

The Ninth District Court of Appeals is accepting comments on proposed changes to its Local Rules. Please send your comments to:

C. Michael Walsh, Court Administrator
Ninth District Court of Appeals
161 South High St., Suite 504
Akron, Ohio 44308

or e-mail the Court at comments@ninth.courts.state.oh.us. The deadline to receive public comment is **November 7, 2005**.

Text that appears with ~~striketrough~~ will be deleted from the current Rule. Text that appears underlined will be added.

**LOCAL RULES
OF THE
NINTH DISTRICT COURT OF APPEALS**

[Including Amendments through ~~January 1, 2004~~ November 30, 2005]

LOCAL RULE 1. GENERAL PROVISIONS

(A) Application of Rules of Civil Procedure. In cases on appeal when the Ohio Rules of Appellate Procedure or these local rules cannot be applied, the Ohio Rules of Civil Procedure will apply, unless they are clearly inapplicable.

(B) General Definitions. As used in these rules, unless the context otherwise requires or the court otherwise orders:

(1) “Appellant” is any party who has filed a notice of appeal.

(2) “Appellee” is any party to the proceedings from which the appeal is taken whom appellant designates as an appellee on the docketing statement or who, upon written motion of the party, is given leave by the court to proceed as an appellee in the appeal.

(3) As used in these rules, “appellant” includes a cross-appellant, “appellee” includes a cross-appellee, and “appeal” includes a cross-appeal. “Trial court” includes the court or agency from which the appeal is directly taken.

(4) “Party to the appeal” includes an appellant, cross-appellant, appellee or cross-appellee.

(5) “Counsel of record” includes only those attorneys who are listed on the docketing statement as representing an appellant or appellee or who have filed a notice of appearance in the case on behalf of such a party.

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

LOCAL RULE 1.1. FILING DOCUMENTS

The clerks of the courts of common pleas of the counties of Lorain, Medina, Summit and Wayne serve as the clerks of this court of appeals in their respective counties pursuant to R.C. 2303.03. All documents required to be filed in this court shall be filed with the clerk of the court of appeals of the county in which the appeal or original action originated. Items sent directly to this court at its headquarters in Akron, Ohio, will not be considered filed.

[Adopted eff. 11-1-01.]

LOCAL RULE 1.2. NOTICES OF APPEAL IN CERTAIN CIVIL CASES

When filing a notice of appeal more than thirty days from journalization of a final judgment in a civil case in which the appellant claims that the trial court did not properly serve notice of the final judgment, the appellant shall attach to the notice of appeal a certified copy of the trial court docket. If the appellant fails to comply with this subsection, the court may dismiss the appeal without notice to the parties. See App.R. 4(A); Civ.R. 58(B).

[Adopted eff. 11-1-01.]

LOCAL RULE 2. COSTS DEPOSITS

(A) Appeal. At the time of filing a notice of appeal in the trial court, the appellant or cross-appellant shall deposit with the clerk of courts the sum of ~~\$85~~ \$125 as security for the payment of costs that may accrue in the court of appeals. The clerk of the trial court shall forward such deposit to the clerk of the court of appeals with the copy of the notice of appeal and other papers as required by Loc.R. 3(B).

(B) Original Actions. At the time of filing a complaint in an original action (quo warranto, mandamus, habeas corpus, prohibition, or procedendo), the relator shall deposit with the clerk of the court of appeals the sum of ~~\$85~~ \$125 as security for the payment of costs that may accrue in the action. If a party seeks the attendance of a witness through a subpoena, the party shall first deposit with the clerk of the court of appeals \$20 for each witness.

(C) Actions Brought by Indigents. If the party bringing the appeal or original action, or the party seeking the attendance of a witness, claims to be unable to pay a deposit, the party shall file a motion to waive the payment of the deposit and an affidavit of indigency that contains financial information to support the party's claim that the party is unable to make the deposit. The party must use the affidavit of indigency approved by the Ohio Public Defender's Office; the affidavit must have been notarized within one year of the date of filing with this court. If the affidavit is filed by an inmate of a state institution, it shall be accompanied by a certificate of the superintendent or other appropriate officer of the institution setting forth the amount of available funds, if any, that the inmate has on deposit with the institution. The court's grant of a waiver of the deposit does not waive the liability to pay the court costs as ordered by the court at the termination of the appeal or original action.

(D) Failure to Pay Deposit. If the party bringing the appeal or original action, or the party seeking the attendance of a witness, files with the clerk a sworn affidavit of inability to secure costs by prepayment, the clerk shall receive and file the appeal, ~~or the complaint,~~ or subpoena the witnesses without security deposits; After the court, however, after notice to all of the parties, the court may dismiss the case at any time if the deposit is not paid or a waiver of the payment of the deposit pursuant to subsection (C) has not been obtained.

[Adopted eff. 7-1-98, proposed amended eff. 11-30-05.]

Commentary

The first change in Rule 2(A) and (B) is an increase in the cost deposit from \$85 to \$125. This increase does *not* represent an increase in the *cost* of an appeal or an additional fee for an appeal but, rather, an increase in the cost deposit to more accurately reflect the final, total, cost of most appeals.

The cost deposit was last increased almost ten years ago. During that time, the court costs of appeals have increased to the point where the cost deposit no longer covers the costs billed after the appeal is terminated. After consulting with the clerks of court for Lorain, Medina, Summit, and Wayne Counties, the Court intends to increase the cost deposit to \$125. According to the clerks of court, this amount should be sufficient to cover the costs of most appeals so that the clerks do not have to send bills to attorneys or parties after the conclusion of the appeal. This increase does not increase the court costs for an appeal; it serves to aid the clerks of court in billing and collecting the costs of an appeal.

The second change, in Rule 2(C), requires a party who claims to be indigent and who seeks a waiver of a deposit to use the affidavit of indigency approved by the Ohio Public Defender's Office and that the affidavit be notarized within one year of the date it is filed with this Court. And the last sentence of this section recognizes that the waiver of the cost deposit does not waive the liability for the court costs at the conclusion of the appeal. These additions reflect this Court's current policy.

LOCAL RULE 3. DOCKETING STATEMENT

(A) Duty of the Appellant. Each appellant shall file a completed docketing statement on the form prescribed by this court, which is reproduced in the appendix, with the clerk of the trial court at the same time as filing the notice of appeal. The clerk will provide docketing statement forms as provided by the court. If no forms are readily available, the appellant may copy the form, provided it is copied legibly and in its entirety, or the form may be printed from the court's web site. The appellant shall file an original plus sufficient copies of the docketing statement to permit the clerk of the trial court to send a copy to the clerk of the court of appeals and to each person or entity who was a party in the proceedings from which the appeal is taken.

(1) Parties.

(a) Enumeration of Parties. Each appellant shall include on the docketing statement and, if necessary, on a separate sheet attached to the docketing statement, the names of all persons or entities who were named as parties to the proceedings from which the appeal is taken, each party's designation in those proceedings, the name of the attorney representing the party, his or her registration number, address and phone number, or, if the party is not represented by counsel, the address and phone number of the party.

(b) **Designation of Parties.** The appellant shall designate as an appellee any party to the proceedings below whose interests may be adversely affected by reversal of the judgment or order from which the appellant appeals. All other parties to the proceedings shall retain, throughout the appeal, the designation used by the trial court (plaintiff, defendant, etc.), unless otherwise ordered by this court. Any party designated as an appellee by the appellant may move the court to withdraw from the appeal. Any party not designated as an appellee by the appellant may move the court to proceed as an appellee.

(2) **Trial Court Judgment Entry.**

(a) **Attachment to Docketing Statement.** The appellant shall attach to the docketing statement a copy of the final judgment entry of the trial court or agency from which the appeal is taken and any other orders that demonstrate that this court has jurisdiction to hear the appeal. If copies do not show a legible time-stamp, the appellant must include other evidence of the date on which each entry or order was journalized by the clerk of the trial court or, if the appeal is taken from an order of another agency, was finalized by that agency pursuant to law.

(b) **Attachment to Brief.** Attachment of the final judgment entry and other orders to the docketing statement does not relieve the party of the obligation to attach a copy of the same entry or orders to the brief, pursuant to Loc.R. 7(A)(9)(a)(i).

(B) **Duty of the Clerk of the Trial Court.** The clerk of the trial court shall transmit a copy of the notice of appeal, the docketing statement with the judgment attached, and a copy of the praecipe to the court reporter, if any, to the clerk of the court of appeals and to counsel of record for each party to the proceedings from which the appeal is taken, or, if a party is not represented, to the party within three (3) business days after the filing of the notice of appeal.

(C) **Failure to File a Docketing Statement.** If the appellant fails to file a docketing statement pursuant to this rule, the court may dismiss the appeal.

[Adopted eff. 7-1-98; amended eff. 1-1-04; proposed amended eff. 11-30-05.]

Commentary

The only significant change is the recognition, in subsection (A), that the required docketing statement is available on this Court's website.

LOCAL RULE 3.1. CHANGE OF ADDRESS

(A) **Notification of Change of Address.** If the address listed on the docketing statement for any party to the appeal or for counsel of record is incorrect or changes during the course of an appeal, the party or attorney shall file a written notice of change of address with the clerk of the appellate court. The notice shall include the case numbers of all cases pending in the court of appeals in which the person is a party to the appeal or the attorney is counsel of record.

(B) **Duty of Appellate Clerk upon Notification of Change of Address.** The clerk of the appellate court shall note upon the docket of each case the change of address of the party or attorney

and shall forward a copy of the notice to the court of appeals at its headquarters in Akron, Ohio.

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

LOCAL RULE 4. BOND

All applications for granting or reduction of bond must be accompanied by proof of service of notice of the application to opposing counsel. A hearing on the application will be scheduled only after prior consultation with the court.

[Adopted eff. 7-1-98.]

LOCAL RULE 5. THE RECORD ON APPEAL

(A) Duty of the Appellant. It is the duty of the appellant to arrange for the timely transmission of the record, including any transcripts of proceedings, App.R. 9(C) statement, or App.R. 9(D) statement, as may be appropriate, and to ensure that the appellate court file actually contains all parts of the record that are necessary to the appeal.

(1) Official Court Reporter. The official court reporter is the person appointed by the trial court to transcribe the proceedings for the trial court.

(a) Praecipe.

(i) If the trial court has an official court reporter, and the appellant desires a transcript of proceedings to be prepared for inclusion in the record, the appellant must serve the official court reporter with a praecipe that designates the dates and parts of the proceedings to be included. A copy of the praecipe, which has been signed by the court reporter, shall be filed in the trial court with the notice of appeal. See App.R. 9(B).

(ii) No praecipe to the court reporter is necessary if the docket of the trial court reflects that the transcript was filed with the trial court, either as an exhibit to an original paper filed in the trial court, or independent of any other filings, provided it was submitted to the trial court for its consideration in the matter then pending before it. For example, no praecipe is necessary if a transcript of proceedings before a magistrate was filed in the trial court with objections to a magistrate's decision.

(iii) No praecipe to the court reporter is necessary if the proceedings were transcribed for, and filed in, a prior appeal; however, if a party desires a transcript of proceedings from a prior appeal to be included in the record of a pending appeal, the party must move the court to supplement the record with that transcript.

(b) Proceedings Recorded by Videotape or Audiotape. Pursuant to App.R. 9(A), a videotape recording of a proceeding that has been certified by the official court reporter may constitute the transcript of proceedings without being transcribed into written form; the parts of a videotape transcript necessary for the court to determine the questions presented, however, must be typed or printed and appended to the appellant's brief. An audiotape recording of a

proceeding must be transcribed into written form in all cases.

(2) No Official Court Reporter. If the trial court does not have an official court reporter, regardless of the means by which the proceedings were recorded, the appellant shall proceed under App.R. 9(C) or 9(D). A statement pursuant to App.R. 9(C) or 9(D) must be in written form and approved by the trial court.

(3) Supplementation of the Record after the Record Has Been Filed. No additions may be made to the record after the date on which the notice of the filing of the record is mailed to the parties except upon leave of the court of appeals to supplement the record.

(B) Duty of the Clerk of the Trial Court.

(1) Time for Filing the Record. Unless otherwise ordered by the court of appeals, the clerk of the trial court shall prepare, assemble and transmit the record to the clerk of the court of appeals when the record is complete, all of the following has occurred: The record shall be deemed to be complete under the following circumstances:

(a) When forty days have elapsed after filing of the last notice of appeal, and there is no extension of time for transmission of the record, OR

(b) When the transcript of proceedings is filed with the clerk of the trial court, OR

(c) When a statement of the evidence or proceedings, pursuant to App.R. 9(C), is settled and approved by the trial court, and filed with the clerk of the trial court, OR

(d) When an agreed statement in lieu of the record, pursuant to App.R. 9(D), is approved by the trial court, and filed with the clerk of the trial court.

(e) Where appellant, pursuant to App.R. 9(B), designates that no part of the transcript of proceedings is to be included in the record or that no transcript is necessary for appeal, after the expiration of ten days following service of such designation upon appellee, unless appellee has within such time filed a designation of additional parts of the transcript to be included in the record.

(f) Where the appellant fails to file either the docketing statement or the statement required by App.R. 9(B), ten days after filing the notice of appeal.

~~(a) — The appellant has paid the deposit against costs or has obtained a waiver of the deposit from the court of appeals;~~

~~(b) — The appellant has filed a completed docketing statement;~~

~~(c) — All parts of the record, as described by the appellant on the docketing statement, have been filed with the clerk of the trial court as follows:~~

~~(i) — If the appellant indicates that the record will consist only of the~~

original papers, exhibits and a certified copy of the docket and journal entries, the record shall be filed within forty (40) days of the last notice of appeal filed in the case.

~~(ii) — If the appellant indicates that the record will include a full or partial transcript of proceedings and the appellant has filed a praecipe to the court reporter, the record shall be filed upon receipt of the transcript(s) of proceedings requested in the praecipe.~~

~~(iii) — If the appellant indicates that the record will include a full or partial transcript of proceedings and the appellant has not filed a praecipe to the court reporter, the record, which shall consist of only the original papers, exhibits and certified copy of the docket and journal entries, shall be filed within forty (40) days of the last notice of appeal filed in the case.~~

~~(iv) — If the appellant indicates that an App.R. 9(C) or 9(D) statement will be filed, the record shall be filed when the statement, which has been settled and approved by the trial court, is filed with the clerk of the trial court.~~

~~(v) — If the appellant does not indicate upon the docketing statement the type of record to be filed or marks on the docketing statement more than one paragraph describing the record, the record shall consist of only the original papers, exhibits and a certified copy of the docket and journal entries, and shall be filed within ten (10) days after the filing of the notice of appeal.~~

~~(vi) — Whenever leave of court must be obtained to appeal, the time for filing the record shall run from the date that leave to appeal is granted by the court.~~

(2) Exhibits. Unless otherwise directed by the court of appeals, the clerk of the trial court shall not transmit to the clerk of the court of appeals any trial exhibits consisting of weapons, ammunition, money, drugs, or valuables. The list of documents that the trial court clerk transmits with the record (App.R. 10(B)) shall designate which exhibits are not being transmitted pursuant to this rule as well as the custodian and location of the exhibits.

(C) Duty of the Clerk of the Court of Appeals. Upon receipt of the record, the clerk of the court of appeals shall file the record and immediately give written **notice to all parties of the date** on which the complete record was filed. The clerk shall also forward a copy of the notice to the office of the court of appeals located in Akron, Ohio, and shall indicate on the copy of the notice the date that the notice was mailed to the parties.

(D) Extensions of Time. The trial court shall not extend the time for transmitting the record, pursuant to App.R. 10(C), more than once and no such extension shall exceed thirty (30) days. Thereafter, any request for extension of time shall be made to the court of appeals.

(E) Removal of the Record. The clerk of the court of appeals shall not permit any party or counsel to remove from its possession any part of the original papers, exhibits, or docket and journal entries unless prior permission has been given by the court of appeals to the party or counsel seeking to remove the same. The clerk of courts may permit a party or counsel for such party to remove a transcript of proceedings for a period not to exceed five (5) days; however, when an appeal has been assigned for oral argument, any party or counsel for such party, who has withdrawn the transcript from the clerk's office shall return the transcript to the custody of the clerk not later than five (5) days prior to the date of the argument. The clerk shall record in the docket the date on which

the transcript is removed and returned. If counsel or a party fails to timely return a removed transcript of proceedings, the court may prohibit counsel or the party from presenting oral argument.

(F) Failure to Cause Transmission of the Record. If the appellant fails to cause the record to be filed with the clerk of the court of appeals in the time provided by this rule, or as extended by the court, the court may dismiss the appeal.

[Adopted eff. 7-1-98; amended eff. 3-1-01; proposed amended eff. 11-30-05.]

Commentary

Section (B) has been rewritten to follow more closely the general appellate rules.

Section (E) has been amended to provide notice of a possible sanction where counsel or a party removes a transcript of proceedings from the clerk of courts and fails to timely return it. The new language provides that the Court may not permit an offending attorney or party present oral argument.

LOCAL RULE 6. TRANSCRIPTS OF PROCEEDINGS

(A) Page Limitation. No volume of a transcript of proceedings filed by a court reporter shall be more than two hundred (200) pages in length, except that a volume may extend to a maximum of two hundred fifty (250) pages if such extra pages are necessary to complete the testimony of a witness or to complete a part of the proceedings such as voir dire, opening statements, closing arguments, or jury instructions.

(B) Certificate of Official Court Reporter. The certificate of an official court reporter must be signed by the court reporter and must reflect the court reporter's appointment by the trial court. The following forms are suggested:

(1) Complete Transcript.

I, _____, official court reporter for the [~~here insert~~ name of court], duly appointed therein, do hereby certify that the [~~here insert~~ "foregoing transcript of proceedings, consisting of ___ pages," or "videotape transcript submitted herewith,"] together with exhibits, is a true and complete transcript of the proceedings conducted before the Honorable _____, judge of said court, on the ___ day of _____, 20___, as transcribed by me.

Subscribed this ___ day of _____, 20___.

[type name here]

(2) Partial Transcript.

I, _____, official court reporter for the [~~here insert~~ name of court], duly appointed therein, do hereby certify that the [~~here insert~~ "foregoing transcript of proceedings, consisting of ___ pages," or "videotape transcript submitted herewith,"]

together with exhibits, is a true partial transcript, as transcribed by me, of the proceedings conducted before the Honorable _____, judge of said court, on the ____ day of _____, 20__, including the testimony of the witnesses named in the index to the transcript.

Subscribed this ____ day of _____, 20__.

[type name here]

(C) Transcript Made Record. No transcript of proceedings shall be considered as a part of the record on appeal unless one of the following applies:

- (1) The official court reporter has certified the transcript as provided in subsection (B) of this rule;
- (2) The record contains an entry of the trial court appointing the court reporter who has certified the transcript;
- (3) The transcript is a part of the original papers and exhibits filed in the trial court;
- (4) The transcript has been incorporated into an App.R. 9(C) statement that has been approved by the trial court; or,
- (5) The court of appeals has granted a motion to supplement the record with a transcript that was filed in a prior appeal.

[Adopted eff. 7-1-98; amended eff. 3-1-01; proposed amended eff. 11-30-05.]

LOCAL RULE 7. THE BRIEF

(A) General Requirements for all briefs. Except as otherwise provided in this rule, briefs shall conform strictly to App.R. 19. Briefs shall be either typewritten or printed by standard typographic or other mechanical printing process in at least a twelve (12) point type and shall be double spaced except for quoted matter which shall be single spaced. An original and three legible copies are required. Briefs should minimize use of the terms “appellant” and “appellee” but should use the parties’ actual names or descriptive terms as (for example, “the injured person,” “the employer,” or “the administrator.”

(A B) Appellant’s Brief. ~~Except as otherwise provided in this rule, briefs shall conform strictly to App.R. 19. Briefs shall be either typewritten or printed by standard typographic or other mechanical printing process in at least a twelve (12) point type and shall be double spaced except for quoted matter which shall be single spaced. An original and three legible copies are required. In addition, the brief of the appellant~~ Appellant’s brief shall contain, under appropriate headings, and in the order here indicated:

- (1) A cover page, which shall contain:

(a) The case caption, including the name of the court, the names of the parties together with their respective party designation (e.g., “Appellant” or “Appellee”), the court of appeals’ case number, the name of the trial court and the trial court case number from which the appeal is taken;

(b) The title of the document (e.g., Brief for Appellant);

(c) The name, address, phone number and Ohio Supreme Court registration number of counsel representing the party on whose behalf the brief is being filed, or, if a party is not represented by counsel, the name, address and phone number of the party filing the brief; and,

(d) The name of the party or parties on whose behalf the document is being filed.

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

(2) ~~An index, consisting of a~~ A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(3) A statement of the assignments of error. The assignments of error may be single spaced.

(4) A statement of the issues presented. The statement of the issues shall be a succinct, clear, and accurate statement of the arguments made in the body of the brief.

(5) A statement of the case. The statement shall indicate briefly the nature and history of the case, where it was filed, and the result below.

(6) A statement of the facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with subsection ~~(e)~~ (F) of this rule.

(7) Argument and law. The argument shall contain the contentions of the appellant with respect to the assignments of error and the supporting reasons with citations to the authorities and statutes on which the appellant relies. Each assignment of error shall be separately discussed and shall include the standard of review applicable to that assignment of error under a separate heading placed before the discussion of the issues;

(8) A short conclusion stating the precise relief sought.

(9) An appendix at the end of the brief.

(a) The appendix shall consist of legibly reproduced copies, ~~photostatically or otherwise,~~ of the following items only:

(i) The judgment entry appealed from;

- (ii) Any opinion of the court announcing the decision reflected by the judgment entry appealed from;
- (iii) Any written findings of fact and conclusions of law in the record on appeal;
- (iv) All statutes, rules, regulations, ordinances, and constitutional provisions cited in the brief; and,
- (v) All magistrate reports containing findings of fact and recommendations which are partially or totally adopted by the court in its final order.

(b) If the appendix contains ~~three~~ two or more items, each item shall be separately tabbed and identified by consecutive letters and shall be listed in the table of contents by the name of the document with reference to its corresponding tab letter. Each page of each item in the appendix shall be sequentially numbered (numbering may begin with the first item in the appendix and continue through the last item, or numbering may begin from “one” for each tabbed item). References in the brief to any item that is contained in the appendix shall include both the tab number of the item and the specific page(s) to which the court should refer.

(B C) Appellee’s Brief. The brief of the appellee shall conform to the requirements set forth in subsections (A) and (B) of this rule except that a statement of the issues and a statement of the case, or of the facts relevant to the issues, need not be made unless the appellee determines that the statements provided by the appellant are not complete or accurate.

(C D) Reply Briefs. Reply briefs shall be restricted to matters in rebuttal of the appellee’s brief. Proper rebuttal is confined to new matters in the appellee’s brief. Reply briefs must conform to the requirements set forth in subsections (A) and (B) of this rule except that the reply brief need not set forth the statement of the issues, statement of the case, statement of the facts, or appendix materials already attached to appellant’s or appellee’s brief.

(D E) Page Limitations. ~~The Appellant’s and appellee’s briefs shall not exceed thirty (30) pages, and Appellant’s reply brief shall not exceed ten (10) pages. Page numbering shall begin exclusive of the table of contents, table of authorities and the appendix. In the appellant’s and appellee’s briefs, numerical pagination shall begin~~ on the page containing the statement of the assignments of error, shall continue on the pages containing the statement of the case, statement of the facts, argument, and conclusion, and shall end on the page containing the certificate of service.

(E F) References to the Record. References to the pertinent parts of the record shall be included in the statement of facts and in the argument section of the brief. If a party fails to include a reference to a part of the record that is necessary to the court’s review, the court may disregard the assignment of error or argument. References must be sufficiently specific so as to identify the exact location in the record of the material to which the court must refer and, where applicable, shall include the title of the item, volume or reel number, and page or counter number. ~~See commentary (July 1, 1997), Sup.R. 11.~~

(F G) Case Citations. Case citations must include volume number, page number, and the particular page numbers relevant to the point of law for which the case is cited. Where available, case citations must include the webcite and paragraph reference in accordance with the Supreme Court of

Ohio's Revisions to the Manual of Citations (2002). ~~When a case is found in the official reports, the citation shall be to the official volume.~~

(H) Failure to Comply. A brief not prepared in accordance with these rules, including the general appellate rules, may be stricken with an order for a conforming brief to be filed within a specified time. An appellant's failure to conform may result in dismissal of the appeal; an appellee's failure to conform may result in the brief being stricken and the right to argue being denied.

[Adopted eff. 7-1-98; amended eff. 7-1-00; amended eff. 11-1-01; proposed amended eff. 11-30-05.]

Commentary

There are three significant changes to Rule 7. First, Rule 7 begins with a new section (A) that incorporates general brief requirements for all briefs into one section. This section also encourages attorneys and parties to use descriptive names instead of labels to assist the Court in reading the arguments. Second, if the appeal must be expedited under App.R. 11.2, the cover of appellant's brief must designate the appeal as an "App.R. 11.2 Appeal". Third, the Rule clarifies that the statement of issues presented shall be a succinct statement of the arguments presented in the brief. The intent is to clarify that the statement of issues presented should not simply be a restatement of the assignments of error.

There are several other changes. Newly renumbered section (B)(9)(b) changes the appendix-tab-requirement so that tabs are required only when the appendix contains three or more documents and emphasizes that the appendix items must be numbered. Newly-renumbered section (E) clarifies the page numbering requirement. Newly-renumbered section (G) requires briefs to include the webcite citation reference as the Supreme Court's Manual of Citations requires. And new section (H) explains the Court's policy for noncomplying briefs.

RULE 8. ORAL ARGUMENT

(A) Persons Permitted to Argue. Only counsel of record or a party to the appeal who is not represented by counsel may present oral argument to the court. Counsel of record in any case includes only those attorneys who are listed on the docketing statement, ~~or~~ who have filed a notice of appearance in the case, or who are legal interns authorized under the Supreme Court of Ohio's Rules for the Government of the Bar and who have received this Court's permission to appear.

(B) Time Allowed for Argument. In accordance with App.R. 21(B), oral argument shall be reduced from thirty (30) minutes per side to fifteen (15) minutes per side.

(C) Continuance of Argument. No continuance of oral argument will be granted unless a written motion for a continuance is filed within seven (7) ~~business~~ days from the date that the notice of oral argument is mailed to the parties as stated on the notice of oral argument. No untimely motion for continuance will be granted unless the moving party demonstrates exceptional circumstances that justify the continuance.

(D) Waiver of Argument. An appellant may waive oral argument by filing a notice of waiver of oral argument with the clerk of the appellate court no later than seven (7) days prior to the date on which oral argument is scheduled. An appellee may waive oral argument by filing a notice of waiver of argument with the clerk of courts no later than three (3) days prior to the date of argument.

The notice of waiver must contain proof of service upon opposing counsel and the date that service was made. Within twenty-four (24) hours from the time that the notice of waiver is filed, the party filing the notice shall separately notify the Akron office of the court of appeals, by telephone or fax transmission, that the party has filed a notice of waiver of argument. ~~Notification may be by phone or facsimile transmission.~~

(E) Supplemental Authority. If counsel or a party intends to rely on cases decided after the filing of the briefs, counsel or the party shall file a Notice of Supplemental Authority with the new material attached to the Notice. The court may accept the supplemental authority but not permit it to be argued during oral argument and may allow other parties to the appeal to respond to the supplemental authority in writing after oral argument.

[Adopted eff. 7-1-98; amended eff. 7-1-00; amended eff. 1-1-04; proposed amended eff. 11-30-05.]

Commentary

There are four changes. First, section (A) is modified to recognize that legal interns are permitted to appear before this Court to present oral argument. Second, section (B) is modified to be consistent with App.R. 14(A) which eliminates weekends and holidays from the calculation of time only when the time prescribed for an act is less than seven days. Third, section (D) provides that the notice of filing of the waiver of oral argument can be provided to the Akron office by telephone or fax. Fourth, new section (E) suggests that supplemental authority should be limited to cases decided, or statutes enacted, between the filing of the briefs and the oral argument.

LOCAL RULE 9. JOURNAL ENTRIES

(A) Form of Decisions. Decisions of the court ~~in an undismissed appeal~~ will be announced on a form provided by the court entitled, "Decision and Journal Entry." Upon receipt by the clerk of the court of appeals, the clerk shall immediately stamp and file the "Decision and Journal Entry," at which time it will become the journal entry of judgment.

(B) Service of Journal Entries and Court Notices. The clerk of court for each county shall mail copies ~~Copies~~ of journal entries, court notices, and the final decision and journal entry ~~shall be mailed only~~ to counsel of record for a party to the appeal at the last known business address of counsel as listed in the court of appeals' records. If a party to the appeal is not represented by counsel, the clerk of court shall send mail copies of journal entries, court notices, and the final decision and journal entry to the party at the last known address of the party as listed in the court of appeals' records.

[Adopted eff. 7-1-98; amended eff. 1-1-04; proposed amended eff. 11-30-05.]

Commentary

These changes reflect the Court's current practice.

LOCAL RULE 10. ORIGINAL ACTIONS

(A) **Commencement of Action.** Service in original actions shall be made and the action shall commence and proceed as a civil case under the Ohio Rules of Civil Procedure, unless those rules are clearly inapplicable. In the absence of extraordinary circumstances, no alternative or preemptive writs will be issued, other than in a habeas corpus action.

(B) **Pretrial Proceedings.** Whenever possible, original actions shall be decided upon either a motion to dismiss or upon a motion for summary judgment. If a dispositive motion is not filed or has not been filed at the time the answer is filed or due, the court will issue a schedule for the presentation of an agreed statement of facts or stipulations and for the submission of briefs.

(C) **Trial.** If the action is not decided pursuant to subsection (B), the action may be referred to a magistrate, pursuant to App.R. 34 and Civ.R. 53. Oral testimony will be heard only in cases referred to a magistrate. Court reporters will not be in attendance at a magistrate's hearing unless arranged and paid for by one or more of the parties and appointed by the court.

(D) **Habeas Corpus.** An action for a writ of habeas corpus shall be similarly submitted whenever practicable and when the interests of justice will not be defeated by delay.

(E) **Briefs.** Parties submitting briefs shall adhere to the form and procedure provided by the Ohio Rules of Appellate Procedure and this court's local rules, ~~Appellate Rules~~, except that a "statement of issues presented" will be substituted for the "statement of the assignments of error presented for review" when appropriate. (See, App.R. 16(A)(3)).

[Adopted eff. 7-1-98; proposed amended eff. 11-30-05.]

LOCAL RULE 11. COUNSEL ON APPEAL

(A) **Appearance of Counsel.** Any attorney representing a party on appeal, but who was not listed on the docketing statement, must file a notice of appearance in the case with the court of appeals. An attorney shall include his or her attorney registration number issued by the Supreme Court of Ohio on all documents filed with the court.

(B) **Appointment of Counsel.** Except in appeals pursuant to App.R. 5, a request for appointment of counsel shall be made in the first instance in the trial court. A motion to appoint counsel that is filed in the court of appeals must be accompanied by proof that the trial court denied a request for appointment of counsel.

(C) **Selection of Counsel.** The court shall maintain a list of attorneys who have notified the court of their interest in serving as appointed counsel in criminal cases. Counsel shall be selected in a continual rotation from a list maintained by the court, except that the court may consider the experience and expertise of counsel and counsel's management of his/her current appellate caseload. Whenever possible, the court shall appoint counsel practicing in the county in which the case is filed.

The court shall keep a record of all counsel appointments made in a given calendar year, and shall annually review that record to assure that appointments are equitably distributed among counsel on the appointment list.

(D) Withdrawal of Counsel. A motion to withdraw as counsel must be supported by a showing of good cause for withdrawal and accompanied by proof of service of the motion upon the client. The motion shall also show the name and address of any substitute counsel and the name and address of the client.

(E) Attorney's Fees.

(1) Application. Application by appointed counsel in criminal cases for attorney's fees on appeal shall be completed on the most recent forms prescribed by the Ohio Public Defender, including the application for fees and a financial disclosure/affidavit of indigency form. Incomplete applications, applications submitted without the proper financial disclosure/affidavit of indigency form, or applications submitted on the wrong forms shall be returned to counsel. The affidavit of indigency must have been notarized within one year of the date of filing with this court.

(2) Limitations on Compensation. Payments for services will not exceed the schedule of fees established by each county pursuant to law.

(3) Time for Filing. All applications for payment of attorney's fees shall be filed with the clerk of the appellate court within ten (10) days of the entry of the decision and journal entry or order that disposes of the appeal.

(4) Penalties. The Ohio Public Defender does not reimburse counties for fees paid pursuant to an untimely or improper application. Accordingly, the failure to timely file a proper application and financial disclosure/affidavit of indigency form may result in reduction or non-payment of fees.

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

Commentary

Section (E) reflects the Court's current policy that requires the affidavit of indigency to have been notarized within one year of filing with this Court.

LOCAL RULE 12. PRESIDING AND ADMINISTRATIVE JUDGES

(A) Presiding Judge.

(1) Selection and Term. The presiding judge shall be elected by a majority vote of the judges of this court and designated by a journal entry filed with the Summit County Clerk of Courts. The presiding judge shall serve for a one year period commencing January 1 of each year and may serve consecutive terms.

(2) Powers and Duties. The presiding judge shall perform all duties incumbent upon the office, shall have full responsibility and control over matters of case administration and shall preside over any sessions and meetings of the court en banc and over any three-judge panel of which the presiding judge is a member. In the absence of the presiding judge, the administrative judge shall perform the duties of the presiding judge. The judge who is senior in service on the court shall

preside on any three-judge panel of which the presiding judge or administrative judge is not a member.

(B) Administrative Judge.

(1) Selection and Term. The administrative judge shall be elected by a majority vote of the judges of this court and designated by a journal entry filed with the Summit County Clerk of Courts. The administrative judge shall serve for a one year period commencing January 1 of each year and may serve consecutive terms.

(2) Powers and Duties. The administrative judge shall perform all duties incumbent upon the office and shall have full responsibility and control over matters of office and business administration. In the absence of the administrative judge, the presiding judge shall perform the duties of the administrative judge.

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

LOCAL RULE 13. EFFECTIVE DATE

Effective ~~July 1, 2000~~ November 1, 2005, all currently existing local rules of this court are repealed and these local rules are adopted. These rules will govern all proceedings brought after the effective date and all pending proceedings, except to the extent that their application in a particular pending action would not be feasible or would work injustice.

[Adopted eff. 7-1-98; proposed amended eff. 11-30-05.]

RULE 14. ADMISSION PRO HAC VICE

(A) The court may permit any attorney who is admitted to practice in the highest court of a state, commonwealth, territory, or possession of the United States or the District of Columbia, or who is admitted to practice in the courts of a foreign state, to appear pro hac vice and file pleadings, memoranda, briefs, or other documents or participate in oral argument before the court.

(B) Admission pro hac vice will be allowed only on motion of an attorney admitted to practice in Ohio and registered with the Clerk of the Ohio Supreme Court for active status. The motion shall briefly and succinctly state the qualifications of the attorney seeking admission. It shall be filed with the first pleading or brief in which the attorney seeks to participate or at least 30 days before oral argument if the attorney seeks only to participate in oral argument. This court may withdraw admission pro hac vice at any time.

(C) The clerk of courts shall reject any filing, other than a notice of appeal, by an attorney who is not admitted to practice in Ohio and who has not complied with section (B) of this rule. The court will not permit an attorney who is not admitted to practice in Ohio to present oral argument, unless prior leave to participate in oral argument has been granted.

[Adopted eff. 7-1-00.]

RULE 15. DESIGNATION OF COURT ADMINISTRATOR AS MAGISTRATE

(A) Pursuant to App.R. 34, the court appoints the Court Administrator to act as Magistrate for the limited purposes of ruling on routine procedural motions and entering routine procedural orders.

(B) The following are routine procedural motions:

- (1) Motions to enlarge or reduce the time to file briefs or the record;
- (2) Motions to consolidate;
- (3) Motions to supplement the record or briefs;
- (4) Motions to file non-complying briefs;
- (5) Motions to proceed in forma pauperis;
- (6) Motions to extend the time to file the docketing statement, comply with in forma pauperis requirements, or comply with a show cause order.

(C) The following are routine procedural orders:

- (1) Orders setting briefing schedules;
- (2) Show cause orders;
- (3) Orders to strike a pleading for failure to comply with the Ohio Rules of Appellate Procedure or this Court's Local Rules;
- (4) Orders to deny a transcript of proceedings at State's expense or appointment of counsel where the order was not first sought in the trial court; and
- (5) Notices of oral argument.

[Adopted eff. 10-05-05.]

Commentary

This new Rule appoints the Court Administrator to the position of magistrate under App.R. 34. And this section authorizes the magistrate to rule on routine procedural motions and enter routine procedural orders as set out in the Rule. The Court adopted this Rule effective October 5, 2005 and now seeks public comment, as authorized by Sup.R. 5(A)(2).

Insert Docketing Statement Here

SPECIMEN DECISION AND JOURNAL ENTRY

STATE OF OHIO)
)ss:
COUNTY OF _____)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
C.A. NO.

Appellant)

v.)

Appellee)

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT, _____ COUNTY, OHIO
CASE NO.

DECISION AND JOURNAL ENTRY

Dated:

This cause was heard upon the record in the trial court. ~~Each error assigned has been reviewed and the~~ The following disposition is made:

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this court, directing the _____ Court to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals, at which time the period for review shall begin to run. App.R. 22(E).

Costs taxed to _____.

~~Exceptions.~~

[Judge's name]
FOR THE COURT

_____, J.

_____, J.

CONCUR.

APPEARANCES: