk or weight, the parties request be transmitted as part of the record on appeal. See App.R. 10(B); Loc.App.R. 8(C)

F. CRIMINAL CASE

1. CHARGE (s): _____
2. DEGREE: () Misdemeanor () Felony
3. Is this an appeal of Post-Conviction Relief? (R.C. 2953.21) () Yes () No. If yes, was a hearing held in the trial court? () Yes () No. What was the original charge and sentence? _____
4. Type of Appeal: (Check One)
() Appeal as of Right () State's Appeal as of Right (R.C. 2945.67(A), Crim.R 12(K) & Loc.R. 7) (Expedited)
() Appeal by Leave of Court (App.R. 5) () State's Appeal by Leave of Court
5. Is this an appeal for review of sentencing pursuant to R.C. 2953.08? () Yes () No
6. Was counsel appointed for trial? () Yes () No
7. Was counsel appointed for appeal? () Yes () No
To request appointed counsel, you must file a separate motion, per Loc. App.R 3.
8. Was a stay of sentence requested in trial court? () Yes () No If yes, stay was: GRANTED DENIED PENDING

G. CIVIL CASE

1. ACTION BROUGHT IN LOWER COURT:

-
2. Did this action originate in a Trial Court or in an Administrative Agency? Indicate which.
() County Court () Municipal Court () Common Pleas Court () Administrative Agency () Board of Tax Appeals () Probate Court () Family Court () Juvenile Court () Other _____
 3. Must this case be expedited as being one of the following types: () Yes () No. If yes, check one of the following:
() Appeal under determination of local fiscal emergency brought by municipal corporation. R.C. 118.04(C)
() Appeal brought by minor child under R.C. 2505.073
() Appeal involving matters of child custody, allocation of parental rights or responsibilities, or designation of a child's place of residence and legal custodian under R.C. 3109.04(H) and R.C. 3109.06
() Appeal from orders granting or denying (1) termination of parental rights or (2) adoption of a minor child. See App. R. 11.2 and Loc. App.R. 7
() Appeal from orders regarding dependent, abused, neglected, unruly, or delinquent children. See App. R. 11.2, Juv. R. 22(F) and Loc. App.R. 7
() Election contests as provided in R.C. 3515.08
() Appeal from the Court of Claims involving public records under R.C. 2743.75(G)
 4. Do you know of another case pending in this Court which raises the same issue(s)? () Yes () No. If yes, please cite case(s)

 5. Have you determined in good faith that the judgment appealed from is a final appealable order? (R.C. 2505.02) () Yes () No.
 6. Was a stay of judgment requested in trial court? () Yes () No If yes, stay was: GRANTED DENIED PENDING

H. MEDIATION:

- Have the parties previously participated in mediation in this dispute: () Yes () No
Would a mediation conference assist in the resolution of this matter? () Yes () No () Maybe

CERTIFICATION

I certify that the information provided on this docketing statement is accurate.

Signature of Counsel (or Party if not represented by Counsel)
(Revised Effective March 1, 2021)

Supreme Court Registration Number

NOTES: