

RULES OF PRACTICE OF THE SUPREME COURT OF OHIO

(Including amendments effective October 16, 2009)

The following Rules of Practice of the Supreme Court of Ohio include all amendments adopted and effective through October 16, 2009, and apply to practice and procedure in cases before the Supreme Court of Ohio.

Most of the rules are followed by Staff Commentary. Although the Supreme Court used the Staff Commentary in its deliberations on rule amendments, the Staff Commentary has not been adopted by the Supreme Court as part of the amendments.

Appendices following the rules include prescribed forms and samples of the types of documents most commonly filed in the Supreme Court. The samples are included to illustrate to attorneys and litigants the proper form to be used for documents filed in the Supreme Court. To ensure compliance with the rules, the complete text of the relevant rules should also be reviewed before documents are submitted for filing.

Filings may be made by delivering the documents in person or by mail addressed to the Clerk at the following address:

Clerk
Supreme Court of Ohio
65 South Front Street, 8th Floor
Columbus, Ohio 43215-3431

Certain documents may be filed by facsimile transmission to the Clerk at the following number: **(614) 387-9539**. Before a document is sent by facsimile transmission, Sec. 1(B) of S. Ct. Prac. R. XIV should be consulted to determine whether it is the type of document that may be filed in that manner.

All filings must be made during the regular business hours of the Clerk's Office, which are 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding holidays. The Supreme Court has adopted security procedures that apply to all visitors and persons with business before the Court. These include check-in with the State Highway Patrol, including the presentation of photo identification, and scanning of all materials brought into the Court. Persons hand delivering documents to the Clerk's Office should build in extra time for these security procedures, which must be followed before gaining access to the Clerk's Office. Documents received **in the Clerk's Office** after 5:00 p.m. will not be filed until the next business day.

The Supreme Court's Web site may be accessed to review frequently asked questions and answers about filing: www.supremecourtofohio.gov. Questions regarding the Rules of Practice or the status of cases pending before the Supreme Court may be directed to the Clerk's Office at the following phone numbers: **(614) 387-9530 or (614) 387-9531**.

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RULES OF PRACTICE OF THE SUPREME COURT OF OHIO

INTRODUCTION

The Supreme Court is the highest court in the State of Ohio. The Court consists of a Chief Justice and six Justices who are elected by the citizens of the State of Ohio to six-year terms. A majority of the Supreme Court is necessary to constitute a quorum or to render a judgment.

The jurisdiction of the Supreme Court is outlined in Article IV, Section 2(B) of the Ohio Constitution as summarized below.

The Supreme Court has original jurisdiction in the following:

- (1) Quo warranto;
- (2) Mandamus;
- (3) Habeas corpus;
- (4) Prohibition;
- (5) Procedendo;
- (6) Any cause on review as may be necessary to its complete determination;
- (7) Admission to the practice of law, the discipline of persons admitted to the practice of law, and all other matters relating to the practice of law.

The Supreme Court has appellate jurisdiction in the following:

- (1) Appeals from the courts of appeals as a matter of right in the following:
 - (a) Cases originating in the courts of appeals;
 - (b) Cases in which the death penalty has been affirmed by a court of appeals (for an offense committed prior to January 1, 1995);
 - (c) Cases involving questions arising under the constitution of the United States or of Ohio;
- (2) Appeals from the courts of appeals in felony cases if leave is first obtained;
- (3) Direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed (for an offense committed on or after January 1, 1995);
- (4) Appeals of the proceedings of certain administrative officers or agencies as provided by statute;
- (5) Cases of public or great general interest, if the Supreme Court directs a court of appeals to certify its record to the Supreme Court;
- (6) Any case certified by a court of appeals to the Supreme Court pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution.

The Supreme Court holds regular sessions that are open to the public. Generally, these sessions are held in the Supreme Court Courtroom on the first floor of the Ohio Judicial Center, 65 South Front Street, in Columbus, Ohio. Calendars of the Court sessions are available in the Clerk's Office and on the Supreme Court of Ohio's Web site at the following address: www.supremecourtofohio.gov.

RULE I. REQUIREMENTS FOR ATTORNEYS PRACTICING BEFORE THE SUPREME COURT

Section 1. Prerequisites to Appearance.

(A) In order to file documents other than those required to perfect an appeal, or to participate in oral argument, attorneys shall be registered for active status with the Attorney Services Division of the Supreme Court as required by Rule VI of the Supreme Court Rules for the Government of the Bar of Ohio or shall have complied with the *pro hac vice* requirements of Section 2 of this rule. In death penalty cases, in addition to meeting the preceding requirements, any appointed attorney shall satisfy the certification requirements of Rule 20 of the Rules of Superintendence for the Courts of Ohio and appear on the list of attorneys certified to represent capital defendants on appeal.

(B) Any attorney appearing in a case after the initial document has been filed shall file a notice of appearance identifying the party on whose behalf the attorney is appearing. Any attorney who withdraws representation of a party shall file a notice of withdrawal.

(C) The Supreme Court may strike documents filed by attorneys not in compliance with this rule.

Section 2. Admission *Pro Hac Vice*.

(A) The Supreme 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 documents or participate in oral argument before the Supreme Court.

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

Section 3. Designation of Counsel of Record.

(A) The attorney representing a party shall be designated as counsel of record for that party. Where two or more attorneys represent a party, only one attorney shall be designated as counsel of record to receive notices and service on behalf of that party. The designation shall be made on the cover page of the first document filed by the party in the Supreme Court. If an attorney is not designated counsel of record, the first attorney listed for the party on the cover page of the first document filed shall be considered the counsel of record. To change a party's designation of its counsel of record, the party shall file a separate notice of change of counsel of record.

(B) The Clerk will send notices and orders in a case to counsel of record at the office address that counsel has registered with the Attorney Services Division under Gov.Bar R. VI. If no office address is registered with the Attorney Services Division, the Clerk will send notices and orders to the residence address that counsel has registered with the Attorney Services Division. Counsel of record may request that the Clerk send notices and orders in a case to an address other than one registered with the Attorney Services Division by filing a notice with the Clerk designating the address to be used in that case.

Staff Commentary to Rule I
(2008 Amendments)

The phrase “pleadings, memoranda, briefs, or other documents” has been amended to simply read “documents.” Since pleadings, memoranda, and briefs are all documents, the listing of each type of document is unnecessary. This change has been made throughout the Rules of Practice and is intended only to simplify the rules. No change in substantive meaning should be inferred.

RULE II. INSTITUTION OF APPEALS; NOTICE OF APPEAL

Section 1. Types of Appeals.

(A) Appeals from Courts of Appeals.

(1) Appeals of right. An appeal of a case in which the death penalty has been affirmed for an offense committed prior to January 1, 1995, an appeal from the decision of a court of appeals under App.R. 26(B) in a capital case, or a case that originated in the court of appeals invokes the appellate jurisdiction of the Supreme Court and shall be designated an appeal of right. The Supreme Court will render judgment after the parties are given an opportunity to brief the case on the merits in accordance with S.Ct.Prac.R. VI.

(2) Claimed appeals of right. An appeal that claims a substantial constitutional question, including an appeal from the decision of a court of appeals under App.R. 26(B) in a noncapital case, may invoke the appellate jurisdiction of the Supreme Court and shall be designated a claimed appeal of right. In accordance with S.Ct.Prac.R. III, the Supreme Court will determine whether to accept the appeal.

(3) Discretionary appeals. An appeal that involves a felony or a question of public or great general interest invokes the discretionary jurisdiction of the Supreme Court and shall be designated a discretionary appeal. In accordance with S.Ct.Prac.R. III, the Supreme Court will determine whether to accept the appeal.

(4) Certified conflict cases. A case in which the court of appeals has issued an order certifying a conflict under Article IV, Section 3(B)(4) of the Ohio Constitution invokes the appellate jurisdiction of the Supreme Court. In accordance with S.Ct.Prac.R. IV, the Supreme Court will act upon the court of appeals order.

(B) Appeals from Administrative Agencies: Board of Tax Appeals; Public Utilities Commission; Power Siting Board.

An appeal that involves review of the action of the Board of Tax Appeals, the Public Utilities Commission, or the Power Siting Board invokes the appellate jurisdiction of the Supreme Court. The Supreme Court will render judgment after the parties are given an opportunity to brief the case on the merits in accordance with S.Ct.Prac.R. VI.

(C) Appeals from Courts of Common Pleas.

(1) An appeal of a case in which the death penalty has been imposed for an offense committed on or after January 1, 1995, invokes the appellate jurisdiction of the Supreme Court and shall be designated an appeal of right. The Supreme Court will render judgment after the parties are given an opportunity to brief the case on the merits in accordance with S.Ct.Prac.R. VI and XIX.

(2) An appeal of a case contesting an election under section 3515.15 of the Revised Code shall be designated an appeal of right. The Supreme Court will render judgment after the parties are given an opportunity to brief the case on the merits in accordance with S.Ct.Prac.R. VI.

Section 2. Institution of Appeal from Court of Appeals.

(A) Perfection of Appeal.

(1) (a) To perfect an appeal from a court of appeals to the Supreme Court, other than in a certified conflict case (which is addressed in S.Ct.Prac.R. IV), the appellant shall file a notice of appeal in the Supreme Court within 45 days from the entry of the judgment being appealed. The date the court of appeals filed its judgment entry for journalization with its clerk, in accordance with App.R. 22(E), shall be considered the date of entry of the judgment being appealed. If the appeal is a claimed appeal of right or a discretionary appeal, the appellant shall also file a memorandum in support of jurisdiction, in accordance with S.Ct.Prac.R. III, at the time the notice of appeal is filed.

(b) Except as provided in divisions (A)(2), (3), and (4) of this section, the time period designated in this rule for filing a notice of appeal and memorandum in support of jurisdiction is mandatory, and the appellant's failure to file within this time period shall divest the Supreme Court of jurisdiction to hear the appeal. The Clerk of the Supreme Court shall refuse to file a notice of appeal or a memorandum in support of jurisdiction that is tendered for filing after this time period has passed.

(2) (a) If a party timely files a notice of appeal in the Supreme Court, any other party may file a notice of appeal or cross-appeal in the Supreme Court within the later of the time prescribed by division (A)(1) of this section or 10 days after the first notice of appeal was filed.

(b) A notice of appeal shall be designated and treated as a notice of cross-appeal if it is filed both:

- (i) after the original notice of appeal was filed in the case;
- (ii) by a party against whom the original notice of appeal was filed.

(c) If a notice of cross-appeal is filed, a combined memorandum both in response to appellant/cross-appellee's memorandum and in support of jurisdiction for the cross-appeal shall be filed by the deadline imposed in S.Ct.Prac.R. III, Section 4.

(3) (a) In a claimed appeal of right or a discretionary appeal, if the appellant intends to seek from the Supreme Court an immediate stay of the court of appeals judgment that is being appealed, the appellant may file a notice of appeal in the Supreme Court without an accompanying memorandum in support of jurisdiction, provided both of the following conditions are satisfied:

- (i) A motion for stay of the court of appeals judgment shall accompany the notice of appeal.
- (ii) A copy of the court of appeals opinion and judgment entry being appealed shall be attached to the motion for stay.

(b) A memorandum in support of jurisdiction shall be filed no later than 45 days from the entry of the court of appeals judgment being appealed. The Supreme Court will dismiss the appeal if the memorandum in support of jurisdiction is not timely filed pursuant to this provision.

(4) (a) In a felony case, when the time has expired for filing a notice of appeal in the Supreme Court, the appellant may seek to file a delayed appeal by filing a motion for delayed appeal and a notice of appeal. The motion shall state the date of entry of the judgment being appealed and adequate reasons for the delay. Facts supporting the motion shall be set forth in an affidavit. A copy of the court of appeals opinion and the judgment entry being appealed shall be attached to the motion.

(b) A memorandum in support of jurisdiction shall not be filed at the time a motion for delayed appeal is filed. If the Supreme Court grants a motion for delayed appeal, the appellant shall file a memorandum in support of jurisdiction within 30 days after the motion for delayed appeal is granted. If a memorandum in support of jurisdiction is not timely filed after a motion for delayed appeal has been granted, the Supreme Court will dismiss the appeal.

(c) The provision for delayed appeal applies to appeals on the merits and does not apply to appeals involving postconviction relief, including appeals brought pursuant to *State v. Murnahan* (1992), 63 Ohio St.3d 60, 584 N.E.2d 1204, and App.R. 26(B). The Clerk shall refuse to file motions for delayed appeal involving postconviction relief.

(B) Contents of Notice of Appeal.

(1) The notice of appeal shall state all of the following:

- (a) The name of the court of appeals whose judgment is being appealed;
- (b) The case name and number assigned to the case by the court of appeals;
- (c) The date of the entry of the judgment being appealed;
- (d) That one or more of the following are applicable:
 - (i) The case involves affirmance of the death penalty;
 - (ii) The case originated in the court of appeals;
 - (iii) The case raises a substantial constitutional question;
 - (iv) The case involves a felony;
 - (v) The case is one of public or great general interest;
 - (vi) The case involves termination of parental rights or adoption of a minor child, or both;
 - (vii) The case is an appeal of a court of appeals determination under App.R. 26(B).

[See Appendix A following these rules for a sample notice of appeal from a court of appeals.]

(2) In an appeal of right under Rule II, Section 1(A)(1), appellant shall attach to the notice of appeal a date-stamped copy of the court of appeals judgment entry that is being appealed. For purposes of this rule, a date-stamped copy of the court of appeals judgment entry shall mean a copy bearing the file stamp of the clerk of the court of appeals and reflecting the date the court of appeals filed its judgment entry for journalization with its clerk under App.R. 22(E). If the opinion of the court of appeals serves as its judgment entry and is in excess of 10 pages, a date-stamped copy of the cover page of the opinion may be filed in lieu of the complete opinion.

(3) In a discretionary appeal or claimed appeal of right, if a party has timely moved the court of appeals to certify a conflict under App.R. 25, the notice of appeal shall be accompanied by a notice, in accordance with S.Ct.Prac.R. IV, Section 4(A), that a motion to certify a conflict is pending with the court of appeals.

(C) Notice to the Court of Appeals.

The Clerk of the Supreme Court shall send a copy of the notice of appeal or cross-appeal to the clerk of the court of appeals whose judgment is being appealed.

(D) Jurisdiction of Court of Appeals after Appeal to Supreme Court Is Perfected.

(1) After an appeal is perfected from a court of appeals to the Supreme Court, the court of appeals is divested of jurisdiction, except to take action in aid of the appeal, to rule on an application timely filed with the court of appeals pursuant to App.R. 26, or to rule on a motion to certify a conflict under Article IV, Section 3(B)(4) of the Ohio Constitution.

(2) In all appeals from a court of appeals, the court of appeals retains jurisdiction to appoint counsel to represent indigent parties before the Supreme Court where a judgment of the court of appeals is being defended by a defendant or upon order of the Supreme Court that counsel be appointed in a particular case.

Section 3. Institution of Appeal from Administrative Agency.

(A) Appeal from the Board of Tax Appeals.

(1) A notice of appeal from the Board of Tax Appeals shall be filed with the Supreme Court and the Board within 30 days from the date of the entry of the decision of the Board, include a copy of the decision being appealed, set forth the claimed errors, comply with the service requirements of Rule XIV, Section 2(B)(2), and otherwise be in conformance with section 5717.04 of the Revised Code.

(2) If a party timely files a notice of appeal in the Supreme Court, any other party may file a notice of appeal pursuant to section 5717.04 of the Revised Code.

(B) Appeal from the Public Utilities Commission.

(1) A notice of appeal from the Public Utilities Commission shall be filed with the Supreme Court and with the Commission within the time specified in and in conformance with sections 4903.11 and 4903.13 of the Revised Code and sections 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code.

(2) If a party files a notice of appeal in the Supreme Court, any other party may file a notice of cross-appeal pursuant to section 4903.13 of the Revised Code. The notice of cross-appeal shall be filed within the later of the time prescribed by section 4903.11 of the Revised Code or 10 days after the first notice of appeal was filed.

(C) Appeal from the Power Siting Board.

A notice of appeal or cross-appeal from the Power Siting Board shall be filed with the Supreme Court and the Board in accordance with division (B) of this section and pursuant to section 4906.12 of the Revised Code.

Section 4. Filing of Joint Notice of Appeal.

Where there are multiple parties appealing from the same decision of a court of appeals or an administrative agency, appellants may join in the filing of a single notice of appeal.

Section 5. Name of Case on Appeal.

Except in appeals from the Public Utilities Commission or the Power Siting Board, an appeal shall be docketed under the case name assigned to the action in the court or agency whose decision is being appealed.

Staff Commentary to Rule II
(2008 Amendments)

Section 2(A)(2)(c)

This amendment makes the title of the referenced document consistent with S.Ct.Prac.R. III, Section 4.

Sections 2(A)(4)(b) and (c)

For clarity, these amendments simply reverse the position of the two paragraphs.

Section 2(B)(2)

This amendment clarifies the types of appeals about which the section refers.

Section 2(D)(2)

This amendment clarifies the Supreme Court's practice when appellate counsel is to be appointed by a court of appeals. The appeal is not remanded; rather, the court of appeals is ordered to make the appointment.

Section 3(A)(1)

The amendment in this section emphasizes that a notice of appeal from a decision of the Board of Tax Appeals must comply with special service requirements under Rule XIV, Section 2(B)(2).

Section 6

This section has been eliminated. The section required the filing of a case information statement form at the time an appeal was perfected. While the case information statement was originally adopted to assist the Court with issues tracking, the Court found it to have limited usefulness.

**RULE III. DETERMINATION OF JURISDICTION ON CLAIMED
APPEALS OF RIGHT AND DISCRETIONARY APPEALS**

Section 1. Memorandum in Support of Jurisdiction.

(A) In a claimed appeal of right or a discretionary appeal, the appellant shall file a memorandum in support of jurisdiction with the notice of appeal. [See Appendix B following these rules for a sample memorandum.]

(B) A memorandum in support of jurisdiction shall contain all of the following:

(1) A table of contents, which shall include the proposition(s) of law stated in syllabus form as set forth in *Drake v. Bucher* (1966), 5 Ohio St.2d 37, 39, 213 N.E.2d 182, 184;

(2) A thorough explanation of why a substantial constitutional question is involved, why the case is of public or great general interest, or, in a felony case, why leave to appeal should be granted;

- (3) A statement of the case and facts;
- (4) Each proposition of law supported by a brief and concise argument.

(C) Except in postconviction death penalty cases, a memorandum shall not exceed 15 numbered pages, exclusive of the table of contents and the certificate of service.

(D) A date-stamped copy of the court of appeals opinion and judgment entry being appealed shall be attached to the memorandum. For purposes of this rule, a date-stamped copy of the court of appeals judgment entry shall mean a copy bearing the file stamp of the clerk of the court of appeals and reflecting the date the court of appeals filed its judgment entry for journalization with its clerk under App.R. 22(E). The appellant may also attach any other judgment entries or opinions issued in the case, if relevant to the appeal. The memorandum shall not include any other attachments.

(E) Except as otherwise provided in S.Ct.Prac.R. II, Section 2(A), if the appellant does not tender a memorandum in support of jurisdiction for timely filing along with the notice of appeal, the Clerk shall refuse to file the notice of appeal.

Section 2. Memorandum in Response.

(A) Within 30 days after the appellant's memorandum in support of jurisdiction is filed, the appellee may file a memorandum in response. If the appeal involves termination of parental rights or adoption of a minor child, or both, any memorandum in response shall be filed within 20 days after the memorandum in support of jurisdiction is filed.

(B) The memorandum in response shall not exceed 15 numbered pages, except in postconviction death penalty cases; shall not include any attachments; and shall contain both of the following:

(1) A statement of appellee's position as to whether a substantial constitutional question is involved, whether leave to appeal in a felony case should be granted, or whether the case is of public or great general interest;

(2) A brief and concise argument in support of the appellee's position regarding each proposition of law raised in the memorandum in support of jurisdiction.

(C) The appellee shall include the Supreme Court case number on the cover page of the memorandum in response.

(D) If two or more notices of appeal are filed in a case in accordance with S.Ct.Prac.R. II, Section 2(A)(2), the appellee shall file only one memorandum in response. The time specified in Section 2(A) of this rule for filing the memorandum in response shall be calculated from the date the last memorandum in support of jurisdiction was filed in the case.

(E) The appellee may waive the filing of a memorandum in response. A waiver shall be on a form prescribed by the Clerk and shall be filed within 20 days after the memorandum in support of jurisdiction is filed. [See Appendix C following these rules for the prescribed form.]

Section 3. Prohibition Against Supplemental and Reply Memoranda.

(A) Except as provided in S.Ct.Prac.R. VIII, Section 7, jurisdictional memoranda shall not be supplemented. If a relevant authority is issued after the deadline has passed for filing a party's jurisdictional memorandum, that party may file a citation to the relevant authority but shall not file additional argument.

(B) The appellant shall not file a reply to the jurisdictional memorandum filed by the appellee under Section 2 of this rule.

(C) The Clerk shall refuse to file supplemental or reply memoranda tendered for filing in violation of this section, and motions to waive the provisions of this section are prohibited and shall not be filed.

Section 4. Jurisdictional Memoranda in Case Involving Cross-Appeal.

(A) In a case involving a cross-appeal, the appellee/cross-appellant shall file a combined memorandum both in response to appellant/cross-appellee's memorandum and in support of jurisdiction for the cross-appeal within 30 days of the filing of appellant/cross-appellee's memorandum in support of jurisdiction. Except as otherwise provided by this section, the combined memorandum shall comply with all of the requirements contained in Sections 1 and 2 of this rule; however, a date-stamped copy of the court of appeals opinion and judgment entry being appealed need not be attached to the combined memorandum. Within 30 days after the filing of appellee/cross-appellant's combined memorandum, the appellant/cross-appellee shall file the last memorandum, which shall be limited to a response to appellee/cross-appellant's arguments in support of jurisdiction for the cross-appeal.

(B) If the appeal or the cross-appeal involves termination of parental rights or adoption of a minor child, or both, the combined memorandum of appellee/cross-appellant shall be filed within 20 days after the filing of appellant/cross-appellee's memorandum in support of jurisdiction, and the last memorandum of appellant/cross-appellee shall be filed within 20 days after the filing of appellee/cross-appellant's combined memorandum.

(C) Except in postconviction death penalty cases, a memorandum filed under this section by the appellant/cross-appellee shall not exceed 15 numbered pages, and the memorandum filed by the appellee/cross-appellant shall not exceed 30 numbered pages.

Section 5. Jurisdictional Memorandum of *Amicus Curiae*.

(A) An *amicus curiae* may file a jurisdictional memorandum urging the Supreme Court to accept or decline to accept a claimed appeal of right or a discretionary appeal.

Leave to file an *amicus* memorandum is not required. An *amicus* memorandum shall conform to the requirements of this rule, except that a copy of the court of appeals opinion and judgment entry is not required to be attached to the *amicus* memorandum.

(B) An *amicus* memorandum in support of jurisdiction shall be filed by the appellant's deadline for perfecting an appeal to the Supreme Court or, if later, by the appellant's deadline for filing a memorandum in support of jurisdiction. An *amicus* memorandum in response shall be filed by the appellee's deadline for filing a memorandum in response. The Clerk shall refuse to file an *amicus* memorandum that is not submitted timely.

Section 6. Determination of Jurisdiction by the Supreme Court.

After the time for filing jurisdictional memoranda has passed, the Supreme Court will review the jurisdictional memoranda filed and determine whether to accept the appeal and decide the case on the merits. If the appeal involves termination of parental rights or adoption of a minor child, or both, the Supreme Court will expedite its review and determination. If the appellee has filed a waiver in lieu of a memorandum in response, the Supreme Court may review the memorandum in support of jurisdiction and determine whether to allow the appeal before the deadline for filing the memorandum in response. Upon review of the memorandum in support of jurisdiction and notwithstanding the appellee's filing of a waiver, the Supreme Court may direct the appellee to file a memorandum in response before it decides whether to allow the appeal.

(A) If the appeal is a claimed appeal of right, the Supreme Court will do one of the following:

(1) Dismiss the appeal as not involving any substantial constitutional question;

(2) Accept the appeal, and either order the case or limited issues in the case to be briefed and heard on the merits or enter judgment summarily.

(B) If the appeal is a discretionary appeal involving a felony, the Supreme Court will do one of the following:

(1) Deny leave to appeal, refusing jurisdiction to hear the case on the merits;

(2) Grant leave to appeal, accepting the appeal, and either order the case or limited issues in the case to be briefed and heard on the merits or enter judgment summarily.

(C) If the appeal is a discretionary appeal asserting a question of public or great general interest, the Supreme Court will do one of the following:

(1) Decline jurisdiction to decide the case on the merits;

(2) Grant jurisdiction to hear the case on the merits, accepting the appeal, and either order the case or limited issues in the case to be briefed and heard on the merits or enter judgment summarily.

(D) The Supreme Court may delay its determination of jurisdiction on a claimed appeal of right or a discretionary appeal pending the outcome of any other case before the Supreme Court that may involve a dispositive issue.

(E) In any claimed appeal of right or discretionary appeal in which the state is not a party but nevertheless may have an interest, the Supreme Court may invite the state solicitor to file a jurisdictional memorandum expressing the views of the state before making its determination of jurisdiction.

Section 7. Appointment of Counsel in Felony Cases.

If the Supreme Court grants leave to appeal in a discretionary appeal involving a felony and an unrepresented party to the appeal is indigent, the Supreme Court will appoint the Ohio Public Defender or other counsel to represent the indigent party or order the court of appeals to appoint counsel as provided in S.Ct.Prac.R. II, Section 2(D)(2).

Staff Commentary to Rule III (2008 Amendments)

Section 1(C)

This amendment clarifies that a certificate of service is not counted when considering the page limitation imposed by this section.

Section 2(A)

The word “appellant” has been inserted to clarify the language of the rule without changing its substance.

Section 2(E)

These amendments are intended to simplify the language of the rule without changing its substance.

Section 3(A)

This division has been amended to allow the filing of post-memoranda citations to relevant authorities that are issued by the Supreme Court. Although it is unnecessary for a party to advise this Court of the authority it has issued, the party’s attorney may feel a responsibility to do so, and doing so does not prejudice anyone. See also, amendments to Rule VI, Section 8, and Rule IX, Section 9, *infra*.

Section 4(A)

Language in the first sentence is being removed as unnecessary. The remaining amendments are intended to simplify and clarify the language of the rule without changing its substance.

RULE IV. CERTIFICATION BY COURT OF APPEALS BECAUSE OF CONFLICT

Section 1. Filing of Court of Appeals Order Certifying a Conflict.

When a court of appeals issues an order certifying a conflict pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution, any interested party to the proceeding may institute an appeal by filing a notice of certified conflict in the Supreme Court. The notice shall have attached a copy of the court of appeals order certifying a conflict and copies of the conflicting court of appeals opinions. The party who files the order certifying a conflict shall be considered the appellant. Failure to file the court of appeals order certifying a conflict within 30 days after the date of such order shall divest the Supreme Court of jurisdiction to consider the order certifying a conflict.

Section 2. Supreme Court Review of Court of Appeals Order Certifying a Conflict.

The Supreme Court will review the court of appeals order certifying a conflict. If the case involves termination of parental rights or adoption of a minor child, or both, the Supreme Court will expedite its review.

(A) If the rule of law upon which the alleged conflict exists is not clearly set forth in the order certifying a conflict, the Supreme Court may dismiss the case or remand it to the court of appeals with an order that the court of appeals clarify the issue presented.

(B) If the Supreme Court determines that a conflict does not exist, it will issue an order dismissing the case.

(C) If the Supreme Court determines that a conflict exists, it will issue an order finding a conflict, identifying those issues raised in the case that will be considered by the Supreme Court on appeal, and ordering those issues to be briefed.

Section 3. Briefs; Supplement to the Briefs.

(A) If the Supreme Court determines that a conflict exists, the appellant shall file a merit brief in conformance with S.Ct.Prac.R. VI and, if applicable, a supplement in conformance with S.Ct.Prac.R. VII, as follows:

(1) Within 20 days from the date the Clerk of the Supreme Court files the record from the court of appeals, if the case involves termination of parental rights or adoption of a minor child, or both;

(2) Within 40 days from the date the Clerk of the Supreme Court files the record from the court of appeals in every other appeal.

(B) The parties shall otherwise comply with the requirements of S.Ct.Prac.R. VI, VII, and VIII. In their merit briefs, the parties shall brief only the issues identified in the order of the Supreme Court as issues to be considered on appeal, and those issues shall be clearly identified in the table of contents, in accordance with S.Ct.Prac.R. VI, Section 2(B)(1). In cases where an appeal from an order certifying a conflict has been consolidated with an appeal under Section 4(C) of this rule, the brief shall identify the issues that have been found by the Supreme Court to be in conflict and shall distinguish those issues from any other issues being briefed in the consolidated appeal.

Section 4. Effect of Pending Motion to Certify a Conflict Upon Discretionary Appeal or Claimed Appeal of Right Filed in Supreme Court.

(A) If a party has perfected a discretionary appeal or a claimed appeal of right with the Supreme Court in accordance with S.Ct.Prac.R. II, Section 2(A), but also has timely moved the court of appeals to certify a conflict in the case, that party shall file a notice with the Supreme Court that a motion to certify a conflict is pending in the court of appeals. The Supreme Court will stay consideration of the jurisdictional memoranda filed in the discretionary appeal or claimed appeal of right until the court of appeals has determined whether to certify a conflict in the case.

(B) If the court of appeals determines that a conflict does not exist, the party that moved the court of appeals to certify a conflict shall immediately file a notice of that determination with the Supreme Court. In accordance with S.Ct.Prac.R. III, the Supreme Court will consider the jurisdictional memoranda filed in the discretionary appeal or the claimed appeal of right.

(C) If the court of appeals certifies the existence of a conflict and a copy of the court of appeals order is filed with the Supreme Court in accordance with Section 1 of this rule, the Supreme Court will consolidate the certified conflict case with the discretionary appeal or the claimed appeal of right. The Supreme Court will review the court of appeals order certifying a conflict when it reviews the jurisdictional memoranda filed by the parties. In accordance with Section 2 of this rule and S.Ct.Prac.R. III, Section 6, the Supreme Court will issue an order determining both whether a conflict exists and whether to allow the discretionary appeal or the claimed appeal of right.

Staff Commentary to Rule IV
(2008 Amendments)

Section 3(A)(1) and (2)

On occasion, when the Clerk receives a record from a lower court clerk, additional information or documentation is required before that record can be filed in the Supreme Court. The amendment to these sections clarifies that the briefing deadlines are calculated from the date the Clerk files the record, since the date of receipt and date of filing may differ.

Section 4(B)

This amendment requires the immediate filing of a court of appeals' denial of a motion to certify a conflict. Because the Court is delaying its review of the companion discretionary appeal under division 4(A) of this rule, parties should file the notice as soon as practicable.

RULE V. TRANSMISSION OF RECORD ON APPEAL

Section 1. Composition of the Record on Appeal.

In all appeals, the record on appeal shall consist of the original papers and exhibits to those papers; the transcript of proceedings and exhibits, along with an electronic version of the transcript, if available; and certified copies of the journal entries and the docket prepared by the clerk of the court or other custodian of the original papers. Where applicable, the record on appeal shall consist of all of the above items from both the court of appeals and the trial court.

Section 2. When Record Is to Be Transmitted to Supreme Court from Court of Appeals.

In every case on appeal to the Supreme Court from a court of appeals, the clerk of the court of appeals or other custodian having possession of the record shall not transmit the record to the Supreme Court unless and until the Clerk of the Supreme Court issues an order to the custodian to transmit the record pursuant to Section 3 of this rule.

Section 3. Certification and Transmission of Record from Court of Appeals.

(A) Upon order of the Supreme Court, the clerk of the court of appeals or other custodian having possession of the record shall certify and transmit the record to the Clerk of the Supreme Court. Unless otherwise ordered by the Supreme Court, the record shall be transmitted within 20 days of the order. If the case involves termination of parental rights or adoption of a minor child, or both, preparation and transmission of the record shall be expedited and given priority over preparation and transmission of the record in other cases.

(B) The record shall be transmitted along with an index that lists all items included in the record. All exhibits listed in the index shall be briefly described. The clerk of the court of appeals or other custodian transmitting the record shall send a copy of the index to all counsel of record in the case. The Clerk of the Supreme Court shall notify counsel of record when the record is filed in the Supreme Court.

Section 4. Submission of Record from Public Utilities Commission.

The word "forthwith" as used in section 4903.21 of the Revised Code, providing that upon service or waiver of service of the notice of appeal the Public Utilities Commission shall forthwith transmit to the Clerk of the Supreme Court a complete transcript of the proceeding, shall mean a period of 30 days. If at the expiration of 30 days the transcript has

not been filed, the appellant shall have an additional three days in which to file a complaint in the Supreme Court for a writ of mandamus to compel the Commission to file the transcript. The appeal shall be dismissed if, at the expiration of 33 days, neither the transcript nor a complaint for a writ of mandamus has been filed.

Section 5. Items Not to Be Transmitted with the Record.

(A) Except in death penalty appeals of right, the custodian of the record shall not transmit the following items unless directed to do so by the Clerk of the Supreme Court:

- (1) Any physical exhibits, other than audiotapes, videotapes, and documents such as papers, maps, or photographs;
- (2) Documents of unusual size, bulk, or weight.

(B) If exhibits or documents are not transmitted pursuant to division (A) of this section, the custodian who certifies the record shall designate in the index the exhibits or documents not being transmitted and identify the custodian of those exhibits or documents.

Section 6. Transmission of Record in Death Penalty Appeals.

In death penalty appeals of right, the custodian of the record shall transmit the entire record, including all physical exhibits and all documents of unusual size, bulk, or weight. In cases in which the death penalty has been imposed by the court of common pleas for an offense committed on or after January 1, 1995, the creation, transmission, supplementation, and correction of the record shall be governed by S.Ct.Prac.R. XIX.

Section 7. Supplementation of the Record.

If any part of the record is not transmitted to the Supreme Court but is necessary to the Supreme Court's consideration of the questions presented on appeal, the Supreme Court, on its own initiative or on motion of a party, may direct that a supplemental record be certified and transmitted to the Clerk of the Supreme Court in accordance with Section 3(B) of this rule.

Staff Commentary to Rule V
(2008 Amendments)

Section 1

This amendment is intended to clarify that transcripts and exhibits from trial court proceedings are to be considered part of the record of the court of appeals. Accordingly, they are to be transmitted to the Supreme Court if they were considered on appeal.

Section 3(A)

These amendments are intended to simplify and clarify the language of the rule without changing its substance.

Section 5

The amendments to division (A) are intended to simplify and clarify the language of the rule without changing its substance. Former division (B) of this section has been moved and is now the first sentence of Section 6 of this rule.

Sections 6 and 7

These sections contain provisions previously appearing elsewhere in the rule. Section 7 clarifies that certification and transmission of supplemental records must be in the same manner as the initial transmission of the record.

RULE VI. BRIEFS ON THE MERITS IN APPEALS

Section 1. Limitation on Application of Rule.

The filing deadlines imposed by this rule do not apply to appeals involving the imposition of the death penalty for an offense committed on or after January 1, 1995, and instituted under S.Ct.Prac.R. II, Section 1(C)(1). Filing deadlines for briefs in those appeals are governed by S.Ct.Prac.R. XIX, Section 5.

Section 2. Appellant's Brief.

(A) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant shall file a merit brief with the Supreme Court within 20 days from the date the Clerk of the Supreme Court files the record from the court of appeals. In every other appeal, the appellant shall file a merit brief within 40 days from the date the Clerk files the record from the court of appeals or the administrative agency. In any case, the appellant shall not file a merit brief prior to the filing of the record by the Clerk. [See Appendix D following these rules for a sample brief.]

(B) The appellant's brief shall contain all of the following:

(1) A table of contents listing the table of authorities cited, the statement of facts, the argument with proposition or propositions of law, and the appendix, with references to the pages of the brief where each appears.

(2) A table of the authorities cited, listing the citations for all cases or other authorities, arranged alphabetically; constitutional provisions; statutes; ordinances; and administrative rules or regulations upon which appellant relies, with references to the pages of the brief where each citation appears.

(3) A statement of the facts with page references, in parentheses, to supporting portions of both the original transcript of testimony and any supplement filed in the case pursuant to S.Ct.Prac.R. VII.

(4) An argument, headed by the proposition of law that appellant contends is applicable to the facts of the case and that could serve as a syllabus for the case if appellant prevails. See *Drake v. Bucher* (1966), 5 Ohio St.2d 37, 39, 213 N.E.2d 182, 184. If several

propositions of law are presented, the argument shall be divided with each proposition set forth as a subheading.

(5) An appendix, numbered separately from the body of the brief, containing copies of all of the following:

- (a) The date-stamped notice of appeal to the Supreme Court, the notice of certified conflict, or the federal court certification order, whichever is applicable;
- (b) The judgment or order from which the appeal is taken;
- (c) The opinion, if any, relating to the judgment or order being appealed;
- (d) All judgments, orders, and opinions rendered by any court or agency in the case, if relevant to the issues on appeal;
- (e) Any relevant rules or regulations of any department, board, commission, or any other agency, upon which appellant relies;
- (f) Any constitutional provision, statute, or ordinance upon which appellant relies, to be construed, or otherwise involved in the case;
- (g) In appeals from the Public Utilities Commission, the appellant's application for rehearing.

(C) Except in death penalty appeals of right, the appellant's brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix.

Section 3. Appellee's Brief.

(A) In every appeal involving termination of parental rights or adoption of a minor child, or both, within 20 days after the filing of appellant's brief the appellee shall file a merit brief. In every other appeal, the appellee shall file a merit brief within 30 days after the filing of appellant's brief. The appellee's brief shall comply with the provisions in Section 2(B) of this rule, answer the appellant's contentions, and make any other appropriate contentions as reasons for affirmance of the order or judgment from which the appeal is taken. A statement of facts may be omitted from the appellee's brief if the appellee agrees with the statement of facts given in the appellant's merit brief. The appendix need not duplicate any materials provided in the appendix of the appellant's brief.

(B) Except in death penalty appeals of right, the appellee's brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

(C) If the case involves more than one appellant who file separate merit briefs, the appellee shall file only one merit brief responding to all of the appellants' merit briefs. The time for filing the appellee's brief shall be calculated from the date the last brief in support of appellant is filed.

Section 4. Appellant's Reply Brief.

(A) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant may file a reply brief within 15 days after the filing of appellee's brief. In every other appeal, the appellant may file a reply brief within 20 days after the filing of appellee's brief. Except in death penalty appeals of right, the reply brief shall not exceed 20 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

(B) If the case involves more than one appellee who file separate merit briefs, the appellant shall file only one reply brief, if any, responding to all of the appellees' merit briefs. The time for filing the appellant's reply brief, if any, shall be calculated from the date the last brief in support of appellee is filed.

Section 5. Merit Briefs in Case Involving Cross-Appeal.

In a case involving a cross-appeal, each of the parties shall be permitted to file two briefs, and each brief shall conform to the requirements of Section 2(B) of this rule.

(A) First brief.

In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant/cross-appellee shall file the first merit brief within 20 days from the date the Clerk files the record from the court of appeals. In every other appeal, the appellant/cross-appellee shall file the first merit brief within 40 days from the date the Clerk files the record from the court of appeals or the administrative agency. Except in death penalty appeals of right, this first brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix.

(B) Second brief.

In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellee/cross-appellant shall file the second merit brief within 20 days after the filing of the first brief. In every other appeal, the appellee/cross-appellant shall file the second merit brief within 30 days after the filing of the first brief. The second brief shall be a combined brief containing both a response to the appellant/cross-appellee's brief and the propositions of law and arguments in support of the cross-appeal. Except in death penalty appeals of right, the second brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix.

(C) Third brief.

In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant/cross-appellee shall file the third merit brief within 20 days after the filing of the second brief. In every other appeal, the appellant/cross-appellee shall file the

third merit brief within 30 days after the filing of the second brief. If the appellant/cross-appellee elects to file a reply brief in that party's appeal, the third brief shall be a combined brief containing both a reply and a response to the arguments in the cross-appeal. Otherwise, the third brief shall include only a response in opposition to the cross-appeal. Except in death penalty appeals of right, the third brief shall not exceed 50 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

(D) Fourth brief.

The fourth brief may be filed by the appellee/cross-appellant only as a reply brief in the cross-appeal. In every appeal involving termination of parental rights or adoption of a minor child, or both, if a fourth brief is filed, it shall be filed within 15 days after the filing of the third brief. In every other appeal, if a fourth brief is filed, it shall be filed within 20 days after the filing of the third brief. Except in death penalty appeals of right, a fourth brief shall not exceed 20 numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

Section 6. Brief of *Amicus Curiae*.

(A) An *amicus curiae* may file a brief urging affirmance or reversal, and leave to file an *amicus* brief is not required. The brief shall conform to the requirements of this rule, except that an *amicus* filing a brief in support of an appellant need not include the appendix required by Section 2(B)(5) of this rule.

(B) The cover of an *amicus* brief shall identify the party on whose behalf the brief is being submitted or indicate that the brief does not expressly support the position of any parties to the appeal. If the *amicus* brief is in support of an appellant, the brief shall be filed within the time for filing allowed to the appellant to file a merit brief, and the *amicus curiae* may file a reply brief within the time allowed to the appellant to file a reply brief. If the *amicus* brief is in support of an appellee or does not expressly support the position of any party, the brief shall be filed within the time for filing allowed to the appellee to file a merit brief. The Clerk shall refuse to file an *amicus* brief that is not submitted timely.

Section 7. Consequence of Failure to File Briefs.

If the appellant fails to file a merit brief within the time provided by this rule or as extended in accordance with S.Ct.Prac.R. XIV, Sections 3 or 6(C), the Supreme Court may dismiss the appeal. If the appellee fails to file a merit brief within the time provided by this rule or as extended in accordance with S.Ct.Prac.R. XIV, Sections 3 or 6(C), the Supreme Court may accept the appellant's statement of facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain reversal.

Section 8. Prohibition Against Supplemental Briefing.

Except as provided in S.Ct.Prac.R. VIII, Section 7, and S.Ct.Prac.R. IX, Sections 8 and 9, merit briefs shall not be supplemented. If a relevant authority is issued after the deadline has passed for filing a party's merit brief, that party may file a citation to the relevant authority but shall not file additional argument.

Staff Commentary to Rule VI (2008 Amendments)

Section 1

These amendments are intended to clarify the language of the rule without changing its substance.

Section 2(A)

On occasion, when the Clerk receives a record from a lower court clerk, additional information or documentation is required before that record can be filed in the Supreme Court. The amendment in this division clarifies that the briefing deadlines are calculated from the date the Clerk files the record, since the date of receipt and date of filing may differ.

Section 2(B)(5)

A portion of this division has been restructured for clarity. In addition, division 2(B)(5)(a) is amended to clarify that notices of certified conflict and federal court certification orders must be included in the appendices of merit briefs filed in certified conflict cases (Rule IV) and state law question cases (Rule XVIII), respectively.

Section 2(C)

This amendment clarifies that a certificate of service is not counted when considering the page limitation imposed by this section.

Section 3

The amendment in division (A) is intended to clarify the language of the rule without changing its substance. The amendment in division (B) clarifies that a certificate of service is not counted when considering the page limitation imposed by this section. The amendment in division (C) clarifies that the appellee's time for filing a merit brief runs from the date the last brief in support of appellant is filed—whether that brief was filed by an appellant or by an amicus supporting the appellant's position.

Section 4

An amendment in division (A) confirms that a certificate of service is not counted when considering the page limitation imposed by this section. The amendment in division (B) clarifies that the appellant's time for filing a reply brief runs from the date the last brief in support of appellee is filed—whether that brief was filed by an appellee or by an amicus supporting the appellee's position.

Section 5

The first amendment to this section clarifies that briefs in cases involving cross-appeals must conform to the requirements of Rule VI, Section 2(B). The remaining amendments in this section clarify that a certificate of service is not counted when considering the page limitations imposed by this section.

Section 8

This section has been amended to allow the filing of post-briefing citations to relevant authorities that are issued by the Supreme Court. Although it is unnecessary for a party to advise this Court of the authority it has issued, the party's attorney may feel a responsibility to do so, and doing so does not prejudice anyone. See also, amendments to Rule III, Section 3(A), and Rule IX, Section 9, *infra*.

RULE VII. SUPPLEMENT TO THE BRIEFS

Section 1. Duty of Appellant to Prepare and File; Content.

(A) In every civil case on appeal to the Supreme Court from a court of appeals or an administrative agency, the appellant shall prepare and file a supplement to the briefs that contains only those portions of the record necessary to enable the Supreme Court to determine the questions presented. Documents not necessary to determine the questions presented shall not be included in the supplement. Documents that should generally be excluded from the supplement include memoranda of law filed in the courts below, summonses, extraneous pleadings, extraneous exhibits, and rulings on unrelated issues. The fact that parts of the record are not included in the supplement shall not prevent the parties or the Supreme Court from relying on those parts. Parties to an appeal are encouraged to consult and agree on the contents of the supplement to minimize the appellee's need for filing a second supplement.

(B) If the appellant determines that no portion of the record is necessary for the Supreme Court to determine the questions presented, and that preparation of a supplement is therefore unwarranted, the appellant may file a notice of intention not to file a supplement. The notice shall be filed by the deadline for filing the supplement.

Section 2. Time for Filing Supplement.

The appellant shall file the supplement with the appellant's merit brief.

Section 3. Filing of a Second Supplement by Appellee.

The appellee may file a second supplement to the merit briefs in the manner required by Section 1 of this rule. The appellee shall file the second supplement with the appellee's merit brief. A second supplement shall not unnecessarily duplicate documents contained in the original supplement.

Section 4. Pagination and Indexing of Supplement.

(A) The pages of the supplement shall be consecutively numbered in the bottom right hand corner.

(B) If any portion of a transcript is included in the supplement, the original page numbering of the transcript shall be placed in parentheses.

(C) The supplement shall include an index that lists all items included in the supplement and references the page numbers at which each item can be located.

Staff Commentary to Rule VII
(2008 Amendments)

Section 4(B)

This division has been redrafted to clarify its language without changing its substance.

RULE VIII. REQUIREMENTS AS TO FORM AND NUMBER OF DOCUMENTS FILED

Section 1. Scope of Rule.

This rule sets forth the requirements as to the form and number of all documents filed in Supreme Court cases.

Section 2. Cover Page.

(A) Each document filed in the Supreme Court shall contain a cover page, which shall be white. Except as provided in division (B) of this section, the cover page shall contain only the following information:

(1) The case name and the case number assigned when the case was filed in the Supreme Court;

(2) The nature of the proceeding in the Supreme Court (e.g., appeal, original action in mandamus, etc.);

(3) If the proceeding is an appeal, the name of the court or the administrative agency from which the appeal is taken;

(4) The title of the document (e.g., notice of appeal, appellant's merit brief, memorandum in support of jurisdiction, etc.);

(5) An identification of the party on whose behalf the document is filed;

(6) The name, attorney registration number, address, telephone number, facsimile number, and e-mail address, if available, of each attorney who has filed an appearance in the case; an indication as to what party each attorney represents; and, where two or more attorneys represent a party, an indication of counsel of record. A party who is not represented by an attorney shall indicate his or her name, address, and telephone number.

(B) The cover page of a notice of appeal shall also provide the name of each appellee in the appeal before the Supreme Court.

Section 3. Signature.

The original of every document filed in the Supreme Court shall be signed by an attorney representing the party on whose behalf the document is filed. A party who is not represented by an attorney shall sign the document being filed.

Section 4. Mechanical Requirements.

(A) (1) Every original document filed with the Supreme Court shall be single-sided, shall be typewritten or prepared by word processor or other standard typographic process, and shall comply with the requirements of this rule. A medium weight, noncondensed Roman type style is preferred, and italic type style may be used only for case citations and emphasis. The Clerk may accept a handwritten document for filing only in an emergency, provided the document is clearly legible.

(2) All documents shall be on opaque, unglazed, 20 to 22 pound weight, white paper, 8 1/2 by 11 inches in size. Every original document shall be firmly stapled or bound on the left margin. All margins shall be at least one inch, and the left margin shall be justified. Documents shall not be enclosed in notebooks or binders and shall not have plastic cover pages.

(3) The text of all documents shall be at least 12-point, double-spaced noncondensed type. Footnotes and quotations may be single-spaced; however, they shall also be in 12-point, noncondensed type. As used in this provision, “noncondensed type” shall refer either to Times New Roman type or to another type that has no more than 80 characters to a line of text.

(B) Whenever these rules require that a copy of the court or agency opinion or decision being appealed be attached to a document filed with the Supreme Court, the copy shall be either of the following:

(1) A photocopy of the opinion or decision issued directly by the court or agency;

(2) An electronically generated copy that meets the requirements of division (A)(3) of this section.

(C) Any supplement to the briefs filed pursuant to S.Ct.Prac.R. VII may be prepared and reproduced by photocopying the relevant documents in the record, even if those documents do not comply with the mechanical requirements of division (A) of this section, provided that the requirements as to paper size and paper type are met and each page of the supplement is clearly legible. Both sides of the paper may be used in preparing a supplement.

(D) Any document filed with the Supreme Court that exceeds two inches in thickness shall be bound and numbered in two or more parts, with each part containing a cover page.

Section 5. Number and Form of Copies.

(A) The original of a document filed in the Supreme Court shall be accompanied by an appropriate number of copies as follows:

- (1) Notice of appeal or cross-appeal - 2;
- (2) Praecipe filed in a death penalty appeal - 1;
- (3) Jurisdictional memorandum - 10;
- (4) Waiver of memorandum in response - none;
- (5) Brief in an appeal or an original action - 18;
- (6) List of additional authorities filed pursuant to S.Ct.Prac.R. IX, Section 7 - 18;
- (7) Supplement to a merit brief filed pursuant to S.Ct.Prac.R. VII - 2;
- (8) Complaint in an original action - 12, plus an additional copy for each respondent named in the complaint;
- (9) Evidence in an original action - 12;
- (10) Request for extension of time or stipulation to an agreed extension of time to file a brief - none;
- (11) Notices related to attorney representation under S.Ct.Prac.R. I - none;
- (12) Any other document - 12.

(B) Any party wishing to receive a date-stamped copy of a document submitted for filing with the Clerk shall provide the Clerk with an extra copy of the document and a self-addressed, postage-paid envelope.

(C) Copies of documents shall be on opaque, unglazed, 20 to 22 pound weight, white paper, 8 1/2 by 11 inches in size. Except as provided in division (D) of this section, copies shall be firmly stapled or bound on the left margin and both sides of the paper may be used as long as the document is clearly legible. Copies shall not be enclosed in notebooks or binders and shall not have plastic cover pages.

(D) One of the copies required by division (A) of this section shall be a one-sided copy that is neither stapled nor otherwise bound, contains no dividers or tabs, and can readily be scanned into the Clerk's electronic case management system.

Section 6. Maintaining Privacy of Personal Identifying Numbers.

To protect legitimate personal privacy interests, social security and other personal identifying numbers shall be redacted from documents before the documents are filed with the Supreme Court. The responsibility for redacting personal identifying numbers rests solely with the attorneys and parties who file the documents. The Clerk will not review the documents to confirm that personal identifying numbers have been excluded. If personal identifying information has been redacted from a document but is necessary for the Supreme Court's determination of the case, the Supreme Court may order, upon motion or *sua sponte*, that an un-redacted copy of the document be filed under seal.

Section 7. Corrections or Additions to Previously Filed Documents.

A party who wishes to make corrections or additions to a previously filed document shall file a revised document and copies that completely incorporate the corrections or additions. The revised document shall be filed within the time permitted by these rules for filing the original document, except that corrections or additions shall not be made to a motion if a memorandum opposing the motion has already been filed. Time permitted by these rules for filing any responsive document shall begin to run when the revised document is filed. The Clerk shall refuse to file a revised document that is not submitted in the form and within the deadlines prescribed by this rule.

Staff Commentary to Rule VIII (2008 Amendments)

Section 1

This section has been amended to reflect that the Rules of Practice of the Supreme Court of Ohio apply to documents filed in Supreme Court cases. Other filings received by the Clerk—such as local rules filed under Sup.R. 5(A) or affidavits of disqualification filed under R.C. 2701.03—are not subject to the Rules of Practice.

Section 2

Not all parties in a case at the court of appeals level will necessarily be parties in the appeal to the Supreme Court. To identify the parties correctly in a Supreme Court appeal, the amendments to this section require that a notice of appeal's cover page provide the name of each Supreme Court appellee. This will assist the Clerk's Office in docketing the case and ensure that all of the proper parties receive Supreme Court notices and orders in the appeal.

Section 4(A)(2)

This amendment is intended to clarify the language of the rule to make it consistent with recent changes to Rule VIII, Section 5, pertaining to scan-ready copies.

Section 4(A)(3)

This amendment clarifies that footnotes and citations contained in a document must also be at least 12-point, noncondensed type.

Section 5(A)

This division has been amended to require the filing of two—rather than one—copies of a notice of appeal. The second copy will be the “scan-ready” copy required by division 5(D) of this section. It has also been amended to indicate that only an original waiver of a memorandum in response must be filed; no copies are required. That document may also be filed by facsimile transmission. See Rule XIV, Section 1(B).

Section 5(C)

This division contained a reference encouraging the use of easily removable staples and bindings to facilitate recycling. Although the use of recycled paper is still encouraged, the language has been eliminated because the Court’s recycling program no longer requires the removal of bindings prior to disposal.

Section 6

Former Section 6 has been redrafted and moved to Rule XIV, Section 1(E). The new language in this section requires parties or their counsel to redact social security numbers and other personal identifying numbers (e.g., driver’s license numbers, financial account numbers) from documents prior to filing. This amendment facilitates the scanning and Internet viewing of case filings—which are generally treated as public records—while protecting personal privacy interests. See also, amendments to Rule XIV, Section 1(B), *infra*.

RULE IX. ORAL ARGUMENT

Section 1. Cases in Which Oral Argument Will Be Scheduled.

(A) Appeals from Other Courts.

Oral argument in the following cases will be scheduled and heard after the case has been briefed on the merits in accordance with S.Ct.Prac.R. VI or XIX:

(1) If the appeal is an appeal of the affirmance of the death penalty by the court of appeals or the imposition of the death penalty by a court of common pleas;

(2) If the appeal is a discretionary appeal that is accepted by the Supreme Court pursuant to S.Ct.Prac.R. III;

(3) If the appeal is a claimed appeal of right that is not determined summarily by the Supreme Court pursuant to S.Ct.Prac.R. III;

(4) If the appeal is filed pursuant to S.Ct.Prac.R. IV and the Supreme Court determined the existence of a conflict certified to it by a court of appeals in accordance with that rule.

(B) Appeals from Administrative Agencies.

In an appeal from the Board of Tax Appeals, the Public Utilities Commission, or the Power Siting Board, oral argument will be scheduled and heard after the case has been briefed on the merits in accordance with S.Ct.Prac.R. VI.

(C) State Law Questions

In a certified state law case under S.Ct.Prac.R. XVIII, oral argument will be scheduled and heard after the case has been briefed on the merits in accordance with S.Ct.Prac.R. XVIII, Section 7.

Section 2. Oral Argument in Other Cases.

(A) In an original action, or in an appeal that is not scheduled for oral argument pursuant to Section 1 of this rule, the Supreme Court may order oral argument on the merits either *sua sponte* or in response to a request by any party.

(B) A request for oral argument on the merits shall be by motion and filed no later than 20 days after the filing of appellee's or respondent's merit brief.

Section 3. Waiver of Oral Argument.

(A) Any party may waive oral argument and submit the case to the Supreme Court on the briefs. A waiver of oral argument shall be in writing. It shall be filed at least seven days before the date scheduled for the oral argument; however, if a party files a waiver on the seventh day before oral argument, any other party shall have until the day before oral argument to file a waiver.

(B) Any party who fails to file a merit brief pursuant to S.Ct.Prac.R. VI, Section 2 or Section 3, shall be deemed to have waived oral argument.

(C) If not all parties to a case waive oral argument, the oral argument shall be heard and the party or parties not waiving shall be permitted to argue.

(D) If an appellant neither waives oral argument pursuant to this rule nor appears at the argument, the Supreme Court may dismiss the case for lack of prosecution.

Section 4. Scheduling of Oral Argument in Certain Cases.

If a case that involves termination of parental rights or adoption of a minor child, or both, is scheduled for oral argument, it shall be scheduled at the earliest practicable time.

Section 5. Time and Procedures for Oral Argument.

(A) In cases involving affirmance or imposition of the death penalty, 30 minutes shall be allotted to each side for oral argument on the merits. In all other cases scheduled for oral argument, 15 minutes shall be allotted to each side for argument on the merits. In cases where there are multiple parties per side, the parties shall share the time allotted to each side.

(B) Either *sua sponte* or upon motion, the Supreme Court may vary the time for oral argument permitted by this section. Motions to vary the time for oral argument shall be filed at least seven days before the date scheduled for oral argument.

(C) The appellant shall open oral argument and may conclude oral argument by reserving time for rebuttal. In a case involving a cross-appeal, the appellee/cross-appellant may reserve time for rebuttal of the appellant/cross-appellee's argument in response to the cross-appeal.

Section 6. Oral Argument by *Amicus Curiae*.

(A) No time for oral argument shall be allotted to counsel who have filed *amicus curiae* briefs. However, with leave of the Supreme Court and the consent of counsel for the side whose position the *amicus curiae* supports, counsel for the *amicus curiae* may present oral argument within the time allotted to that side. If an *amicus curiae* wishes to participate in oral argument but either does not receive the consent of counsel for the side whose position the *amicus curiae* supports or does not expressly support the position of any parties to the case, the *amicus curiae* may seek leave from the Supreme Court to participate in oral argument, but such leave will be granted only in the most extraordinary circumstances.

(B) A motion of *amicus curiae* for leave to participate in oral argument shall be in writing and filed at least seven days before the date scheduled for the oral argument.

Section 7. Reference of Certain Cases to Master Commissioner for Oral Argument.

(A) Appeals from the Board of Tax Appeals shall be referred to a regular or special master commissioner for oral argument unless the parties waive the argument or the Supreme Court, *sua sponte* or upon motion, decides to hear the argument itself. A motion for the Supreme Court to hear oral argument shall be filed within 20 days after the filing of appellee's brief.

(B) The Supreme Court may refer any other matter scheduled for oral argument to a regular or special master commissioner for argument.

Section 8. List of Additional Authorities Relied Upon During Oral Argument.

A party who intends to rely during oral argument on authorities not cited in the merit briefs shall file a list of citations to those authorities no fewer than seven days before oral argument.

Section 9. Supplemental Filings After Oral Argument.

Unless ordered by the Supreme Court, the parties shall not tender for filing and the Clerk shall not file any additional briefs or other materials relating to the merits of the case after the case has been orally argued. If a relevant authority is issued after oral argument, a party may file a citation to the relevant authority but shall not file additional argument.

Staff Commentary to Rule IX (2008 Amendments)

Section 1

These amendments are intended to simplify and clarify the language of the rule without changing its substance.

Section 2

Occasionally, parties will request oral argument by simply stating “Oral argument requested” on the cover page of a brief or other document. This amendment clarifies that a request for oral argument shall be by separate motion.

Section 3

The language in this section regarding entitlement to oral argument has been eliminated from this section and throughout the rule. Although the rule specifies in which types of cases the Court will hold oral arguments, the Court may choose not to hold argument in any given case. See, e.g., Rule XII.

The section has also been amended to change the deadline for filing a waiver of oral argument. The seven-day timeframe eliminates the possibility that the deadline could fall on a weekend.

Section 5(B)

The division has been amended to change the deadline for filing a waiver of oral argument. The seven-day timeframe eliminates the possibility that the deadline could fall on a weekend.

Section 5(C)

This division has been amended to clarify the appellant’s duty to reserve time for rebuttal during argument. Some language in the division has been stricken because it provides oral argument detail that is better addressed outside the rule. The Clerk publishes an oral argument guide that provides information on how to reserve time for rebuttal.

Section 6(B)

In this amendment, the deadline for filing an amicus motion to argue is changed from ten days to seven days before the argument date. The seven-day timeframe eliminates the possibility that the deadline could fall on a weekend.

Section 8

In this amendment, the deadline for filing a list of additional authorities is changed from ten days to seven days before the argument date. The seven-day timeframe eliminates the possibility that the deadline could fall on a weekend.

Section 9

This section has been amended to allow the filing of post-argument citations to relevant authorities that are issued by the Supreme Court. Although it is unnecessary for a party to advise this Court of the authority it has issued, the party's attorney may feel a responsibility to do so, and doing so does not prejudice anyone. See also, amendments to Rule III, Section 3(A), and Rule VI, Section 8, *infra*.

RULE X. ORIGINAL ACTIONS

Section 1. Application of Rule.

(A) This rule applies only to actions, other than habeas corpus, within the original jurisdiction of the Supreme Court under Article IV, Section 2 of the Ohio Constitution. The following Revised Code chapters also are applicable: Mandamus, R.C. Chapter 2731; Quo Warranto, R.C. Chapter 2733.

(B) Habeas corpus actions shall be brought and proceed in accordance with R.C. Chapter 2725.

Section 2. Form and Procedure.

In all original actions filed under this rule, these rules shall govern the procedures and the form of documents filed in the actions. The Ohio Rules of Civil Procedure shall supplement these rules unless clearly inapplicable. Where these rules conflict with the Ohio Rules of Civil Procedure, these rules shall control.

Section 3. Parties.

The party filing an action in mandamus, prohibition, procedendo, or quo warranto shall be referred to as the relator. The party named in an original action shall be referred to as the respondent.

Section 4. Institution of Original Action.

(A) An original action shall be instituted by the filing of a complaint. The cover page of the complaint shall contain the name, title, and address of the respondent. The Clerk of the Supreme Court shall issue a summons and serve the summons and a copy of the complaint by certified mail sent to the address of the respondent as indicated on the cover page of the complaint. The summons shall inform the respondent of the time permitted to respond to the complaint pursuant to Section 5 of this rule.

(B) All complaints shall contain a specific statement of facts upon which the claim for relief is based, shall be supported by an affidavit of the relator or counsel specifying the details of the claim, and may be accompanied by a memorandum in support of the writ. The affidavit required by this division shall be made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit. All relief sought, including the issuance of an alternative writ, shall be set forth in the complaint.

Section 5. Response to Complaint; Court Action.

The respondent shall file an answer to the complaint or a motion to dismiss within 21 days of service of the summons and complaint. If an amended complaint is filed under S.Ct.Prac.R. VIII, Section 7, and Civ.R. 15(A), the respondent shall file an answer to the amended complaint or a motion to dismiss within 21 days of the filing of the amended complaint. The respondent may file a motion for judgment on the pleadings at the same time an answer is filed. The relator may not file a response to an answer. The relator may file a memorandum in opposition to a motion to dismiss or a motion for judgment on the pleadings within ten days of the filing of the motion. Neither party may file a motion for summary judgment. After the time for filing an answer to the complaint or a motion to dismiss, the Supreme Court will either dismiss the case or issue an alternative or a peremptory writ, if a writ has not already been issued.

Section 6. Alternative Writ.

When an alternative writ is issued, the Supreme Court will issue a schedule for the presentation of evidence and the filing and service of briefs or other pleadings. Unless the Supreme Court orders otherwise, issuance of an alternative writ in a prohibition case stays proceedings in the action sought to be prohibited until final determination of the Supreme Court. See *State ex rel. Hughes v. Brown* (1972), 31 Ohio St.2d 41, 43, 285 N.E.2d 376, 377.

Section 7. Presentation of Evidence.

To facilitate the consideration and disposition of original actions, counsel, when possible, should submit an agreed statement of facts to the Supreme Court. All other evidence shall be submitted by affidavits, stipulations, depositions, and exhibits. Affidavits shall be made on personal knowledge, setting forth facts admissible in evidence, and

showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached.

Section 8. Merit Briefs.

All merit briefs shall conform to the requirements set forth in S.Ct.Prac.R. VI and VIII, to the extent those rules are applicable.

Section 9. Expedited Election Cases.

Because of the necessity of a prompt disposition of an original action relating to a pending election, and in order to give the Supreme Court adequate time for full consideration of the case, if the action is filed within 90 days prior to the election, the respondent shall file a response to the complaint within five days after service of the summons. Unless otherwise ordered by the Supreme Court, relator shall file any evidence and a merit brief in support of the complaint within three days after the filing of the response or, if no response is filed, within three days after the response was due. Respondent shall file any evidence and a merit brief within three days after the filing of relator's merit brief, and relator may file a reply brief within three days after the filing of respondent's merit brief. Motions to dismiss and for judgment on the pleadings may not be filed in expedited election cases. The parties shall serve the response, evidence, and merit briefs on the date of filing by personal service, facsimile transmission, or e-mail.

Section 10. Expedited Adoption/Termination of Parental Rights Cases.

If the original action involves termination of parental rights or adoption of a minor child, or both, the respondent shall file a response to the complaint within 15 days after service of the summons. After the time for filing a response to the complaint, the Supreme Court will decide on an expedited basis whether to dismiss the case or issue an alternative or a peremptory writ, if a writ has not already been issued. In order to invoke these expedited procedures, the relator shall designate on the cover page of the complaint that the original action involves termination of parental rights or adoption of a minor child, or both.

Section 11. Reference to a Master Commissioner.

The Supreme Court may refer original actions to a master commissioner for hearing and argument.

Section 12. Consequence of Failure to File Briefs.

If the relator fails to file a merit brief within the time provided by this rule or as ordered by the Supreme Court, an original action shall be dismissed for want of prosecution. Unless otherwise ordered by the Supreme Court, a dismissal under this section operates as an adjudication on the merits. If the respondent fails to file a merit brief within the time provided by this rule or as ordered by the Supreme Court, the Supreme Court may accept the

relator's statement of facts and issues as correct and grant the writ if relator's brief reasonably appears to sustain the writ.

Staff Commentary to Rule X
(2008 Amendments)

Section 5

This amendment clarifies that neither party may file a motion for summary judgment in original actions filed in the Supreme Court. This incorporates into rule the prior case law of the Court. See *State ex rel. Physicians Commt. for Responsible Medicine v. Ohio St. Bd. of Trustees*, 108 Ohio St.3d 288, 2006-Ohio-903, 843 N.E.2d 174, ¶ 17; *State ex rel. Findlay Publishing Co. v. Schroeder* (1996), 76 Ohio St.3d 580, 581, 669 N.E.2d 835, 837.

Section 9

This amendment prohibits the filing of certain procedural motions—motions to dismiss and for judgment on the pleadings—in expedited election cases. This reflects Court precedent that, under S.Ct.Prac.R. X, Section 9, the presentation of evidence and briefs is provided in lieu of a S.Ct.Prac.R. X, Section 5, determination, making procedural motions generally inapplicable. *State ex rel. N. Main St. Coalition v. Webb*, 106 Ohio St.3d 437, 2005-Ohio-5009, 835 N.E.2d 1222, ¶ 20.

The section has also been amended to indicate that service by e-mail is an acceptable form of service in expedited election cases under this section.

RULE XI. ENTRY OF SUPREME COURT JUDGMENT; MOTIONS FOR RECONSIDERATION AND FOR REOPENING; ISSUANCE OF MANDATE

Section 1. Entry of Judgment.

The filing of a judgment entry or other order by the Supreme Court with the Clerk for journalization constitutes entry of the judgment or order. A Supreme Court judgment entry or other order is effective when it is filed with the Clerk. In every case involving termination of parental rights or adoption of a minor child, or both, the Supreme Court will expedite the filing of the judgment entry or other orders for journalization.

Section 2. Motion for Reconsideration.

(A) Except in expedited election cases under S.Ct.Prac.R. X, Section 9, a motion for reconsideration may be filed within 10 days after the Supreme Court's judgment entry or order is filed with the Clerk. In expedited election cases, a motion for reconsideration may be filed within three days after the Supreme Court's judgment entry or order is filed with the Clerk and shall be served on the date of filing by personal service, facsimile transmission, or e-mail.

(B) A motion for reconsideration shall be confined strictly to the grounds urged for reconsideration, shall not constitute a reargument of the case, and may be filed only with respect to the following:

- (1) The Supreme Court's refusal to grant jurisdiction to hear a discretionary appeal;
- (2) The *sua sponte* dismissal of a case;
- (3) The granting of a motion to dismiss;
- (4) A decision on the merits of a case.

(C) An *amicus curiae* may not file a motion for reconsideration. An *amicus curiae* may file a memorandum in support of a motion for reconsideration within the time permitted for filing a motion for reconsideration.

(D) The Clerk shall refuse to file a motion for reconsideration that is not expressly permitted by this rule or that is not timely.

Section 3. Memorandum Opposing Motion for Reconsideration.

(A) Except in expedited election cases under S.Ct.Prac.R. X, Section 9, a party opposing reconsideration may file a memorandum opposing a motion for reconsideration within 10 days of the filing of the motion. In expedited election cases, a party opposing reconsideration may file a memorandum opposing a motion for reconsideration within three days of the filing of the motion for reconsideration.

(B) An *amicus curiae* may file a memorandum opposing a motion for reconsideration within 10 days of the filing of the motion.

Section 4. Issuance of Mandate.

(A) After the Supreme Court has decided an appeal on the merits, the Clerk shall issue a mandate. The mandate shall be issued 10 days after entry of the judgment, unless a motion for reconsideration is filed within that time in accordance with Section 2 of this rule.

(1) If a motion for reconsideration is filed but denied, the mandate shall be issued when the order denying the motion for reconsideration is filed with the Clerk.

(2) If a motion for reconsideration is filed and granted, the mandate shall be issued after the Supreme Court reconsiders the case and when the entry on reconsideration is filed with the Clerk.

(B) No mandate shall be issued on the Supreme Court's refusal to grant jurisdiction to hear a discretionary appeal or the dismissal of a claimed appeal of right as not involving a substantial constitutional question.

(C) A certified copy of the judgment entry shall constitute the mandate.

Section 5. Assessment of Costs.

(A) Unless otherwise ordered by the Supreme Court, costs in an appeal shall be assessed as follows at the conclusion of the case:

- (1) If an appeal is dismissed, to the appellant;
- (2) If the judgment or order being appealed is affirmed, to the appellant;
- (3) If the judgment or order being appealed is reversed, to the appellee.

(4) If the judgment or order being appealed is affirmed or reversed in part or is vacated, the parties shall bear their respective costs.

(B) As used in this section, “costs” includes only the filing fee paid to initiate the appeal with the Supreme Court, unless the Court, *sua sponte* or upon motion, assesses additional costs.

Section 6. Application for Reopening.

(A) An appellant in a death penalty case involving an offense committed on or after January 1, 1995, may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel in the Supreme Court. An application for reopening shall be filed within 90 days from entry of the judgment of the Supreme Court, unless the appellant shows good cause for filing at a later time.

(B) An application for reopening shall contain all of the following:

(1) The Supreme Court case number in which reopening is sought and the trial court case number or numbers from which the appeal was taken;

(2) A showing of good cause for untimely filing if the application is filed more than 90 days after entry of the judgment of the Supreme Court;

(3) One or more propositions of law or arguments in support of propositions of law that previously were not considered on the merits in the case or that were considered on an incomplete record because of the claimed ineffective representation of appellate counsel;

(4) An affidavit stating the basis for the claim that appellate counsel’s representation was ineffective with respect to the propositions of law or arguments raised pursuant to division (B)(3) of this section and the manner in which the claimed deficiency prejudicially affected the outcome of the appeal, which affidavit may include citations to applicable authorities and references to the record;

(5) Any relevant parts of the record available to the applicant and all supplemental affidavits upon which the applicant relies.

(C) Within 30 days from the filing of the application, the attorney for the prosecution may file and serve affidavits, parts of the record, and a memorandum of law in opposition to the application.

(D) An application for reopening and an opposing memorandum shall not exceed 10 pages, exclusive of affidavits and parts of the record.

(E) An application for reopening shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal.

(F) If the Supreme Court grants the application, the Clerk shall serve notice on the clerk of the trial court, and the Supreme Court will do both of the following:

(1) Appoint counsel to represent the applicant if the applicant is indigent and not currently represented;

(2) Impose conditions, if any, necessary to preserve the status quo during the pendency of the reopened appeal.

(G) If the application is granted, the case shall proceed as on an initial appeal in accordance with these rules except that the Supreme Court may limit its review to those propositions of law and arguments not previously considered. The time limits for preparation and transmission of the record pursuant to S.Ct.Prac.R. XIX shall run from entry of the order granting the application. The parties shall address in their briefs the claim that representation by prior appellate counsel was deficient and that the applicant was prejudiced by that deficiency.

(H) If the Supreme Court determines that an evidentiary hearing is necessary, the evidentiary hearing may be conducted by the Supreme Court or referred to a master commissioner.

(I) If the Supreme Court finds that the performance of appellate counsel was deficient and the applicant was prejudiced by that deficiency, the Supreme Court shall vacate its prior judgment and enter the appropriate judgment. If the Supreme Court does not so find, it shall issue an order confirming its prior judgment.

Staff Commentary to Rule XI
(2008 Amendments)

Section 2

This section has been amended to indicate that e-mail is an acceptable form of service for motion for reconsideration in expedited election cases. A portion of the section has also been reordered.

Section 3(A)

This amendment extends the time for filing a memorandum opposing a motion for reconsideration from seven to 10 days. The change makes the rule consistent with the response time for filing a memorandum opposing a motion as set forth in the general provision contained in Rule XIV, Section 4.

Section 3(B)

This amendment extends the time for *amicus curiae* to file a memorandum opposing a motion for reconsideration from seven to 10 days. The change makes the rule consistent with the response time for filing a memorandum opposing a motion as set forth in the general provision contained in Rule XIV, Section 4.

RULE XII. DISPOSITION OF APPEALS IMPROVIDENTLY ACCEPTED OR CERTIFIED; SUMMARY DISPOSITION OF APPEALS

(A) When a case has been accepted for determination on the merits pursuant to S.Ct.Prac.R. III, the Supreme Court may later find that there is no substantial constitutional question or question of public or great general interest, or that the same question has been raised and passed upon in a prior appeal. Accordingly, the Supreme Court may *sua sponte* dismiss the case as having been improvidently accepted, or summarily reverse or affirm on the basis of precedent.

(B) When the Supreme Court finds a conflict pursuant to S.Ct.Prac.R. IV, it may later find that there is no conflict or that the same question has been raised and passed upon in a prior appeal. Accordingly, the Supreme Court may *sua sponte* dismiss the case as having been improvidently certified, or summarily reverse or affirm on the basis of precedent.

Staff Commentary to Rule XII
(2008 Amendments)

This rule has been redrafted to reflect the Court's practice when dismissing certain cases or issuing summary dispositions.

RULE XIII. RETURN OF RECORD

After the mandate has been issued in a case on appeal, the Clerk of the Supreme Court shall return the record to the clerk or custodian that transmitted the record under Rule V, Section 3.

Staff Commentary to Rule XIII
(2008 Amendments)

This amendment is intended to clarify the language of the rule without changing its substance.

RULE XIV. GENERAL PROVISIONS

Section 1. Filing with the Supreme Court.

(A) Filing Defined.

The filing of documents with the Supreme Court as required by these rules shall be made by filing with the Clerk of the Supreme Court during the regular business hours of the

Clerk's Office. Documents received in the Clerk's Office after 5:00 p.m. shall not be filed until the next business day. Only submissions filed in accordance with this provision will be considered by the Supreme Court. Filing may be made in person or by mail addressed to the Clerk, but documents filed by mail shall not be considered filed until received in the Clerk's Office.

(B) Filings Treated as Public Records

Documents filed with the Supreme Court shall be treated as public records unless they have been sealed pursuant to a court order or are the subject of a motion to seal pending in the Supreme Court.

(C) Filing by Facsimile Transmission.

(1) The following documents may be filed by facsimile transmission to the Clerk:

(a) A request for extension of time or a stipulation to an agreed extension of time that complies with Section 3 or Section 6 of this rule;

(b) A list of additional authorities filed under S.Ct.Prac.R. VI, Section 8, or S.Ct.Prac.R. IX;

(c) An application for dismissal;

(d) A waiver of oral argument filed under S.Ct.Prac.R. IX, Section 3.

(e) A notice related to attorney representation filed under S.Ct.Prac.R. I.

(f) A notice of a court of appeals determination of no conflict filed under S.Ct.Prac.R. IV, Section 4(B).

(g) A waiver of a memorandum in response under S.Ct.Prac.R. III, Section 2(E).

(2) Each facsimile transmission shall be accompanied by a cover page requesting that the document be filed and providing the name, telephone number, and facsimile number of the person transmitting the document.

(3) Only one copy of the document shall be transmitted. The Clerk shall provide any additional copies required to be filed by these rules. The person filing a document by facsimile transmission shall retain the original document and make it available upon request of the Supreme Court.

(4) Documents transmitted by facsimile transmission and received in the Clerk's Office on a Saturday, Sunday, or other day the Clerk's Office is closed to the public, or after 5:00 p.m. on a business day, shall be considered for filing on the next business day.

(D) Prohibition Against Untimely Filings.

No document may be filed after the filing deadlines imposed by these rules, set by Court order, or as extended in accordance with Section 3(B)(2) or Section 6(C) of this rule or with S.Ct.Prac.R. XIX. The Clerk shall refuse to file a document that is not timely tendered for filing. Motions to waive this rule are prohibited and shall not be filed.

(E) Rejection of Noncomplying Documents.

The Clerk may reject documents tendered for filing unless they are clearly legible and comply with the requirements of these rules.

Section 2. Service of Documents; Notice When Documents Are Rejected for Filing.

(A) Service Requirement.

(1) When a party or an *amicus curiae* files any document with the Clerk, except a complaint filed to institute an original action, that party or *amicus curiae* shall also serve a copy of the document on all parties to the case. Service on a party represented by counsel shall be made on counsel of record.

(2) Service of a copy of a notice of appeal from a decision of the Public Utilities Commission or the Power Siting Board shall be made pursuant to section 4903.13 of the Revised Code. In an appeal or a cross-appeal from the Public Utilities Commission or the Power Siting Board, a copy of the notice of appeal or cross-appeal shall also be served upon all parties to the proceeding before the Public Utilities Commission or the Power Siting Board that is the subject of the appeal or cross-appeal.

(3) In a case involving a felony, when a county prosecutor files a notice of appeal under S.Ct.Prac.R. II or an order certifying a conflict under S.Ct.Prac.R. IV, the county prosecutor shall also serve a copy of the notice or order on the Ohio Public Defender.

(B) Manner of Service.

(1) Except as otherwise provided by this rule, service may be personal, by mail, by e-mail, or by facsimile transmission. Except as provided in division (A) of this section, personal service includes delivery of the copy to counsel or to a responsible person at the office of counsel and is effected upon delivery. Service by mail is effected by depositing the copy with the United States Postal Service for mailing. Service by e-mail is effected upon the successful electronic transmission of the copy. Service by facsimile transmission is effected upon the successful electronic transmission of the copy by facsimile process.

(2) In appeals from the Board of Tax Appeals under S.Ct.Prac.R. II, Section 3(A), service of a notice of appeal or cross-appeal shall be made by certified mail.

(3) In expedited election cases under S.Ct.Prac.R. X, Section 9, service of the response, evidence, and merit briefs shall be personal, by e-mail, or by facsimile transmission.

(C) Certificate of Service; Certificate of Filing.

(1) Unless a document is filed jointly and is signed by all parties to the case, all documents presented for filing with the Clerk, except complaints filed to institute an original action, shall contain a certificate of service. The certificate of service shall state the date and manner of service, identify the names of the persons served, and be signed by the party or the *amicus curiae* who files the document. The certificate of service for a document served by facsimile transmission shall also state the facsimile number of the person to whom the document was transmitted. The Clerk shall refuse to accept for filing any document that does not contain a certificate of service, unless these rules require that the document be served by the Clerk.

(2) In an appeal from the Public Utilities Commission or the Power Siting Board, the notice of appeal shall also contain a certificate of filing to evidence that the appellant filed a notice of appeal with the docketing division of the Public Utilities Commission in accordance with sections 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code.

(D) Failure to Provide Service.

(1) When a party or *amicus curiae* fails to provide service upon a party or parties to the case in accordance with division (A) of this section, any party adversely affected may file a motion to strike the document that was not served. Within 10 days after a motion to strike is filed, the party or *amicus curiae* against whom the motion is filed may file a memorandum opposing the motion.

(2) If the Supreme Court determines that service was not made as required by this rule, it may strike the document or, if the interests of justice warrant, order that the document be served and impose a new deadline for filing any responsive document. If the Supreme Court determines that service was made as required by this rule or that service was not made but the movant was not adversely affected, it may deny the motion.

(E) Notice to Other Parties When Document Is Rejected for Filing.

If a document presented for filing is rejected by the Clerk under these rules, the party or *amicus curiae* who presented the document for filing shall promptly notify all of the parties served with a copy of the document that the document was not filed in the case.

Section 3. Computation and Extension of Time.

(A) Computation of Time.

In computing any period of time prescribed or allowed by these rules or by an order of the Supreme Court, the day of the act from which the designated period of time begins to run shall not be included and the last day of the period shall be included. If the last day of the period is a Saturday, Sunday, or legal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Notwithstanding Civ.R. 6(A), when the

period of time prescribed or allowed is less than seven days, as in expedited election cases under S.Ct.Prac.R. X, Section 9, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation. When the Clerk's Office of the Supreme Court is closed to the public for the entire day that constitutes the last day for doing an act, or before the usual closing time on that day, then that act may be performed on the next day that is not a Saturday, Sunday, or legal holiday.

(B) Extension of Time.

(1) General Prohibition Against Extensions of Time.

Except as provided in division (B)(2) of this section, the Supreme Court will not extend the time for filing a document as prescribed by these rules or by Court order, and the Clerk shall refuse to file requests for extension of time.

(2) Extension of Time to File Certain Documents.

(a) Except in expedited election cases under S.Ct.Prac.R. X, Section 9, parties may stipulate to extensions of time to file merit briefs, including reply briefs, under S.Ct.Prac.R. VI; merit briefs, including reply briefs, under S.Ct.Prac.R. XIX; or the response to a complaint or evidence under S.Ct.Prac.R. X. Each party may obtain in a case only one agreed extension of time not to exceed 20 days, provided the party has not previously obtained an extension of time from the Supreme Court under division B(2)(b) of this section. An agreed extension of time shall be effective only if a stipulation to the agreed extension of time is filed with the Clerk within the time prescribed by these rules for filing the brief or other document that is the subject of the agreement. The stipulation shall state affirmatively the new date for filing agreed to by the parties. The Clerk shall refuse to file a stipulation to an agreed extension of time that is not tendered timely in accordance with this rule, or if a request for extension of time has already been granted under Section 3(B)(2)(b) of this rule to the party filing the stipulation.

(b) In an expedited election case or any other case where a stipulation to an agreed extension of time cannot be obtained under division 3(B)(2)(a) of this section, a party may file a request for extension of time to file a brief, the response to a complaint, or evidence. The Supreme Court will grant a party only one extension of time, not to exceed 10 days, provided the request for extension of time states good cause for an extension and is filed with the Clerk within the time prescribed by the rules for filing the brief or other document that is the subject of the request. The Clerk shall refuse to file a request for extension of time that is not tendered timely in accordance with this rule, or if a stipulation to an agreed extension of time has already been filed under Section 3(B)(2)(a) of this rule by the party filing the request.

(3) Effect of Extension of Time Upon Other Parties on the Same Side.

When one party receives an extension of time under division (B)(2) of this section, the extension shall apply to all other parties on that side.

Section 4. Motions; Responses.

(A) Unless otherwise prohibited by these rules, an application for an order or other relief shall be made by filing a motion for the order or relief. The motion shall state with particularity the grounds on which it is based. A motion to stay a lower court's decision pending appeal shall include relevant information regarding bond and be accompanied by a copy of the lower court's decision and any applicable opinion.

(B) If a party files a motion with the Supreme Court, any other party may file a memorandum opposing the motion within 10 days from the date the motion is filed, unless otherwise provided in these rules. A reply to a memorandum opposing a motion shall not be filed by the moving party. The Clerk shall refuse to file a reply to a memorandum opposing a motion, and motions to waive this rule are prohibited and shall not be filed.

(C) The Supreme Court may act upon a motion before the deadline for filing a memorandum opposing the motion if the motion is for a procedural order, including an extension of time to file a merit brief, or if the motion requests emergency relief and the interests of justice warrant immediate consideration by the Supreme Court. Any party adversely affected by the action of the Supreme Court may file a motion to vacate the action.

Section 5. Frivolous Actions; Sanctions; Vexatious Litigators.

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

(B) If a party habitually, persistently, and without reasonable cause engages in frivolous conduct under section 5(A) of this rule, the Supreme Court may, *sua sponte* or on motion by a party, find the party to be a vexatious litigator. If the Supreme Court determines that a party is a vexatious litigator under this rule, the Court may impose filing restrictions on the party. The restrictions may include prohibiting the party from continuing or instituting legal proceedings in the Supreme Court without first obtaining leave, prohibiting the filing of actions in the Supreme Court without the filing fee or security for costs required by S.Ct.Prac.R. XV, or any other restriction the Supreme Court considers just.

Section 6. Settlement Conferences.

(A) Referral of Cases for Settlement Conferences.

The Supreme Court may, *sua sponte* or on motion by a party, refer to mediation counsel for a settlement conference any case that originated in the court of appeals, any appeal from an administrative agency, any original action, or any non-felony case that the Supreme Court deems appropriate. The mediation counsel may conduct the settlement conference in person or by telephone. At the settlement conference, the parties shall explore settling the case, simplifying the issues, and expediting the procedure, and may consider any other matter that might aid in resolving the case. Unless otherwise provided by Court order, referral of a case for a settlement conference under this rule does not alter the filing deadlines prescribed by these rules.

(B) Attendance.

If a case is referred for a settlement conference, each party to the case, or the representative of each party who has full settlement authority, and the attorney for each party shall attend the conference, unless excused by the mediation counsel to whom the case has been referred. If a party or an attorney fails to attend the conference without being excused, the Supreme Court may assess the party or the attorney reasonable expenses caused by the failure, including reasonable attorney fees or all or a part of the expenses of the other party. The Supreme Court may also dismiss the action, strike documents filed by the offending party, or impose any other appropriate penalty.

(C) Extension of Time to File Briefs or Other Documents.

Notwithstanding Section 3(B) of this rule, the Supreme Court, *sua sponte* or upon motion by a party, may extend filing deadlines or stay the case referred under this section, if the extension or stay will facilitate settlement. A request for an extension of time shall be filed with the Clerk within the time prescribed by the rules for filing the brief or other document that is the subject of the request.

(D) Privileges and Confidentiality.

The definitions contained in section 2710.01 of the Revised Code apply to Supreme Court settlement conferences. The privileges contained in section 2710.03 of the Revised Code and the exceptions contained in section 2710.05 of the Revised Code apply to mediation communications. The privileges may be waived under section 2710.04 of the Revised Code. Mediation communications are confidential, and no one shall disclose any of these communications unless all parties and the mediation counsel consent to disclosure. The Supreme Court may impose penalties for any improper disclosures made in violation of this rule.

(E) Settlement Conference Order.

At the conclusion of the settlement conference, the Supreme Court will enter an appropriate order.

Staff Commentary to Rule XIV
(2008 Amendments)

Section 1(B)

This new provision alerts parties that documents filed in the Supreme Court are generally accessible by the public. However, they are not treated as public if they have been sealed by order of the Supreme Court or another court, or if they are the subject of a motion to seal still pending in the Supreme Court. If the parties believe that their filings—or portions of them—should not be considered public, it is their responsibility to seek an order to seal. Without an order or a pending motion to seal, the original filings will be made accessible for public review in the Clerk’s Office, and copies of the original filings will be scanned for posting to the Supreme Court’s Web site.

This provision should be considered in conjunction with Rule VIII, Section 6, which requires parties to redact social security and other personal identifying numbers from documents before filing them. If the personal identifying numbers in a document are necessary for the Supreme Court’s determination of the case, the Court may order that an un-redacted copy of the document be filed under seal.

Section 1(C)

These amendments permit facsimile filing of a waiver of a memorandum in response filed under Rule III, Section 2(E). They also limit the information requested on a fax cover page. Finally, they eliminate an unnecessary provision addressing service of documents that are filed by facsimile. Normal service requirements for those documents still exist under Section 2 of the rule.

Section 1(E)

Former Section 6 of Rule VIII has been redrafted for clarity and moved to this rule because it is a rule of general applicability.

Section 2(A)

Because this provision addresses three distinct matters, it has been divided into divisions (1), (2), and (3).

Sections 2(B)

The amendment to this division provides that service of a document by e-mail, which is now commonplace, is an accepted manner of service.

Section 3(B)(2)(b)

This amendment clarifies that, although stipulations to extensions of time cannot be obtained in expedited election cases under division 3(B)(2)(a) of this section, parties in those cases may, under this division, still file requests for extensions of time.

Section 6

Amendments to this section include clarification of language and the change of title of the mediation attorney to “mediation counsel.” The amendments to division 6(D) of this section were necessary after the General Assembly enacted the Uniform Mediation Act, which changed the rules on the privileges pertaining to, and confidentiality of, mediation communications. Generally, these amendments adopt the Uniform Mediation Act’s provisions concerning privilege against disclosure, waiver and preclusion of privilege, and exceptions to privilege.

RULE XV. FILING FEES AND SECURITY DEPOSITS

Section 1. Filing Fees to Institute a Case.

The following filing fees are imposed by section 2503.17 of the Revised Code and shall be paid before a case is filed:

- For filing a notice of appeal \$100.00
- For filing a notice of cross-appeal \$100.00
- For filing an order of a court of appeals certifying a conflict . . . \$100.00
- For instituting an original action \$100.00

Section 2. Security Deposits in Original Actions.

Original actions also require a deposit in the amount of \$100.00 as security for costs. The security deposit shall be paid before the case is filed. In extraordinary circumstances, the Supreme Court may require an additional security deposit at any time during the action.

Section 3. Affidavit of Indigency in Lieu of Fees.

An affidavit of indigency may be filed in lieu of filing fees or security deposits. The affidavit shall be executed within six months prior to being filed in the Supreme Court by the party on whose behalf it is filed. The affidavit shall state the specific reasons the party does not have sufficient funds to pay the filing fees or the security deposit. At any-stage in the proceeding, the Supreme Court may review and determine the sufficiency of an affidavit of indigency. Counsel appointed by a trial or appellate court to represent an indigent party may file a copy of the entry of appointment in lieu of an affidavit of indigency. [See Appendix E following these rules for an affidavit of indigency form.]

Staff Commentary to Rule XV
(2008 Amendments)

The amendments to Section 3 clarify the rule without changing its substance.

RULE XVI. PRESERVATION OF RECORDS AND FILES

The Clerk of the Supreme Court is the custodian of all documents and other items filed in Supreme Court cases, and they shall not be taken from the Clerk's custody unless by special order of the Supreme Court. The Supreme Court may direct that any records may be reproduced as set forth in section 9.01 of the Revised Code.

RULE XVII. [Reserved.]

RULE XVIII. CERTIFICATION OF QUESTIONS OF STATE LAW FROM FEDERAL COURTS

Section 1. When a State Law Question May Be Certified.

The Supreme Court may answer a question of law certified to it by a court of the United States. This rule may be invoked when the certifying court, in a proceeding before it, issues a certification order finding there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court.

Section 2. Contents of Certification Order.

The certification order shall contain all of the following:

- (A) The name of the case;
- (B) A statement of facts showing the nature of the case, the circumstances from which the question of law arises, the question of law to be answered, and any other information the certifying court considers relevant to the question of law to be answered;
- (C) The name of each of the parties;
- (D) The names, addresses, and telephone numbers of counsel for each party;
- (E) A designation of one of the parties as the moving party.

Section 3. Preparation of Certification Order; Notice of Filing.

The certification order shall be signed by any justice or judge presiding over the cause or by a magistrate judge presiding over the cause pursuant to 28 U.S.C. Section 636(c). The clerk of the certifying court shall serve copies of the certification order upon all parties or their counsel of record and file with the Supreme Court the certification order under seal of the certifying court, along with certificate of service.

Section 4. Record.

The Supreme Court may request that copies of all or any portion of the record before the certifying court be transmitted to the Clerk of the Supreme Court.

Section 5. Parties.

The party designated by the certifying court as the moving party shall be referred to as the petitioner. The party adverse to the petitioner shall be referred to as the respondent.

Section 6. Preliminary Memoranda; Court Determination of Whether to Answer Question Certified.

Within 20 days after a certification order is filed with the Supreme Court, each party shall file a memorandum, not to exceed 15 pages in length, addressing all questions of law certified to the Supreme Court. An *amicus curiae* may file a memorandum conforming to the requirements of this rule and supporting either party within 20 days after a certification order is filed with the Supreme Court. The Supreme Court will review the memoranda and issue an entry identifying the question or questions it will answer and declining to answer the remaining question or questions. The Clerk of the Supreme Court shall send a copy of the entry to the certifying court and to all parties or their counsel.

Section 7. Merit Briefs.

If the Supreme Court decides to answer any of the questions certified to it, the parties shall brief the merits of the issue certified in accordance with S.Ct.Prac.R. VI. The petitioner shall proceed under the provisions of S.Ct.Prac.R. VI that are applicable to an appellant and the respondent shall proceed under the provisions applicable to an appellee.

Section 8. Opinion.

If the Supreme Court decides to answer a question or questions certified to it, it will issue a written opinion stating the law governing the question or questions certified. The Clerk shall send a copy of the opinion to the certifying court and to the parties or their counsel.

Staff Commentary to Rule XVIII
(2008 Amendments)

Section 1

These amendments are intended to clarify the rule without changing its substance.

RULE XIX. DEATH PENALTY APPEALS

(Clerk's note: This rule applies only to death penalty appeals from the courts of common pleas--i.e., cases in which the death penalty has been imposed for an offense committed on or after January 1, 1995).

Unless this rule provides otherwise, the Supreme Court Rules of Practice shall be followed in death penalty appeals.

Section 1. Institution of Appeal.

(A) Perfection of Appeal.

(1) To perfect an appeal of a case in which the death penalty has been imposed for an offense committed on or after January 1, 1995, the appellant shall file a notice of appeal in the Supreme Court within 45 days from the journalization of the entry of the judgment being appealed or the filing of the trial court opinion pursuant to section 2929.03(F) of the Revised Code, whichever is later.

(2) If the appellant timely files in the trial court a motion for a new trial, or for arrest of judgment, the time for filing a notice of appeal begins to run after the order denying the motion is entered. However, a motion for a new trial on the ground of newly discovered evidence extends the time for filing the notice of appeal only if the motion is made before the expiration of the time for filing a motion for a new trial on grounds other than newly discovered evidence.

(3) When the time has expired for filing a notice of appeal in the Supreme Court, the appellant may seek to file a delayed appeal by filing a motion for delayed appeal and a notice of appeal. The motion shall state the date of the journalization of the entry of the judgment being appealed, the date of the filing of the trial court opinion pursuant to section 2929.03(F) of the Revised Code, and adequate reasons for the delay. Facts supporting the motion shall be set forth in an affidavit.

(B) Copy of the Praeceptum to Court Reporter.

The notice of appeal shall be accompanied by a copy of the praecipe that was served by the appellant on the court reporter pursuant to Section 3(B) of this rule. The appellant shall certify on this copy the date the praecipe was served on the reporter.

(C) Notice to the Common Pleas Court.

The Clerk of the Supreme Court shall send a date-stamped copy of the notice of appeal to the clerk of the court of common pleas whose judgment is being appealed.

(D) Jurisdiction of Common Pleas Court after Appeal to Supreme Court Is Perfected.

After an appeal is perfected from a court of common pleas to the Supreme Court, the court of common pleas is divested of jurisdiction, except to take action in aid of the appeal, to grant a stay of execution if the Supreme Court has not set an execution date, or to appoint counsel.

Section 2. Appointment of Counsel.

If a capital appellant is unrepresented and is indigent, the Supreme Court will appoint the Ohio Public Defender or other counsel qualified pursuant to Sup.R. 20 to represent the appellant, or order the trial court to appoint qualified counsel.

Section 3. Record on Appeal.

(A) Composition of the Record on Appeal.

The record on appeal shall consist of the original papers filed in the trial court and exhibits to those papers; the transcript of proceedings, including all documentary and photographic exhibits; photographs of exhibits entered into evidence in accordance with Crim.R. 26; an electronic version of the transcript, if available; and a certified copy of the docket and journal entries prepared by the clerk of the trial court.

(B) The Transcript of Proceedings; Duty of Appellant to Order.

(1) The transcript of proceedings shall be prepared by the court reporter appointed by the trial court to transcribe the proceedings for the trial court. The reporter shall transcribe into written form all of the trial court proceedings, including pre-trial, trial, hearing, and other proceedings, whether recorded by any medium, including stenographic means and videotape.

(2) Before filing a notice of appeal in the Supreme Court, the appellant shall, by written praecipe, order from the reporter a complete transcript of the proceedings.

(3) A transcript prepared by a reporter under this rule shall be in the following form:

(a) The transcript shall include a front and back cover; the front cover shall bear the case name and number and the name of the court in which the proceedings occurred;

(b) The transcript shall be firmly bound on the left side;

(c) The first page inside the front cover shall set forth the nature of the proceedings, the date or dates of the proceedings, and the judge or judges who presided;

(d) The transcript shall be prepared on white paper, 8 1/2 by 11 inches in size, with the lines of each page numbered and the pages sequentially numbered;

(e) An index of witnesses shall be included in the front of each volume of the transcript and shall contain page and line references to direct, cross, re-direct, and re-cross examination;

(f) An index to exhibits, whether admitted or rejected, briefly identifying each exhibit, shall be included in each volume following the index of witnesses and shall reflect page and line references where each exhibit was identified and offered into evidence, was admitted or rejected, and if any objection was interposed;

(g) No volume of a transcript shall exceed 250 pages in length, except it may be enlarged to 300 pages, if necessary, to complete a part of the voir dire, opening

statements, closing arguments, or jury instructions; when it is necessary to prepare more than one volume, each volume shall contain the number and name of the case and be numbered sequentially and consecutively from the previous volume, and the separate volumes shall be approximately equal in length.

(4) The reporter shall certify that the transcript is correct and complete.

(C) Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript Is Unavailable.

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee no later than 20 days prior to the time for transmission of the record pursuant to Section 4 of this rule. The appellee may serve objections or proposed amendments to the statement within 10 days after service. The statement and any objections or proposed amendments shall be forthwith submitted to the trial court for settlement and approval. The trial court shall act prior to the time for transmission of the record pursuant to Section 4 of this rule, and, as settled and approved, the statement shall be included by the clerk of the trial court in the record on appeal.

(D) Correction or Modification of the Record.

If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated in the record, the parties by stipulation, or the trial court, either before or after the record is transmitted to the Supreme Court, or the Supreme Court, *sua sponte* or upon motion, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

Section 4. Transmission of the Record.

(A) Time for Transmission; Duty of Appellant.

(1) The clerk of the trial court shall prepare a certified copy of the docket and journal entries, assemble the original papers, and transmit the record on appeal to the Clerk of the Supreme Court within 90 days after the date the notice of appeal is filed in the Supreme Court, unless an extension of time is granted under division (C) of this section.

(2) The appellant shall take any action necessary to enable the clerk to assemble and transmit the record, including, if required, filing a motion for an extension of time for transmission of the record under Section 4(C) of this rule.

(B) Duty of Trial Court and Supreme Court Clerks.

(1) Before transmitting the record to the Supreme Court, the clerk of the trial court shall number the documents, transcripts, and exhibits comprising the record. The clerk of the trial court shall prepare an index of the documents, transcripts, and exhibits, correspondingly numbered and identified with reasonable definiteness. All exhibits listed in the index shall be briefly described. If applicable, a separate index shall be prepared identifying any exhibits that are part of the record, but which have not been transmitted under division (B)(3) of this section. The clerk of the trial court shall send a copy of each index to all counsel of record in the case and transmit each index with the record to the Clerk of the Supreme Court.

(2) Documentary exhibits offered at trial whose admission was denied shall be included with the record and transmitted in a separate envelope with a notation that they were not admitted.

(3) Any evidence in the record containing human tissue or blood samples, or any other evidence in the record that may be considered a biohazard, shall not be transmitted to the Supreme Court. The Supreme Court may order the transmission of such evidence if its evaluation is necessary for determination of the issues on appeal.

(4) Transmission of the record is effected when the Clerk of the Supreme Court files the record. The Clerk of the Supreme Court shall notify counsel of record and the clerk of the trial court when the record is filed in the Supreme Court.

(C) Extension of Time for Transmission of the Record.

(1) The Supreme Court may extend the time for transmitting the record or, notwithstanding the provisions of S.Ct.Prac.R. XIV, Section 1(C), may permit the record to be transmitted after the expiration of the time prescribed by this rule or set by order of the Supreme Court.

(2) A request for extension of time to transmit the record shall be made by motion, stating good cause for the extension and accompanied by one or more affidavits setting forth facts to demonstrate good cause. The motion shall be filed within the time originally prescribed for transmission of the record or within the time permitted by a previously granted extension.

(3) A request for extension of time to transmit the record shall be accompanied by an affidavit of the court reporter if the extension is necessitated by the court reporter's inability to transcribe the proceedings in a timely manner.

(D) Retention of Copy of the Record in the Trial Court.

(1) Before transmitting the record to the Clerk of the Supreme Court, the clerk of the trial court shall make a copy of the record. A copy of the original papers, transcript of

proceedings, and any documentary exhibits shall be made by photocopying the original papers, transcript of proceedings, and documentary exhibits. A copy of any physical exhibits may be made by either photographing or videotaping the physical exhibits. A copy of a video, audio or other electronic recording that is part of the record shall be made by making a duplicate recording.

(2) The clerk of the trial court shall retain the copy of the record for use in any postconviction proceeding authorized by section 2953.21 of the Revised Code or for any other proceeding authorized by these rules.

Section 5. Briefs on the Merits.

(Clerk's note: Death penalty appeals from the courts of appeals--i.e., cases in which the death penalty has been affirmed for an offense committed prior to January 1, 1995—are briefed in accordance with S.Ct.Prac.R. VI.)

(A) The appellant shall file a merit brief with the Supreme Court within 180 days from the date the Clerk of the Supreme Court files the record from the trial court.

(B) Within 120 days after the filing of appellant's brief, the appellee shall file a merit brief.

(C) The appellant may file a reply brief within 45 days after the filing of appellee's brief.

(D) The form of the briefs shall comply with the provisions of S.Ct.Prac.R. VI.

(E) A party may obtain one extension of time to file a merit brief in accordance with the provisions of S.Ct.Prac.R. XIV, Section 3(B)(2).

Staff Commentary to Rule XIX (2008 Amendments)

Section 3(B)(1)

This amendment makes clear that transcripts of pre-trial proceedings (e.g., *voir dire*, hearings on motions, etc.) shall be prepared and included in the record on appeal.

Section 3(B)(3)

These amendments eliminate as unnecessary a requirement that documentary exhibits be attached to the transcript in which they are referenced.

Section 4(A)

The first amendment to this division extends the time for filing the record from 60 to 90 days. Due to the volume of transcription that accompanies preparing the record in death penalty appeals, the 60-day timeframe had proven to be unworkable, and many appellants were filing multiple motions to extend the deadline. The extra time should ensure that court

reporters can prepare an accurate and complete transcript within the time allotted. The second amendment makes clear that, if more time is needed for transcription of the record, it is the appellant's duty to file a motion for extension of time.

Section 4(B)(1)

The first amendment to this division clarifies that the transcripts are to be numbered and indexed by the trial court clerk. The other amendment requires the trial court clerk to prepare a separate index of any exhibits that are not transmitted in accordance with division (B)(3) of this section.

Section 4(B)(2)

A death penalty appeal could involve issues relating to excluded exhibits. Therefore, this provision requires the identification and transmission of documentary exhibits whose admission into evidence was denied at trial.

Section 4(B)(3)

These amendments have been added to aid in preserving certain types of evidence. In death penalty cases, evidence such as blood or tissue samples is often admitted at trial. The transmission of such evidence may increase the difficulty of future testing of the evidence, should the need arise. This kind of evidence is usually stored in controlled environments or laboratories, and the trial courts are better equipped to address the storage and handling issues that arise. In addition, because this kind of evidence may create a biohazard for those who handle or transport it, limiting its exposure is warranted.

RULE XX. [Reserved.]

RULE XXI. TITLE

These rules shall be known as the Rules of Practice of the Supreme Court of Ohio and shall be cited as "S.Ct.Prac.R. _____".

RULE XXII. EFFECTIVE DATES

(A) The Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on January 11, 1994, shall take effect on June 1, 1994. These rules supersede the Rules of Practice of the Supreme Court of Ohio, effective August 16, 1971, as amended through July 16, 1990. These rules govern all proceedings and actions brought after the effective date and also all further proceedings and actions then pending, except to the extent that their application in a particular action pending when the rules take effect would not be feasible or would work an injustice, in which event the former procedure applies.

(B) Amendments to the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on January 9, 1996, and March 19, 1996, shall take effect on April 1, 1996.

(C) Amendments to Rule XIV of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on March 31, 1997, shall take effect on April 28, 1997.

(D) Amendments to Rule XIX of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on April 7, 1998, shall take effect on June 1, 1998.

(E) Amendments to Rule VI of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on September 15, 1998, shall take effect on October 19, 1998.

(F) Amendments to Rule XIV of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on June 8, 1999, shall take effect on July 12, 1999.

(G) Amendments to Rules II, III, IV, V, VI, IX, X, and XI of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on January 25, 2000, shall take effect on April 1, 2000.

(H) Amendments to Rules I, II, IV, VI, VIII, XVII, and XIX of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on April 10, 2000, shall take effect on June 1, 2000.

(I) Amendments to Rules VIII and IX of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on November 14, 2000, shall take effect on February 1, 2001.

(J) Amendments to Rules III and IX of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on February 5, 2002, shall take effect on April 1, 2002.

(K) Amendments to Rule X of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on May 7, 2002, shall take effect on August 1, 2002.

(L) Amendments to Rule III of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on March 11, 2003, shall take effect on June 1, 2003.

(M) Amendments to Rules I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIV, XV, XVII, XVIII, and XIX of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on March 18, 2004, shall take effect on July 1, 2004.

(N) Amendments to Rule II of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on May 11, 2004, shall take effect on August 1, 2004.

(O) Amendments to Rules XIV and XIX of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on May 10, 2005, shall take effect on October 1, 2005.

(P) Amendments to Rule VIII of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on November 28, 2006, shall take effect on February 1, 2007.

(Q) Amendments to Rules I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVIII, and XIX of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on September 18, 2007, shall take effect on January 1, 2008.

(R) Amendments to Rule XV of the Rules of Practice of the Supreme Court of Ohio, adopted by the Supreme Court on September 15, 2009, shall take effect on October 16, 2009.

APPENDICES

Note: Some of the following samples include material taken from actual Supreme Court cases. However, the material has been edited to conform to the requirements of the current rules. Fictitious attorney names and related data have also been used.

The authorities cited in the samples are cited in accordance with the Manual of the Forms of Citation used in the Ohio Official Reports, Interim Edition (July 1, 1992, revised July 12, 2002), issued by the Reporter of the Supreme Court. However, conformance to the Reporter's style manual is not required, provided citations conform to another generally recognized and accepted style manual. See, for example, A Uniform System of Citation (current edition) ("Blue Book"); University of Chicago Manual of Legal Citation (current edition) ("Maroon Book"); Association of Legal Writers and Directors Citation Manual (current edition) ("ALWD Citation Manual"); and Judicial Opinion Writing Manual (current edition) ("ABA Manual").

APPENDIX A	Sample notice of appeal from a court of appeals
APPENDIX B	Sample memorandum in support of jurisdiction
APPENDIX C	Waiver of memorandum in response form
APPENDIX D	Sample merit brief of appellant
APPENDIX E	Affidavit of indigency form

APPENDIX A. NOTICE OF APPEAL FROM A COURT OF APPEALS

IN THE SUPREME COURT OF OHIO

John B. DeVennish,	:	
	:	
Appellant,	:	On Appeal from the Franklin
	:	County Court of Appeals,
v.	:	Tenth Appellate District
	:	
City of Columbus, Division	:	Court of Appeals
of Public Safety, et al.,	:	Case No. 02AP-433
	:	
Appellees.	:	

NOTICE OF APPEAL OF APPELLANT JOHN B. DEVENNISH

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COLUMBUS AND COLUMBUS MUNICIPAL
CIVIL SERVICE COMMISSION

Notice of Appeal of Appellant John B. DeVennish

Appellant John B. DeVennish hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals case No. 02AP-433 on October 24, 2003.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,

John Miller, Counsel of Record

Susan Smith

COUNSEL FOR APPELLANT,
JOHN B. DEVENNISH

Certificate of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for appellees, Jane Doe, Columbus City Attorney, and Peter Jones, Chief Labor Attorney, City of Columbus Dept. of Law, 90 West Broad Street, Columbus, Ohio 43215 on November 22, 2003.

Susan Smith

COUNSEL FOR APPELLANT,
JOHN B. DEVENNISH

APPENDIX B. MEMORANDUM IN SUPPORT OF JURISDICTION

IN THE SUPREME COURT OF OHIO

John B. DeVennish,	:	
	:	
Appellant,	:	On Appeal from the
	:	Franklin County Court
v.	:	of Appeals, Tenth
	:	Appellate District
City of Columbus, Division	:	
of Public Safety, et al.,	:	Court of Appeals
	:	Case No. 02AP-433
Appellees.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JOHN B. DEVENNISH

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**EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST AND
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This cause presents two critical issues for the future of public employee collective bargaining in Ohio: (1) whether promotions are a mandatory subject of collective bargaining under R.C. Chapter 4117, the Public Employees' Collective Bargaining Act; and (2) whether a city may disclaim the legal identity between itself and its civil service commission in order to evade municipal obligations under a public employee collective bargaining agreement.

In this case, the court of appeals excluded promotions from the mandatory topics of collective bargaining and concluded, therefore, that the promotional provisions of a collective bargaining agreement could not supersede an existing civil service regulation. The court of appeals also ruled that, under the Home-Rule provisions of the Ohio Constitution, a civil service commission is not bound by the collective bargaining agreement entered into by the public employer but instead is entitled to enforce its own rules and regulations.

The decision of the court of appeals threatens the structure of public employees' collective bargaining created by the General Assembly in R.C. Chapter 4117. By its ruling, the court of appeals undermines legislative intent, ignores the plain meaning of the Act, and creates its own unsupported view of public employee collective bargaining. Moreover, the court of appeals' decision establishes the illogical and untenable rule that a city can ignore its collective bargaining agreement by delegating labor matters to a municipal agency that can violate the agreement with impunity. Finally, the decision of the court of appeals elevates the Home-Rule provisions of the Ohio Constitution over the authority of the General Assembly to enact employee welfare legislation pursuant to Section 34, Article II of the Ohio Constitution. These unprecedented inroads into the scope of the Public Employees' Collective Bargaining Act offend the plain

language of the Act and the principles of constitutional governance. They urgently need correction by this court.

The implications of the decision of the court of appeals affect every governmental entity in Ohio, and touch the lives of tens of thousands of public employees in the state. The public's interest in the orderly operation of government is profoundly affected by a holding that the agreements of municipalities are not binding on agencies of the municipality. Such a rule would sabotage the integrity of governmental contracts, and undermine the fundamental principle that the rule of law constrains governments as well as citizens. Similarly, the public interest is affected if the plain meaning of a statute duly adopted by the General Assembly can be judicially altered to subvert the legislature's intent that the labor relations of governmental units throughout the state be controlled by certain uniform principles.

Apart from these governmental considerations, which make this case one of great public interest, the decision of the court of appeals has broad general significance. Thousands and thousands of citizens of Ohio are public employees who perform the essential work of governance. The General Assembly has recognized their right to bargain collectively over the terms and conditions of their employment, and has codified a clear and orderly process for that bargaining. Under this codification, public employees can, through bargaining, determine the terms and conditions of their employment. The resulting collective bargaining agreement represents the product of a time-honored process by which employers and employees mutually agree on matters that jointly affect them.

The decision of the court of appeals sets a precedent that would exclude an entire subject matter—promotions—from collective bargaining by public employees. Under this rule, public employees would be denied the right to bargain over one of the most significant terms and conditions of employment affecting their career paths. The result of this rule would be

preposterous. Employee representatives would bargain with the municipalities' representatives about the full range of terms and conditions that affect their employment, but would see the central issue of promotions relegated to the unilateral determinations of civil service commissions, which would be unconstrained by any agreement of the city.

Not surprisingly, the conclusion of the court of appeals is contrary both to the statutory scheme of R.C. Chapter 4117 and to all legal authority. Courts and public employment boards throughout the country, as well as the National Labor Relations Board, have endorsed the proposition that promotions are mandatorily subject to collective bargaining laws. Similarly, the State Employee Relations Board has recognized the mandatory bargaining nature of promotions.

The judgment of the court of appeals has great general significance also because it undermines collective bargaining by permitting cities to circumvent their collective bargaining agreements. If civil service commissions had exclusive jurisdiction over promotional matters, despite contrary provisions of collective bargaining agreements, the force and value of agreements and the objectives of the Act would be severely compromised. Municipal administrative agencies, such as civil service commissions, could negate at will agreements made under the Act. Such a prospect is contrary to current case law and the stated purpose of the Act.

Finally, this case involves a substantial constitutional question. The decision offends Ohio's constitutional scheme by elevating the Home-Rule powers of municipalities, granted by the Ohio Constitution, Section 3, Article XVIII, over the constitutional power of the General Assembly to enact employee welfare legislation pursuant to Section 34, Article II of the Ohio Constitution. Such a constitutional imbalance is contrary to this court's holding in *Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1, 539 N.E.2d 103.

Contrary to the holding in *Rocky River*, the lower court's interpretation of R.C. 4117.08(B) impairs the functioning of the Act. The decision would invite a return to pre-collective bargaining

days. This court rejected such a regression in *Kettering v. State Emp. Relations Bd.* (1986), 26 Ohio St.3d 50, 56, 26 OBR 42, 496 N.E.2d 983:

“A myopic insistence on returning a significant portion of Ohio’s public employee labor relations to the pre-Act *ad hoc* ‘system,’ under the rubric of local self-government powers, only invites a return to the very litigation and controversy which had prompted the General Assembly to address that distressing state of affairs. * * *” (Footnote omitted.) See also, *Dublin v. State*, 118 Ohio Misc.2d 18, 2002-Ohio-2431, 769 N.E.2d 436; *Sanders v. Summit Cty. Veterans’ Serv. Comm.*, Summit App. No. 20800, 2002-Ohio-2653, at ¶ 20.

If allowed to stand, the decision of the court of appeals would ravage the Public Employees’ Collective Bargaining Act. Under the decision, the collective bargaining process would be chaotic and uncertain, and would lack finality. Municipal collective bargaining agreements would be subject to interference and rejection by municipal agencies, whose actions would undermine not only individual agreements, but also the general framework of public labor relations intended by the legislative branch. The entire process of collective bargaining under R.C. Chapter 4117, designed to result in enforceable contractual relationships and coherent public labor relations, would be frustrated if the decision of the court of appeals is permitted to stand.

In sum, this case puts in issue the essence of public employee collective bargaining and the fate of public labor relations, thereby affecting every governmental entity and employee in Ohio. To promote the purposes and preserve the integrity of the Public Employees’ Collective Bargaining Act, to assure uniform application of the Act, to promote orderly and constructive negotiations between employers and their public employees, and to remove impediments to the collective bargaining process, this court must grant jurisdiction to hear this case and review the erroneous and dangerous decision of the court of appeals.

STATEMENT OF THE CASE AND FACTS

The case arises from the attempt of appellant John B. DeVennish (“DeVennish”) to attain the rank of sergeant in the Columbus Police Department. The Columbus Municipal Civil Service

Commission (the “commission”) ruled that DeVennish was not eligible to take the necessary promotional examination because, under the rules and regulations of the commission, he did not meet the minimum requirement of three years of continuous accredited service as a permanent employee immediately prior to the date of the examination.

The commission’s “continuous-service” requirement was in obvious conflict with the provisions of the existing collective bargaining agreement (“agreement”) between the appellee city of Columbus (the “city”) and the Fraternal Order of Police, Capital City Lodge No. 9 (the “FOP”). Article 15 of the agreement requires an applicant for the sergeant’s examination to have at least three years of service; however, the agreement does not mandate that the service be continuous or be immediately prior to the examination. DeVennish met the requirement as established by the collective bargaining agreement. The commission, however, refused to honor the provisions of the agreement and found that DeVennish did not meet the minimum qualifications to take the promotional examination.

The appellant appealed to the Franklin County Common Pleas Court and, upon the affirmance of the commission’s decision, appealed to the Franklin County Court of Appeals. The court of appeals affirmed the judgment of the court of common pleas and found that: (1) Section E, Article 15 of the agreement addresses matters that are not appropriate subjects of bargaining under R.C. 4117.08(B) and, therefore, the promotional provisions of the collective bargaining agreement could not supersede the existing civil service regulation; and (2) the commission was an entity separate from the city and, under the Home-Rule provisions of the Ohio Constitution, was entitled to enforce its own rules and regulations.

The court of appeals erred in ruling that the Public Employees’ Collective Bargaining Act excludes promotions from the mandatory topics of collective bargaining. The court of appeals

also erred in failing to recognize that a municipality binds its civil service commission when it enters into a collective bargaining agreement with a public employee union.

In support of its position on these issues, the appellant presents the following argument.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Promotions are a mandatory subject of collective bargaining pursuant to R.C. 4117.08.

Matters dealing with promotion are mandatory subjects for bargaining under the Ohio Public Employees' Collective Bargaining Act ("Act"), R.C. Chapter 4117. The statutory scheme of the Act makes this clear.

R.C. 4117.08(A) sets forth the matters that are subject to collective bargaining between a public employer and the exclusive representative of a public employee bargaining unit. Under that statute, "[a]ll matters pertaining to wages, hours, or terms and other conditions of employment * * * are subject to collective bargaining" unless otherwise specified in the statute. The few statutory exclusions from this broad mandate are set out in R.C. 4117.08(B), which provides:

"The conduct and grading of civil service examinations, the rating of candidates, the establishment of eligible lists from the examinations, and the *original appointments from the eligible lists* are not appropriate subjects for collective bargaining." (Emphasis added.)

This provision excludes from collective bargaining only lists for *original* appointments, not promotional appointments. This statute codifies a distinction widely accepted in traditional private sector labor law: original hiring practices are left to the employer's discretion and are not appropriate subjects of collective bargaining; promotions, in contrast, are proper subjects of collective bargaining. See, e.g., *Ford Motor Co. v. Huffman* (1953), 345 U.S. 330, 341-342, 73 S.Ct. 681, 97 L.E. 1048; *Amalgamated Transit Union Internatl., AFL-CIO v. Donovan*

(C.A.D.C.1985), 767 F.2d 939; *Houston Chapter, Associated Gen. Contrs. of Am., Inc.* (1963), 143 N.L.R.B. 409.

This plain meaning of the narrow exclusion embodied in R.C. 4117.08(B) is supported by the language of the section that immediately follows it. R.C. 4117.08(C) provides as follows:

“Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the right and responsibility of each public employer to:

“ * * *

“(5) * * * promote * * * employees.”

This section expressly permits a public employer to address promotional matters in a collective bargaining agreement. More forcefully, the final provision of R.C. 4117.08(C) requires an employer to bargain on subjects that affect “wages, hours, [and] terms and conditions of employment.” Promotions obviously are such a subject; they inherently affect wages, hours and terms or conditions of employment.

The court of appeals held that, under this clear statutory scheme, the determination of who is eligible for a promotion, and therefore eligible for a promotional civil service examination, is a prohibited topic for collective bargaining. This holding ignores the evident meaning of R.C. 4117.08 and improperly broadens the narrow exceptions enumerated in R.C. 4117.08(B). The court of appeals erroneously interpreted the statutory phrase “establishment of eligible lists *from* the examination” (emphasis added) to include the determination of an applicant’s eligibility to sit *for* an examination. Such a judicial expansion of a clear and carefully drafted statutory exclusion violates the rules of statutory construction established and applied by this court. See *State ex rel. Keller v. Forney* (1923), 108 Ohio St. 463, 141 N.E. 16; *Kroff v. Amrhein* (1916), 94 Ohio St. 282, 114 N.E. 267; *Erich v. Mayfield Village*, (July 13, 2000), Cuyahoga App. No. 76675; *Leland v. Lima*, Allen App. No. 1-02-59, 2002-Ohio-6188, at ¶ 20-21.

Proposition of Law No. II: A civil service commission is bound by the collective bargaining agreement entered into by the public employer under R.C. Chapter 4117.

As with any municipal agency, a civil service commission is bound by the contracts of the municipality. Thus, a collective bargaining agreement between a city and a public employee union binds the civil service commission.

As the State Employee Relations Board and several Ohio courts have ruled, and as the appellee city has acknowledged in other forums, a civil service commission has no separate legal identity or capacity apart from the city that created it. A collective bargaining agreement entered into by a municipality, as a public employer, therefore, binds a civil service commission as well.

Furthermore, the provisions of a collective bargaining agreement entered into by a municipality must prevail over a conflicting regulation of a civil service commission. This court held in *Rocky River v. State Emp. Relations Bd.*, supra, 43 Ohio St.3d 1, 539 N.E.2d 103, that the exercise by municipalities of Home-Rule powers is constitutionally limited to the exercise of powers that do not conflict with any general law. Thus, the provisions of R.C. Chapter 4117, a general state law, prevail over conflicting municipal enactments, such as the commission's regulations. See *State ex rel. Dayton Fraternal Order of Police, Lodge No. 44, v. State Emp. Relations Bd.* (1986), 22 Ohio St.3d 1, 22 OBR 1, 488 N.E.2d 181; *Kettering v. State Emp. Relations Bd.*, supra, 26 Ohio St.3d 50, 26 OBR 42, 496 N.E.2d 983; and *Dist. 1199, Health Care & Soc. Serv. Union, SEIU, AFL-CIO v. State Emp. Relations Bd.*, Franklin App. No. 02AP-391, 2003-Ohio-3436.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

John Miller, Counsel of Record

Susan Smith
COUNSEL FOR APPELLANT,
JOHN B. DEVENNISH

Certificate of Service

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to counsel for appellees, Jane Doe, Columbus City Attorney, and Peter Jones, Chief Labor Attorney, City of Columbus Dept. of Law, 90 West Broad Street, Columbus, Ohio 43215 on November 22, 2003.

Susan Smith

COUNSEL FOR APPELLANT,
JOHN B. DEVENNISH

APPENDIX C. WAIVER OF MEMORANDUM IN RESPONSE

IN THE SUPREME COURT OF OHIO

v. _____

:

:

:

:

:

:

Case No. _____

Waiver of Memorandum in Response*

I am filing this waiver pursuant to S.Ct.Prac.R. III, Section 2(E). I do not intend to file a response to the memorandum in support of jurisdiction unless one is requested by the Court.

Name

Address

Attorney Registration #

City & State

Phone Number

Zip Code

Please enter my appearance as follows (check one):

- Enter my appearance as counsel of record for all appellees.
- There are multiple appellees, and I do not represent all of them. Enter my appearance as counsel of record for the following appellee(s):

I certify that I am sending a copy of this form, on this date, to all other parties in compliance with S.Ct.Prac.R. XIV, Section 2(B).

Signature

Date

** Note: If a waiver is filed in lieu of a memorandum in response, it must be filed within 20 days after the memorandum in support of jurisdiction is filed. If there are multiple appellants and more than one memorandum in support of jurisdiction is filed, the appellee may file only one waiver, and it must be filed within 20 days after the filing of the last memorandum in support.*

APPENDIX D. MERIT BRIEF OF APPELLANT

IN THE SUPREME COURT OF OHIO

John B. DeVennish,	:	
	:	
Appellant,	:	Case No. 02-2177
	:	
v.	:	
	:	
City of Columbus, Division	:	On Appeal from the
of Public Safety, et al.,	:	Franklin County Court
	:	of Appeals, Tenth
	:	Appellate District
Appellees.	:	

MERIT BRIEF OF APPELLANT JOHN B. DEVENNISH

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STATEMENT OF FACTS

This case arises from the attempt of appellant John B. DeVennish (“DeVennish”) to attain the rank of sergeant in the Columbus Police Department. DeVennish joined the Columbus police force on March 17, 1985. (Supp. 38.) He voluntarily resigned in good standing on

April 30, 1991 to work in private industry. (Supp. 38, Tr. 15.) On October 6, 1999, DeVennish rejoined the Columbus police force and graduated first academically in his police academy class. (Supp. 38, Tr. 16.)

In 2000, DeVennish applied to take the police sergeant promotional examination. (Supp. 41.) The staff of the Columbus Municipal Civil Service Commission (the “commission”), and later the executive director of the commission, rejected the application of DeVennish on the ground that DeVennish did not meet a minimum requirement under the rules and regulations of the commission. Specifically, they found that DeVennish did not have “three years of continuous accredited service as a permanent appointee immediately prior to the date of examination.” (Supp. 32, 30.)

DeVennish appealed this decision to the commission. (Supp. 31.) Pending that appeal, he was permitted to take the promotional examination. (Supp. 143.) On the posted list of test scores, DeVennish ranked twenty-first out of one hundred seventy-nine applicants. (Supp. 143.) On July 22, 2001, the commission dismissed DeVennish’s appeal on the ground that he did not have three years of continuous service prior to the examination. (Appx. 18.) In so doing, the commission refused to honor the provisions of a contract, effective December 29, 1998, between the city of Columbus (the “city”) and

the Fraternal Order of Police, Capital City Lodge No. 9 (the “FOP”) pursuant to R.C. Chapter 4117. (See Supp. 118.)

Section E, Article 15 of the collective bargaining agreement (“the agreement”) between the city and the FOP provides, in part, that:

“The City and * * * [FOP] agree that, within 60 days of the ratification date of this Agreement, they shall jointly support and petition the * * * Commission to request that the following be included in the Civil Service Rules and Regulations:

“ * * *

“(E) To be eligible for the next promotional examination, the applicant must have had at least 3 years as a Police Officer for the rank of Sergeant and at least one year in prior ranks for all other ranks. * * *”
(Supp. 83-84.)

Despite the terms of the agreement and the effort of the FOP, the city neither joined in a petition nor caused the commission to formally adopt the new promotional eligibility rule. In determining the eligibility of DeVennish, the commission elected to apply the civil service regulation instead of the standard of the agreement, a standard DeVennish met.

Pursuant to R.C. 119.12 and Chapter 2505, DeVennish appealed to the Franklin County Common Pleas Court. (Supp. 26.) The Franklin County Common Pleas Court (Crawford, J.) issued its decision on February 27, 2003, affirming the decision of the commission, and entered its judgment on March 10, 2003. (Appx. 11, 17.) DeVennish filed his notice of appeal to the Franklin County Court of Appeals on April 10, 2003. (Supp. 136.)

On October 24, 2003, the Franklin County Court of Appeals affirmed the judgment of the common pleas court. (Appx. 3, 9.) The court of appeals ruled that the

promotional provisions of the collective bargaining agreement did not apply to DeVennish on grounds that: (a) Section E, Article 15 of the collective bargaining agreement between the city and the FOP addressed a matter that was not an appropriate subject of bargaining under R.C. 4117.08(B) and, therefore, the agreement could not supersede the existing civil service regulation; (b) the Columbus Municipal Civil Service Commission was an entity separate from the city of Columbus and had the right, under the Home-Rule provisions of the Ohio Constitution, to enforce its own rules and regulations; and (c) the commission had never formally adopted the promotional standard set forth in the collective bargaining agreement between the city and the FOP and was not bound by the agreement between the city and the FOP.

DeVennish filed his notice of appeal to the Supreme Court of Ohio on November 22, 2003. (Appx. 1.) On April 4, 2004, the Supreme Court granted jurisdiction to hear the case and allowed the appeal.

ARGUMENT

Proposition of Law No. I:
Promotions are a mandatory subject of collective bargaining pursuant to R.C. 4117.08.

R.C. 4117.08(A) provides that “[a]ll matters pertaining to wages, hours, or terms and other conditions of employment” are mandatory subjects of collective bargaining between public employers and exclusive representatives unless otherwise specified in the statute. R.C. 4117.08(B) excludes only four topics from this broad mandate:

1. The conduct and grading of civil service examinations;
2. The rating of candidates;

3. The establishment of eligible lists from examinations; and
4. The original appointments from the eligible lists.

The court of appeals in this case ruled that the determination of a public employee's eligibility to sit for a promotional civil service examination is "the establishment of the eligible lists from [an] examination" and, therefore, falls within the statutory exclusion. As a result of this conclusion, the court ruled that a collective bargaining agreement cannot address the subject of eligibility for promotions.

The court of appeals misread the exclusionary language contained in R.C. 4117.08(B) which, in its entirety, states:

"The conduct and grading of civil service examinations, the rating of candidates, the establishment of eligible lists from the examinations, and the *original appointments from the eligible lists* are not appropriate subjects for collective bargaining." (Emphasis added.)

Two provisions of this section are relevant here: (a) "the establishment of eligible lists from the examinations"; and (b) "the original appointments from the eligible lists." Accepted canons of statutory construction make clear that these contiguous phrases are related. Read together, as they must be, the clauses exclude from collective bargaining two matters: (1) determination of eligibility based on the results of examinations, and (2) original appointments of persons determined by the examination to be eligible. This section plainly does not exclude from collective bargaining the subjects of eligibility for promotion or promotional appointments. The use of the term "original" makes clear the legislature's intent to exclude only original appointments. In doing so, the General Assembly merely codified the standard practice of labor relations under which original hiring practices typically are left to the employer's discretion and not considered an appropriate subject of collective bargaining.

The court of appeals' decision in this case would render the evident statutory scheme meaningless. Nowhere in R.C. 4117.08 did the General Assembly evince the slightest intent to exclude promotions from the broad requirement of R.C. 4117.08(A) that "terms and other conditions of employment" be subject to bargaining. Of course, had the General Assembly actually intended to exclude promotions from collective bargaining, it would have done so directly and simply—by using the word "promotion" in R.C. 4117.08(B), which defines excluded topics. That the General Assembly did not do so is conclusive evidence that it did not intend to exclude promotions. Any contrary conclusion, such as that reached by the court of appeals, violates a basic principle of statutory construction.

The court of appeals' error is compounded by its obvious misreading of the specific exclusions in the statute. The court of appeals erroneously interpreted the phrase, "the establishment of eligible lists *from* the examinations," to include the determination of an applicant's eligibility to sit *for* an examination. Such judicial expansion of a clear and carefully drafted statutory exclusion violates the rules of statutory construction established and applied by this court, and the critical constitutional concerns for separation of powers that animate those rules. In *State ex rel. Keller v. Forney* (1923), 108 Ohio St. 463, 141 N.E. 16, this court held that exceptions to a general law must be strictly construed, because of the presumption that matters not clearly excluded from the operation of the law are clearly included in the operation of the law. Similarly, in *Kroff v. Amrhein* (1916), 94 Ohio St. 282, 286, 114 N.E. 267, this court held that exceptions in a remedial statute should be strictly construed. In so ruling, the court embraced "the familiar rule that the exclusion clearly made in the exception only

emphasizes the inclusion of all other things germane to the statute which are not so excluded.” *Id.*; *Leland v. Lima*, Allen App. No. 1-02-59, 2002-Ohio-6188, at ¶ 20-21.

This plain meaning of the narrow exclusion set out in R.C. 4117.08(B) is confirmed by the section that immediately follows it. R.C. 4117.08(C) provides in part as follows:

“Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the right and responsibility of each public employer to:

“ * * *

“(5) * * * promote * * * employees.

“ * * *

“The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.”

R.C. 4117.08(C) expressly contemplates that a public employer may address the subject of promotions in a collective bargaining agreement. Otherwise, the introductory phrase of Division (C) would be superfluous, and the term “promote” in Subdivision (C)(5) would be pointless. Indeed, under R.C. 4117.08(C) an employer is required to bargain with respect to those matters involving promotions. In *Lorain City Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 533 N.E.2d 264, this court analyzed the scope of management rights and bargaining obligations. The court held that “a public employer must bargain with its employees regarding a management decision to the extent that the decision ‘affects wages, hours, terms and conditions of employment.’” *Id.* at 262, 533 N.E.2d 264. Promotions obviously affect wages and terms and conditions of

employment and, therefore, under the court's holding in *Lorain*, they are subject to bargaining.

That promotions are a mandatory subject of bargaining is widely established in the United States.¹ For example, the California Public Employment Relations Board held that promotional proposals must be negotiated since promotional rights bear a close relationship to virtually every subject of bargaining set forth in the California Act. *California School Emp. Assn. v. Healdsburg Union High School Dist.* (Jan. 4, 1984), Pub. Emp. Bargaining (CCH), 1983-1987 Transfer Binder (Adm. Rulings), Paragraph 43,573. Promotions are recognized as a mandatory bargaining subject in the private sector as well. *Ford Motor Co. v. Huffman* (1953), 345 U.S. 330, 73 S.Ct. 681, 97 L.Ed. 1048.

The exceptions enumerated in R.C. 4117.08(B) are the conduct and grading of civil service examinations, the establishment of eligible lists from the examination, the rating of candidates, and the original appointment from the eligible lists. The court of appeals found that the establishment of eligible lists from the examination encompasses the determination of the eligibility of an applicant to sit for the examination. The lower court's decision erroneously interprets R.C. 4117.08. The decision ignores the plain meaning of the statute, improperly broadens a narrow and clearly drafted exclusion, and offends the basic tenets of statutory construction. Not surprisingly, the decision is contrary not only to the law of Ohio, but also to the settled law throughout the United States. The court of appeals' decision must be reversed. Applying the unmistakable language of R.C. 4117.08, this court should hold that the subject of eligibility to sit for a

¹ *Note: This footnote contains string citations supporting appellant's statement. However, because of space limitations, these citations have been omitted from publication in the sample brief.*

promotional civil service examination is a proper subject for bargaining. As demonstrated in the next section, once a collective bargaining agreement addresses a subject, that agreement prevails over conflicting civil service rules. See *Rocky River v. State Emp. Relations Bd.* (1989), 43 Ohio St.3d 1, 539 N.E.2d 103.

Proposition of Law No. II:
A civil service commission is bound by the collective bargaining agreement entered into by the public employer under R.C. Chapter 4117.

The city in the instant case has attempted to portray the civil service commission as an independent entity that is exclusively responsible for promotions. This attempted portrait is inconsistent with the statutory scheme of R.C. Chapter 4117.

R.C. 4117.01(B) defines “public employer” as including any “municipal corporation with a population of at least five thousand.” R.C. 4117.10(C) states that “[t]he chief executive officer, or his representative, of each municipal corporation * * * is responsible for negotiations in the collective bargaining process * * * .” Finally, and critically, the section expressly prescribes the binding effect of agreements produced by this process:

“ * * * When the matters about which there is agreement are reduced to writing and approved by the employee organization and the legislative body, the agreement is binding upon the legislative body, the employer, and the employee organization and employees covered by the agreement.”

The law provides no role for a civil service commission in the collective bargaining process. The comprehensive legislative scheme defines who the public employer is, who can bargain on behalf of the public employer, and the matters over which bargaining must occur. Promotions are expressly included as a topic of

bargaining. This coherent process requires the conclusion that a civil service commission has no independent role regarding promotions. As with any municipal agency, the commission is bound by the contracts of the municipality, particularly those entered into pursuant to express statutory authority. Any contrary conclusion would frustrate the legislative scheme and severely disrupt governmental operations.

This court recently recognized the importance of permitting the Act to function as intended, without local interference from municipalities or their agencies. In *Rocky River v. State Emp. Relations Bd.*, supra (43 Ohio St.3d 1), this court found that R.C. Chapter 4117 is a constitutional enactment within the General Assembly's authority to enact employee welfare legislation pursuant to Section 34, Article II of the Ohio Constitution. Accordingly, the court held, at paragraph two of the syllabus, that the functioning of the Act may not be impaired, limited or negated by local enactments pursuant to the Home-Rule provision, Section 3, Article XVIII. The lower court's decision in the case now before the court threatens this critical allocation of responsibility for governmental labor relations. If allowed to stand, the court of appeals' decision will create chaos in the collective bargaining process and frustrate the essential objective of establishing an orderly and constructive relationship between the public employer and its employees.

Before the Act was adopted to promote this objective, public labor relations were characterized by wide and irrational variations among various local governmental entities relating to all manner of terms and conditions of employment. Not long ago, this court recalled that deplorable time. In *Kettering v. State Emp. Relations Bd.* (1986), 26 Ohio St.3d 50, 56, 26 OBR 42, 496 N.E.2d 983, this court stated:

“A myopic insistence on returning a significant portion of Ohio's public employee labor relations to the pre-Act *ad hoc* ‘system,’ under

the rubric of local self-government powers, only invites a return to the very litigation and controversy which had prompted the General Assembly to address that distressing state of affairs. * * *” (Footnote omitted.)

The decision below represents precisely the sort of return to the pre-Act “system” that this court condemned in *Kettering*, supra. This court’s holdings in *Rocky River* and *Kettering* make clear that, under the Act, a collective bargaining agreement binds the municipality and all of its agencies. No municipal agency can operate independently of that agreement; nor can it render the agreement a nullity by purporting to assume control over a term or condition of employment that is governed by the agreement.

In accordance with this important principle, the court of appeals in *State ex rel. Darvanan v. Youngstown* (Jan. 27, 1987), Mahoning App. No. 85 C.A. 131, directly addressed a conflict between a negotiated promotional procedure and municipal civil service commission control over promotions. Relying on R.C. 4117.10, the court held that bargaining under the Public Employees’ Collective Bargaining Act superseded conflicting language in the Youngstown City Charter:

“It is our conclusion that [R.C.] Chapter 4117. authorizes public employers and public employees to enter into labor agreements which agreements provide for promotions within the classified services without competitive examinations and that such a process does not conflict with the Constitution or laws of Ohio.” *Id.* at 7.

In *Fraternal Order of Police, Capital City Lodge No. 9 v. Columbus* (June 11, 1987), Franklin C.P. No. 86CV-04-2336, the common pleas court followed this logic when it restrained the city from conducting police promotional examinations without the addition of seniority points. In ruling on a motion for equitable relief, Judge George C. Smith, in a consent decree, included the civil service commission as part of the city administration. (Supp. 177.)

The city itself has acknowledged that the civil service commission does not occupy any independent status. In stipulations filed by the parties in a SERB case, *State Emp. Relations Bd. v. Columbus* (Dec. 31, 1987), Docket No. 86-ULP-04-0122, 5 OPER, Paragraph 5119 (SERB Hearing Officer), Stipulation – Admission No. 15 reads as follows:

“[‘] * * * The Municipal Civil Service Commission is created by Columbus City Charter §146. The Municipal Civil Service Commission acts on behalf of the City of Columbus, particularly in its rule-making capacity. City Charter §149. The Civil Service Commissioners are appointed by and pursuant to the Columbus City Charter §§146-147. They have no separate legal identity [and] cannot be considered separate and distinct from the City of Columbus. * * * [’]”

CONCLUSION

The decision below is fundamentally wrong in its reasoning and dangerous in its implications for public employee collective bargaining. The decision undermines the structure and purpose of the Public Employees’ Collective Bargaining Act. In place of that coherent Act, the decision below would establish a disorderly and outmoded method of governmental labor relations, a method this court condemned in *Kettering*, supra. Such a process, under which municipal agencies would be free to disregard the municipality’s collective bargaining agreement, and exercise unilateral control over topics that are subject to mandatory bargaining, must be rejected.

The decision below must be reversed. A reversal will promote the exemplary purposes of the Act and preserve the unmistakable legislative intent, which this court has uniformly supported.

Respectfully submitted,

John Miller, Counsel of Record

Susan Smith
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JOHN B. DEVENNISH

Certificate of Service

I certify that a copy of this Merit Brief was sent by ordinary U.S. mail to counsel of record for appellees, Peter Jones, Chief Labor Attorney, City of Columbus Dept. of Law, 90 West Broad Street, Columbus, Ohio 43215 on May 21, 2004.

Susan Smith

COUNSEL FOR APPELLANT,
JOHN B. DEVENNISH

APPENDIX E. AFFIDAVIT OF INDIGENCY

IN THE SUPREME COURT OF OHIO

Affidavit of Indigency

I, _____, do hereby state that I am without the necessary funds to pay the costs of this action for the following reason(s):

[Note: S. Ct. Prac. R. XV, Sec. 3, requires your affidavit of indigency to state the reason(s) you are unable to pay the docket fees and/or security deposit. Failure to state specific reasons that you are unable to pay will result in your affidavit being rejected for filing by the Clerk.]

Pursuant to Rule XV, Section 3, of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fee and security deposit, if applicable, be waived.

Affiant

Sworn to, or affirmed, and subscribed in my presence this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____.

[Note: This affidavit must be executed not more than six months prior to being filed in the Supreme Court in order to comply with S. Ct. Prac. R. XV, Sec. 3. Affidavits not in compliance with that section will be rejected for filing by the Clerk.]

