

# LOCAL RULES OF THE FOURTH APPELLATE JUDICIAL DISTRICT

[Serving Adams, Athens, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pickaway, Pike, Ross, Scioto, Vinton, and Washington Counties]

Effective as Amended March 2, 2022

## Purpose and Intent

FILED

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CLERK OF COURT  
SUPREME COURT OF OHIO

## Rule

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## **PURPOSE AND INTENT**

The following amended rules have been adopted by the judges of the Fourth District Court of Appeals, pursuant to Section 5(B), Article IV, Ohio Constitution, as amended, and App.R. 41, for the purpose of promoting the administration of justice and increasing the efficiency of the court's operation.

The rules are not intended to provide a comprehensive scheme of appellate practice. They are intended merely to supplement the Ohio Rules of Appellate Procedure concerning local practice before the Fourth District Court of Appeals and shall be amended or revised at the discretion of the court.

### **LOCAL RULE 1 CONTENT OF THE NOTICE OF APPEAL**

The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. The title of the case shall be the same as in the trial court with the designations of appellant and appellee added, as appropriate. The notice of appeal shall include a certification that the judgment or order appealed from is a judgment or order that is final under both R.C. 2505.02 and Civ.R. 54(B). See Form 1, Appendix of Forms. If applicable, the notice of appeal shall include a notification to the court that the matter being appealed requires mandatory expedition citing the applicable statute or rule under which expedition is required. The notice of appeal shall include the name, address, telephone number, email address, Supreme Court of Ohio registration number, and the designation and name of the party represented by the attorney. The appellant shall attach a copy of the judgment or order appealed from to the notice of appeal. This copy shall show the date that the judgment or order was filed. The appellant shall comply with the language of App.R. 9(B) regarding the transcript. The appellant shall also attach to the notice of appeal a docketing statement as required by Loc.R. 17. The appellant shall file and serve the court reporter with a praecipe ordering the court reporter to prepare the designated parts of the transcript of proceedings to be included in the record.

### **LOCAL RULE 2 DESIGNATION OF COUNSEL AND PROOF OF SERVICE**

Every notice of appeal, pleading, motion, and brief filed shall have typed or printed on it the name, address, telephone number, email address, and Supreme Court of Ohio registration number of the filing counsel or of the party, if not represented by counsel. When counsel is a firm of attorneys, the attorney in the firm having primary responsibility for the case shall also be designated. When proof of service of any document is required by law, the certification of service shall state specifically the name and address of each attorney and party served. A certification alone that all counsel and parties of record were served without giving their names and addresses will be deemed not in compliance with this rule.

### **LOCAL RULE 3 COST DEPOSITS**

(A) **Appeals.** At the time of filing in the trial court a notice of appeal to the court of appeals, the appellant and the cross-appellant, if any, shall deposit with the clerk of courts the sum of \$85.00 as security for the payment of costs in the court of appeals. The clerk of the trial court shall forward such deposit or deposits to the clerk of the court of appeals with the copy of the notice of appeal and other papers as required by App.R. 3(D).

If the appellant or the cross-appellant either files with the clerk a sworn affidavit or affirmation of inability to secure costs by prepayment, or produces evidence that the trial court determined that the appellant was indigent for purposes of appeal, no deposit shall be required. Failure to make this deposit for costs shall not prevent the filing of a notice of appeal in the trial court, but will be a ground upon which the court may dismiss the appeal.

(B) **Original Actions.** At the time of filing the initial pleading in an original action in this court, the party bringing the action shall deposit with the clerk the sum of \$85.00 as security for the payment of costs. If the party, by affidavit, shows inability by reason of indigency to pay or secure costs, the clerk shall receive and file the complaint without such deposit.

### **LOCAL RULE 4 CLERK'S DUTIES REGARDING TRANSMISSION OF THE RECORD**

(A) Before transmission of the record to this court, the clerk of the trial court shall cause the following to occur:

(1) The clerk shall include on the pagination sheet (App.R. 10(B)) the filing date and a brief description of each document filed in the trial court;

(2) The clerk of the trial court shall ascertain that a clear and legible date-stamp of every document and copy thereof appears in the record. If the date-stamp is not legible, the clerk shall certify the date of filing on the document and copy thereof on the face of each such document;

(3) The clerk of the trial court in preparing for transmission of the record as defined in App.R. 9(A) shall bind together the original papers and exhibits attached thereto by utilization of an ACCO fastener or any other fastening system utilized in the trial court which is sufficient to keep such papers firmly bound while being used in appellate review; and

(4) The clerk of the trial court shall not, unless directed to do so by the court of appeals, transmit any trial exhibits consisting of weapons, ammunition, money, or drugs. The pagination sheet shall designate which exhibits are not being transmitted pursuant to this rule and the custodian of the exhibits.

**LOCAL RULE 5  
TRANSMITTING AND SUPPLEMENTING THE RECORD;  
EXTENSIONS BY TRIAL COURT**

(A) Extensions of time for transmitting the record beyond the eightieth (80th) day after the filing of the notice of appeal may be granted only by the court of appeals. The trial court shall not extend the time for transmitting the record beyond the eightieth (80th) day after the filing of the notice of appeal, and the court of appeals will not recognize an order of the trial court purporting to do so.

(B) Motions for extensions of time beyond the eightieth (80th) day shall be filed before the expiration of the last extension granted by the trial court. Motions for an extension of time to file the record and motions to supplement the record requested because of a claimed inability of the court reporter to timely supply a transcript or other necessary part of the record, whether filed with the trial court or with the court of appeals, must be accompanied by an affidavit of the court reporter explaining why the extension is needed and stating when the reporter will be able to supply the transcript or other necessary part of the record.

(C) Applications to the court of appeals for extensions of time to transmit the record and applications to supplement the record shall be made by written motion filed by counsel or a party acting pro se. When not subject to division (B) of this rule, such motions shall be supported by affidavit or affidavits based on personal knowledge, which set forth facts demonstrating good cause for the extension or supplementation.

(D) The appellant is responsible for causing timely transmission of the record and for obtaining such extensions and supplementations as are necessary to discharge this responsibility. Any party who obtains an order granting an extension of time for filing the record or an order supplementing the record from the trial court shall file a copy of the order with the clerk of the court of appeals.

(E) Motions for extensions of time to transmit the record in priority cases are governed by Loc.R. 13.

(F) No additions may be made to the record after the date on which the notice of the filing of the record is mailed to the parties except upon leave of the court of appeals to supplement the record.

**LOCAL RULE 6  
TRANSCRIPT OF PROCEEDINGS**

(A) The official court reporter shall prepare the transcript of proceedings in conformity with App.R. 9(B).

(B) Electronic Copy of the Transcript. The court reporter shall include an electronic copy of the written transcript of proceedings if it is available. A copy of the electronic transcript should be emailed to [transcript@4thdistrictappeals.com](mailto:transcript@4thdistrictappeals.com) and include

the case number in the subject of the email address. See App.R. 9(B)(6)(i).

### **LOCAL RULE 7 CONSOLIDATED CASES**

If appealing from a judgment that has more than one trial court case number and the cases were not consolidated by the trial court, a party must file a separate notice of appeal for each trial court case number. A party is required to file only one notice of appeal from a judgment entered in cases which were consolidated by the trial court. The notice of appeal must list all consolidated trial court case numbers.

Cases involving related transactions and the same or similar principles of law may be consolidated at the discretion of the court of appeals either upon motion or sua sponte. Once two or more cases have been consolidated in the court of appeals, the first case shall be deemed the "lead case." Thereafter, all filings and entries pertaining to the consolidated matter shall contain all case numbers, with the lead case number appearing first, but shall be filed in only the lead case. Dispositive motions pertaining to fewer than all cases within a consolidated matter shall contain only the case numbers to which they pertain and shall be docketed in only those cases.

### **LOCAL RULE 8 NUMBER OF MOTIONS AND BRIEFS REQUIRED TO BE FILED; FILING DOCUMENTS**

An original and four (4) copies of briefs and papers relating to motions shall be filed with the clerk. All filings shall contain the name of the attorney, the attorney's address, telephone number, email address, Supreme Court of Ohio registration number, and the name and designation of the party represented by the attorney.

Motions, records, briefs, and all other documents required to be filed in this court with the clerk shall be filed with the clerk of the court of appeals of the county in which the trial of the action appealed took place or, in the case of original actions, with the clerk of the court of appeals of the county in which the complaint is filed. Documents mailed, faxed or delivered to the offices of the judges of the court of appeals will not be considered filed either when mailed or when received.

### **LOCAL RULE 9 DISMISSALS FOR FAILURE TO PROSECUTE**

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

(A) Failure to file with the notice of appeal the appropriate filing in accordance

with App.R. 9(B);

(B) Failure to timely order in writing from the court reporter any necessary transcript of proceeding;

(C) Failure to cause the record on appeal to be timely transmitted to the clerk of this court;

(D) Failure to timely file the brief and assignment of error; and

(E) Any other noncompliance with the appellate rules or rules of this court.

**LOCAL RULE 10  
FORM AND LENGTH OF BRIEFS; SUPPLEMENTAL AUTHORITY**

(A) Briefs shall be prepared in conformity with App.R. 16 and 19. The appellant's and the appellee's briefs shall not exceed thirty (30) pages, exclusive of the table of contents, table of cases, and appendices. Reply briefs shall not exceed ten (10) pages, exclusive of the appendix, if any. No brief may be filed which exceeds these limitations except by prior permission of the court obtained by motion specifying why extra pages are required. Reply briefs shall be restricted to new matters raised in the answer brief. All briefs must use 12-point font or greater.

All briefs shall be secured with a staple at the top left margin. The use of binder or spring clips is not permitted. If an appendix is too large to bind with the brief, it shall be given a separate cover page identifying it as the party's appendix to the brief and bound separately. Parties do not need to include unreported and unpublished cases, statutes, rules, regulations, ordinances, and constitutional provisions in the appendix.

Reference to the record must include reference to the volumes and page numbers of the transcript. Juveniles shall be referred to by means of the juvenile's initials, or a generic term or abbreviations such as "child"; however, this does not apply to juveniles who have been bound over to the court of common pleas and convicted of criminal charges. Victims of sexual offenses shall be referred to by the victim's initials or a generic term or abbreviations such as "Victim 1" or V1.

(B) If counsel wishes to present or call the court's attention to additional authorities not discussed in the briefs, a notice of supplemental authority shall be filed with the court and served upon opposing counsel at the earliest possible opportunity. Absent exceptional circumstances, a notice of supplemental authority shall be filed only when counsel could not, with due diligence, have been aware of the additional authority at the time the brief was filed.

**LOCAL RULE 11  
TIME FOR FILING OF BRIEFS IN AN APPEAL  
INVOLVING A CROSS-APPEAL.**

Multiple parties filing appeals from the same order or judgment entry of the trial court shall be designated as the appellants, the cross-appellants, the appellees, or the cross-appellees pursuant to the language of App.R. 3(C). The appellant's and the cross-appellant's briefs shall be filed within twenty (20) days of the transmission of the record unless otherwise extended by this court. The appellee's and the cross-appellee's briefs shall be filed within twenty (20) days of the filing of the appellant's and the cross-appellant's briefs unless otherwise extended by this court. The appellant's and the cross-appellant's reply briefs shall be filed within ten (10) days of the filing of the appellee's and the cross-appellee's briefs unless otherwise extended by this court.

## **LOCAL RULE 12 ORAL ARGUMENT**

(A) If a party wants to present oral argument, the request must be made in writing. The request for oral argument shall be in the form of the words "ORAL ARGUMENT REQUESTED" displayed prominently on the cover page of the appellant's opening brief or the appellee's brief. If either party requests oral argument on the cover page of their opening brief, all parties who filed a brief will be permitted to argue. However if one of the parties has not formally requested oral argument on the cover page of the brief and they now desire to present oral argument, they must provide notice to the court that they intend to present oral argument no later than seven (7) days prior to the oral argument date. The failure of a party to notify the court may result in a reduction of allotted time for argument. The court may require oral argument in any case.

No time for oral argument shall be allotted to counsel who have filed amicus curiae briefs. However, with leave of 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 of 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 court to participate in oral argument but such leave will be granted at the discretion of the court.

Notwithstanding any of the foregoing, the court is not required to schedule oral argument, even if requested, if any of the parties are both incarcerated and proceeding pro se. When no oral argument is scheduled, the date of the submission of the appeal for decision as well as the composition of the panel will be posted on the court of appeals' website.

(B) The court shall notify the parties or their attorneys in writing of the date, time, and location of the oral argument, as well as the composition of the oral argument panel. No continuance of oral argument will be granted unless a written motion establishing exceptional circumstances and good cause for the continuance is filed not later than seven (7) days after the date of the written notice. If a continuance is requested based on an earlier scheduled event in another court, proof of the earlier scheduled event must be attached to the motion for continuance. Additionally, the party

requesting the continuance must contact opposing counsel or the opposing party, if possible, to determine if they object to the continuance and notify the court of the objection or lack of objection in the motion for continuance.

(C) Pursuant to App.R. 21(B), oral argument will be fifteen (15) minutes per side. The time limit applies to all appeals, including cases involving cross-appeals and cases in which there are multiple appellants or multiple appellees. However, the court may, in its discretion, grant additional time for argument. Cases assigned for oral argument on the same day will be scheduled in the order of initial filing.

### **LOCAL RULE 13 PRIORITY CASES**

(A) Appeals described in App.R. 11.2 are hereby assigned to the priority calendar and shall be expedited over all other cases on the docket.

(B) The appellant is responsible for causing the timely transmission of the record in such cases and for obtaining such extensions as are necessary to discharge this responsibility. No extensions of time to transmit the record shall be granted in cases described in App.R. 11.2(B).

For those cases described in App.R. 11.2(C) and (D), motions for extension of time to transmit the record shall be granted only by the court of appeals. The court of appeals will not recognize orders from the trial court granting extensions in these cases. Motions for extensions of time to transmit the record beyond the twentieth (20th) day after the filing of the notice of appeal shall be made by written motion to the court of appeals, filed by the appellant or the appellant's counsel, and supported by an affidavit from the court reporter, setting forth facts demonstrating good cause for the extension and verifying that the requested extension is for the shortest amount of time possible. Extensions of more than fifteen (15) days shall not be granted except in extraordinary circumstances and only for the most compelling reasons in the interest of justice.

(C) Filing of the briefs shall be in accordance with App.R. 11.2. If the time for the filing of the brief is not specified in App.R. 11.2, appellant shall serve and file appellant's brief within fifteen (15) days after the date on which the record is filed. The appellee shall serve and file appellee's brief within fifteen days after service of the brief of the appellant. Reply briefs shall not be filed unless ordered by the court. Extensions of time for filing of briefs shall not be granted except in the most unusual circumstances and only for the most compelling reasons in the interest of justice.

(D) After the briefs have been filed the case shall be considered submitted for immediate decision, unless a request for oral argument has been filed with the brief. If oral argument has been requested in a case described in App.R. 11.2(C) or (D), oral argument shall be scheduled at the earliest convenience of the court, but no later than thirty (30) days after the briefs have been filed, whether in the county of origin or not. If oral argument is requested in a case described under App.R. 11.2(B), oral argument shall be scheduled in compliance with App.R. 11.2(B)(3)(c).



No continuance of oral argument shall be granted. Pursuant to App.R. 21(C), oral argument will be fifteen (15) minutes per side.

(E) Matters, other than those specified above that are designated “expedited” by statute shall be expedited pursuant to the applicable statute.

#### **LOCAL RULE 14 JOURNAL ENTRIES**

(A) **Form of Decisions.** Decisions of the court will be announced in a document entitled “Decision and Judgment Entry.” Upon receipt by the clerk of the court of appeals, the clerk shall immediately stamp and file the “Decision and Judgment Entry” at which time it will become the journal entry of judgment and the time for appeal to the Supreme Court of Ohio will begin to run.

(B) **Service of Judgment Entries and Court Notices.** In accordance with App.R. 30(A), the clerk of the court of appeals shall mail copies of judgment entries, court notices, orders, and the final decision and judgment entry to counsel of record for a party to the appeal at the last known address of counsel as listed in the court of appeals’ record. If a party is not represented by counsel, the clerk of the court of appeals shall mail copies of judgment entries, court notices, orders, and the final decision and judgment entry to the party at the last known address of the party as listed in the court of appeals’ record. The clerk of the court of appeals shall note the service, including the address of mailing and the method of service, on the docket.

#### **LOCAL RULE 15 STAYS; SUSPENSION OF EXECUTION OF SENTENCE AND ADMISSION TO BAIL**

(A) **Filing.** All motions to stay an appealed judgment, motions for bond pending appeal, and motions to suspend execution of sentence and admission to bail pending appeal shall be made in the first instance in the trial court as required by App.R. 7 and 8. No motion seeking such relief will be considered by this court unless accompanied by a copy of the entry of the trial court denying a similar motion. In addition to filing the motion with the clerk, the moving party shall serve a copy of such application upon opposing counsel or party.

(B) **Briefing.** All motions to stay shall be accompanied by a memorandum that discusses the relevant factors concerning (1) whether the stay should be granted and (2) whether the posting of a supersedeas bond should be required. If the motion to stay involves a criminal conviction, the defendant also must address the factors contained in Crim.R. 46(C), including, but not limited to the following: (1) the nature and circumstances of the crime charged; (2) the weight of the evidence against the defendant; (3) the defendant’s family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution; and (4) whether the defendant was on probation, a community control sanction, parole, post-release control, or bail. The failure to comply with this section

may result in the automatic denial of the motion.

Within seven (7) days of the date upon which the moving party serves the motion, the opposing party shall file a response addressing the same factors noted above. The failure of the responding party to file a response does not affect this court's discretion to grant or deny the motion. However, the court may deem the absence of a response as acquiescence in the motion and thus grant it, if it seems reasonable upon its face.

(C) **Exigent Circumstances.** If the moving party can demonstrate the existence of exigent circumstances, the court may, ex parte, grant a temporary stay until the opposing party can file a response and the court can render a final determination. If the moving party specifically requests a temporary stay, the motion shall be accompanied by an affidavit in which the moving party sets forth (1) the nature of the exigent circumstances and (2) any efforts that have been made to give the opposing party notice of the request. The granting of a temporary stay does not relieve the opposing party of its obligation to submit a response.

(D) **Presentence Investigation Report.** The filing of a motion to suspend execution of sentence and admission to bail pending appeal shall be considered a waiver of any privilege of confidentiality that the defendant might have otherwise had to prevent this court from reviewing a presentence investigation report or a psychiatric or mental evaluation that the trial court considered, or which was available for consideration.

## **LOCAL RULE 16 ORIGINAL ACTIONS**

(A) **How Instituted.** An original action, other than habeas corpus, shall be instituted by the filing of a complaint, together with four copies thereof, and service shall be made, and such action shall proceed, as in any civil action under the Ohio Rules of Civil Procedure. The court will sua sponte dismiss any complaint found to be frivolous, malicious, or abusive.

(B) **Alternative Writs.** In the absence of extraordinary circumstances, no alternative writ will be issued in an original action, other than a habeas corpus action.

(C) **Affidavit of Indigency.** A relator claiming to be indigent shall file with the complaint a motion for leave to proceed in forma pauperis supported by an affidavit showing indigency and indicating the party's actual financial condition and the disposition of any request for similar leave sought with any other court. The motion shall comply with App.R. 15(A). A respondent may oppose the granting of a motion to proceed in forma pauperis in the manner set forth in App.R. 15(A).

(D) **Answer.** The respondent shall file an answer to the complaint or a motion to dismiss within twenty (20) days of service of the summons and complaint. The respondent may file a motion for judgment on the pleadings at the same time an answer

is filed.

(E) **Motion to Dismiss.** When a motion to dismiss is filed, five (5) copies of a brief in support of such motion must be filed with such motion, and the movant shall indicate whether ruling on the motion will dispose of the merits. Five (5) copies of a brief in opposition to a motion to dismiss shall be filed within fifteen (15) days of the filing of such motion with an indication whether a ruling on the motion may be deemed a disposition of the merits. All motions will be ruled upon without oral argument before the court, except where the court requests such argument.

(F) **Evidence in Original Actions.** Unless the court orders otherwise, evidence shall be submitted within twenty (20) days after the respondent files the answer, except that if the respondent files a motion to dismiss the complaint under Civ.R. 12(B), evidence shall be filed within twenty (20) days after the court denies the motion.

Unless consent of the court is otherwise obtained, the evidence in all original actions, except actions in habeas corpus, shall be submitted to the court by means of an agreed statement of facts, stipulations, depositions, interrogatories, requests for production of documents, requests for admissions, affidavits, or certified copies of official records. Oral testimony will not be heard unless ordered by the court. If oral testimony is ordered by the court it will be referred to and heard before a magistrate. The evidence in actions in habeas corpus shall be submitted with the petition, where practicable, and with the return of the writ, when a return is ordered by the court, and may be submitted with any response to the return authorized by the court. Court stenographers will not attend the trial of the action unless arranged for and employed by one or more of the parties and appointed by the court, or unless, because of exceptional circumstance, otherwise ordered by the court.

Except in habeas corpus actions, at the time the parties submit their evidence, they must indicate by a separate filing whether they intend to rest on that evidence.

(G) **Reference to Magistrate.** Original actions in this court may, upon the court's own motion, be referred by the court to a magistrate, pursuant to Civ.R. 53. Unless otherwise indicated in the order of reference to a magistrate, the magistrate shall have all the powers specified in Civ.R. 53, and the proceedings and report of the magistrate and objections thereto shall be governed by Civ.R. 53.

When a party so requests and guarantees the costs in a manner prescribed by the court which may include advance deposit of costs, and the court so orders, the magistrate shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations upon a court sitting without a jury. If a party desires a transcript of proceedings before the magistrate to be utilized in objecting to the magistrate's report or for any other purpose, they shall obtain the transcript from the reporter and pay for the same. The magistrate shall not order a transcript of proceedings prepared without prior authorization of this court.

Alternatively, in order to expedite court consideration of the action, if a

reference to a magistrate is made and if a party or parties agree to hire and pay for recordation and transcription by a court reporter of the presentation of evidence, the order of reference will be limited to receiving and reporting evidence, including rulings upon objections, for immediate presentation to the court of the transcript of evidence presented when transcribed.

(H) **Time for Briefs.** The relator shall serve and file his trial brief within fifteen (15) days after completion of the submission or presentation of the evidence; the respondent shall serve and file his brief within fifteen (15) days after service of the brief of the relator; and any reply brief shall be served and filed within five (5) days after service of the brief of the respondent.

(I) **Briefs.** Briefs shall conform to App.R. 19 and the length of the briefs shall conform to Loc.R. 10. The brief of the relator shall contain, under appropriate headings, and in the order here indicated:

1. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to pages of the brief where they are cited;
2. A statement of the issues presented;
3. A statement of the case. The statement shall first indicate briefly the nature of the case. There shall follow a statement of the facts relevant to the issues presented;
4. An argument. The argument shall contain the contentions of the relator with respect to the issues presented, and the reasons therefore, with citations to the authorities and statutes relied on; and
5. A short conclusion, stating the precise relief sought.

The brief of the respondent shall conform to the foregoing requirements except that a statement of the issues and a statement of the case, or of the facts relevant to the issues, need not be made unless the respondent is dissatisfied with such statements of the relator.

(J) **Service of Brief.** Service of a copy of any brief shall be made upon opposing counsel forthwith, and proof of service shall be filed with the clerk.

(K) **Oral Argument.** In any original action in this court, oral argument may be had only on approval of a request therefore, provided that the court may, if it so desires, require such oral argument in any case. Any request for oral argument must be made in writing, by either party, at the time of the filing of the trial brief.

(L) Actions in habeas corpus shall proceed in conformity with this rule, except to the extent that specific procedures are prescribed in R.C. Chapter 2725.

(M) **Dismissal for Failure to Prosecute.** Failure to comply with the time limits provided in this rule or by order of this court may result in the dismissal of the action or other appropriate sanction. An action not subject to a separate scheduling order may be dismissed without notice if no evidence has been presented or the petitioner has not filed a brief within 120 days after the filing of the complaint. The court will not dismiss an action for failure to prosecute while a dispositive motion is pending.

### **LOCAL RULE 17 DOCKET STATEMENT**

(A) Upon every appeal filed in the court of appeals, the appellant shall complete a docket statement (criminal - Form II; civil - Form III) and file the completed docket statement with the notice of appeal.

(B) Upon receipt of the docket statement, the court shall review the statement and may, if necessary, schedule a prehearing conference with counsel of record. The prehearing conference may include a discussion of: (1) the finality of the order being appealed; (2) the type of record to be filed; (3) the probable time required to complete preparation of the record on appeal; (4) the assignments of error and issues to be raised; (5) any prior court decisions on similar issues; (6) the time needed for briefing and oral argument; (7) the identity and address of all counsel involved; and (8) other matters of particular relevance to the action.

(C) Failure to file a docket statement may result in dismissal of the appeal, or may result in assessing against the appellant such court costs as may be attributable to failure to file the docket statement.

**LOCAL RULE 18  
PRESIDING AND ADMINISTRATIVE JUDGES**

Pursuant to R.C. 2501.06 and Sup.R. 3 and 4, the court shall appoint a presiding judge and an administrative judge, with such designation being by a journal entry signed by a majority of the judges of this court and filed with the clerk of the court of appeals of each county in this district. The presiding judge shall preside over all court sessions and meetings of the court. In the absence of the presiding judge, the administrative judge shall perform the duties of the presiding judge. The administrative judge shall also be responsible for the supervision of the administration, docket, and calendar of the court. The administrative judge shall rule upon all requests for extensions of time and other motions and matters which may be handled by a single judge. Other motions shall be referred to a three-judge panel with the court's ruling being signed by the administrative judge. Such designations and duties shall continue until further order of the court.

**LOCAL RULE 19  
COURT SECURITY**

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

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

Therefore, pursuant to the Ohio Rules of Superintendence, the court has implemented a local security policy and procedure plan which addresses the Ohio Court Security Standards adopted by the Supreme Court of Ohio on October 17, 1994.

**LOCAL RULE 20  
NOTIFICATION OF PROPOSED CHANGES TO THE LOCAL  
RULES OF COURT**

This court shall send to the clerk of the court of appeals for each county in the district a copy of the proposed changes to the local rules of court. The respective clerks of court shall post the proposed changes in a conspicuous public place in the clerk's office, make copies available for distribution to members of the bar and provide copies to each trial judge in the county for which the clerk serves. The court may adopt a new rule or amend or modify an existing rule if, in the opinion of the court, exigent circumstances so require but shall promptly afford notice and opportunity for comment thereafter in the manner provided above.

**LOCAL RULE 21  
EFFECTIVE DATE AND APPLICABILITY**

The amended rules shall take effect February 1, 2021. They shall govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that, in the opinion of the court, their application in a particular action pending when these rules take effect would not be feasible or would work an injustice.

Adopted this February 1, 2021, pursuant to App.R. 41 and Section 5 (B), Article IV, Ohio Constitution, and filed with the clerks of the fourteen counties of this district, and a copy hereof to be filed with the Supreme Court of Ohio.

**LOCAL RULE 22  
MEDIATION**

(A) **Uniform Mediation Act and Definitions.** The “Uniform Mediation Act” (UMA), codified in R.C. Chapter 2710, as well as all definitions found in R.C. 2710.01, are incorporated by reference and adopted by this court through this local rule.

(B) **Cases Eligible for Mediation; Exceptions; Scheduling.**

(1) **General.** The court’s mediator will review the notice of appeal, the trial court’s judgment, and the docket statement in all civil and administrative appeals to determine whether mediation is appropriate. A case may be submitted to mediation upon referral by the mediator, upon the motion of counsel, or the court may issue an order on its own motion. Additionally, any party may telephone the court to request mediation. Any request for mediation will be confidential if the requesting party desires.

(2) **Exceptions.** Mediation is prohibited as follows:

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

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

(4) **Scheduling.** Once a case is selected or referred for mediation, the court will notify the attorneys, or the litigants if unrepresented, of the name of the mediator and the date, time and location of the mediation.

(C) **Purpose and Procedure.** The person conducting the mediation will be

the court's mediator. The attorneys primarily responsible for the case, as well as their clients, are required to attend the mediation in person, or with the approval of the mediator, by telephone. The goals of the mediation are: (1) to explore settlement possibilities, (2) to simplify the issues in the appeal if settlement is not achieved, and (3) to consider any procedural problems that exist, may arise, or be anticipated in connection with the appeal.

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

**(D) Stay of Proceedings; Extensions of Time to Transmit Record and File Briefs.** Upon referral of a case to mediation, the court may elect to stay all filings for up to sixty (60) days. The clerk of courts shall not accept for filing any documents while a case is in mediation unless expressly permitted by these rules or by court order. Only the following documents may be filed while a mediation stay is in effect:

- (1) Motion to lift the mediation stay;
- (2) Response to a motion to lift the mediation stay;
- (3) Joint motion to dismiss the appeal;
- (4) Notice related to counsel.

If a stay of proceedings is not issued by the court and if a mediation is to occur after the date for transmitting the record under App.R. 10, or after the date the appellant's or the appellee's brief is due under App.R. 18, any party may telephone the mediator and request an order extending the time, until after the mediation, in which to transmit the record or file a brief. Thereafter, if the mediator determines that the parties are negotiating in good faith, additional extensions of time will be recommended on a party's oral request.

**(E) Confidentiality.**

(1) **General.** All mediation communications related to or made during the mediation process are subject to and governed by the Uniform Mediation Act. Mediation communications are confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to disclosure. This court may impose penalties for any improper disclosures made in violation of this rule. Disputes regarding confidentiality should first be addressed with the mediator where possible.

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

(2) **Exceptions.** All mediation communications are confidential with the following exceptions:

- (a) Parties may share all mediation communications with their



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

(F) **Referral to Resources.** The court administrator shall maintain resources for mediation parties, including victims and suspected victims of domestic violence, encouraging appropriate referrals to legal counsel and other support services such as Children Services, domestic violence prevention, counseling, substance abuse, and mental health services.

(G) **Noncompliance Sanctions.** If a party or attorney fails to comply with the provisions of this rule or the provisions of the mediation notice, the court may assess reasonable expenses caused by the failure, including attorney fees. The court may also assess all or a portion of the appellate costs or dismiss the appeal. Such sanctions may be imposed by the court sua sponte or at a party's request.

(H) **Evaluation, Comments, and Complaints.** It is the policy of the court to use mediation to benefit the parties, to assist in reaching a resolution, and to provide a process that is timely and flexible that maintains the trust and confidence of the people. Any mediation participant may submit written comments, complaints or feedback regarding the performance of the mediator provided by the court.

### **LOCAL RULE 23 COUNSEL; ADMISSION PRO HAC VICE**

(A) **Appearance of Counsel.** An attorney representing a party on appeal, but who was not listed on the docketing statement, must file a notice of appearance with the court of appeals.

(B) **Appointment of Counsel.** Except in appeals pursuant to App.R. 5(A), a request for appointment of counsel shall be filed in the first instance with the trial court. A party that files a motion to appoint counsel with the court of appeals must attach proof showing that the trial court denied a similar request along with a Financial Disclosure/Affidavit of Indigency.

The court shall maintain a list of pre-qualified attorneys who have notified the court of their interest in serving as appointed counsel. Counsel shall be selected in a continual rotation from a list maintained by the court, except that the court may consider the experience, expertise, and location of counsel and counsel's management of his or her current appellate caseload.

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

(C) **Withdrawal of Counsel.** Counsel who has entered an appearance with this court, whether appointed or retained, may not withdraw representation without leave of court. Counsel seeking to withdraw shall file a motion showing good cause for the request. In addition, counsel shall submit proof of service of the motion upon the client and the name and address of any substitute counsel, or if none, the name and address of the client.

(D) **Attorney Fees.** When seeking payment for work provided in an appeal, counsel shall file the motion with the court of appeals, not the trial court, no matter which court made the appointment. Motions for approval of appointed counsel fees and expenses must be submitted on the form prescribed by the Office of the Ohio Public Defender, which is available on its website, to the court's administrative office. Counsel shall attach a copy of the entry appointing counsel and a copy of the Financial Disclosure/Affidavit of Indigency to the completed form. Incomplete applications, applications submitted without the necessary attachments, or applications submitted on the wrong forms will be returned to counsel. The rate of compensation for work performed by appointed counsel is set by the individual counties. If the fee exceeds the maximum allowed by the county from which the appeal was taken, counsel must submit a separate motion for extraordinary fees justifying the request. All motions for appointed counsel fees and expenses shall be filed no earlier than the date this court enters final judgment and no later than thirty (30) days thereafter. Any motions received after thirty (30) days of the final judgment will not be approved except with prior leave of court for good cause shown. The Office of the Ohio Public Defender does not reimburse counties for fees paid pursuant to an untimely or improper application. Accordingly, the failure to timely file a proper application may result in the reduction or nonpayment of fees.

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

Admission pro hac vice will be allowed only on motion of an attorney who has complied with the requirements of Gov. Bar R. XII. The motion shall briefly and succinctly state the qualifications of the attorney seeking admission and include a copy of the certificate of registration furnished by the Supreme Court of Attorney Services as required by Gov. Bar. XII(2)(A)(6). It shall be filed with the first pleading or brief in which the attorney seeks to participate or at least thirty (30) days before oral argument if the attorney seeks only to participate in oral argument. This court may withdraw admission pro hac vice at any time.

#### **LOCAL RULE 24 RECORDS RETENTION**

Pursuant to Sup.R. 26(G), this court adopts as its records retention schedule Sup.R. 26, 26.01 and 26.02. In no event shall any record of this court be retained for a

period less than the time established in Sup.R. 26, 26.01 and 26.02.

**LOCAL RULE 25  
BROADCASTING, TELEVISION, RECORDING,  
AND PHOTOGRAPHING COURT PROCEEDINGS**

Any media representative or member of the public that wishes to broadcast, televise, record, or photograph a proceeding in this court must submit a written request to the court administrator at least twenty-four (24) hours prior to the scheduled time. If a majority of the judges determines that granting such a request will not distract the participants or interfere with the proceedings, the court will grant the request subject to any conditions the court deems necessary. If the court receives a request less than twenty-four (24) hours prior to the time a proceeding is scheduled to start, the court will consider the request if good cause is shown justifying the late filing. In those situations where someone makes a request less than twenty-four (24) hours prior to the scheduled time, the person may submit the request directly to the presiding or administrative judge of the court.

The court will direct the placement of the equipment and operators, and the court may limit the number of cameras, recording devices, and other equipment in the courtroom. Those seeking to broadcast, televise, record, or photograph a proceeding are encouraged to arrange for pooling equipment themselves without imposing on the court or court personnel. If a dispute does occur over the pooling of equipment, the court may exclude all contesting representatives from the proceedings.

The use of equipment that produces distracting sound or light is prohibited. If someone who has requested permission under this rule fails to comply with the conditions set by the court, the court may revoke that permission.

**LOCAL RULE 26  
MAGISTRATES**

Pursuant to App.R. 34 and Civ.R. 53, the court may appoint a magistrate to whom, by general or specific order of reference, are referred categories of motions and other matters filed by a party or by the court on its own motion in an appeal or an original action, to enter orders thereon as necessary to regulate proceedings.

**LOCAL RULE 27  
FRIVOLOUS ACTIONS; VEXATIOUS LITIGATORS; SANCTIONS**

(A) If the Fourth District Court of Appeals, sua sponte or on motion by a party, determines that an appeal, original action, or motion is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose on the person who signed the appeal, original action, or motion, 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 Fourth District Court of Appeals considers just. An appeal, original action, or motion shall be considered frivolous if it is not reasonably well-grounded in fact, or warranted by existing law, or by 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 division (A) of this rule, the Fourth District Court of Appeals may, sua sponte or on motion by a party, find the party to be a vexatious litigator. If the Fourth District Court of Appeals 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 Fourth District Court of Appeals without first obtaining leave, prohibiting the filing of actions in the Fourth District Court of Appeals without the filing fee or security for costs required by Local Rule 3(A), or any other restriction the Fourth District Court of Appeals considers just.

(C) Any party that has been declared a vexatious litigator under R.C. 2323.52 or Local Rule 27 must seek leave of court to proceed with any appeal or original action that is filed in the Fourth District Court of Appeals. The failure to comply with R.C. 2323.52(F)(2) shall result in the dismissal of any appeal or original action as filed by a party that has been declared a vexatious litigator.

**APPENDIX OF FORMS**

**FORM I**

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, OHIO

Name, : Case No.

Plaintiff-Appellee, :

v. : **NOTICE OF APPEAL**

Name, :

Defendant-Appellant. :

Now comes the Appellant, Name, through counsel, and gives notice that he is appealing to the Fourth District Court of Appeals, \_\_\_\_\_ County, Ohio, from the final judgment entered in this action on \_\_\_\_{Date}\_\_\_\_.

The attorney signing this notice certifies that the judgment appealed is final and appealable as defined in R.C. 2505.02 and Civ.R. 54(B).

\_\_\_\_\_  
Attorney for Defendant, C.D.  
Supreme Court Registration Number  
Address  
Telephone Number  
Email Address

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, certify that this notice of appeal was sent by ordinary United States mail to \_\_\_\_\_, Counsel for Appellee, at \_\_\_\_{Address}\_\_\_\_, on \_\_\_\_{Date}\_\_\_\_.

\_\_\_\_\_  
Attorney

**FORM II**

**CRIMINAL DOCKET STATEMENT**

1. Counsel for the appellant, or the appellant if pro se, **must** complete, serve, and file this docket statement at the time of filing the notice of appeal.
2. A copy of the judgment entry or order which is being appealed **must** be attached to the notice of appeal.
3. A copy of the order for the transcript of proceedings **must** be filed with the clerk and served on the court reporter at the time of filing the notice of appeal.
4. If less than the entire transcript of proceedings is to be included in the record, appellant **must**, at the time of filing the notice of appeal, file a statement of the assignments of error appellant intends to present on appeal.

Court of Appeals Case No.: \_\_\_\_\_ County: \_\_\_\_\_

Case Caption: \_\_\_\_\_

Counsel for appellant or appellant pro se:

Name: \_\_\_\_\_ Address and Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Counsel for appellee or appellee pro se:

Name: \_\_\_\_\_ Address and Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Trial Judge: \_\_\_\_\_ Trial Court Case No.: \_\_\_\_\_

Date notice of appeal filed: \_\_\_\_\_

Date that judgment or order appealed from was filed: \_\_\_\_\_

Related Appeals Nos.: \_\_\_\_\_

Was counsel appointed for trial? Yes \_\_\_ No \_\_\_

Is substitute counsel requested for appeal? Yes \_\_\_ No \_\_\_

Did the trial court stay execution of sentence? Yes \_\_\_ No \_\_\_

Is a stay of execution by the Court of Appeals requested? Yes \_\_\_ No \_\_\_

Nature of the case (check appropriate box and provide requested information):

Trial: Jury trial: \_\_\_\_\_ Bench trial: \_\_\_\_\_

Plea: Guilty plea: \_\_\_\_\_ No contest: \_\_\_\_\_

Misdemeanor: Charge \_\_\_\_\_ Sentence: \_\_\_\_\_

Felony: Charge: \_\_\_\_\_ Sentence: \_\_\_\_\_

Probation Revocation: Prior Charge: \_\_\_\_\_  
Sentence: \_\_\_\_\_

Appeal by State: of right \_\_\_ by leave of court \_\_\_

Postconviction Relief (R.C. 2953.21): \_\_\_\_\_

Did the trial court hold a hearing on the petition?: Yes \_\_\_ No \_\_\_

App.R. 5(A) motion for leave to file a delayed appeal: \_\_\_\_\_

Record (indicate type of record to be filed): \_\_\_\_\_

There will be a full \_\_\_ partial \_\_\_ transcript of the proceedings filed. If partial, designate parts: \_\_\_\_\_

There will be an App.R. 9(C) statement: \_\_\_\_\_

There will be an App.R. 9(D) agreed statement: \_\_\_\_\_

No transcript, statement, or agreed statement to be filed: \_\_\_\_\_

**TRANSCRIPT INFORMATION [App.R. 9(B)]**

\_\_\_ I have ordered a complete transcript of proceedings from the court reporter.

\_\_\_ I have ordered a partial transcript of proceedings from the court reporter.

\_\_\_ A statement of the evidence pursuant to App.R. (C) or (D) is to be prepared in lieu of a transcript of proceedings.

\_\_\_ No transcript of proceedings or statement of the evidence pursuant to either App.R. 9(C) or (D) is necessary and I have notified the court reporter of that fact in writing pursuant to App.R. 9(B).

\_\_\_ The transcript of proceedings has been completed and already made part of the record.

Name: \_\_\_\_\_

Attorney for: \_\_\_\_\_

**FORM III**

**CIVIL DOCKET STATEMENT**

1. Counsel for the appellant, or the appellant if pro se, **must** complete, serve, and file this docket statement at the time of filing the notice of appeal.
2. A copy of the judgment entry or order which is being appealed **must** be attached to the notice of appeal.
3. A copy of the order for the transcript of proceedings **must** be filed with the clerk and served on the court reporter at the time of filing the notice of appeal.
4. If less than the entire transcript of proceedings is to be included in the record, appellant **must**, at the time of filing the notice of appeal, file a statement of the assignments of error appellant intends to present on appeal.

Court of Appeals Case No.: \_\_\_\_\_ County: \_\_\_\_\_

Case Caption: \_\_\_\_\_

Counsel for appellant or appellant pro se:

Name: \_\_\_\_\_ Address and Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Counsel for appellee or appellee pro se:

Name: \_\_\_\_\_ Address and Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Trial Judge: \_\_\_\_\_ Trial Court Case No.: \_\_\_\_\_

Date notice of appeal filed: \_\_\_\_\_

Date that judgment or order appealed from was filed: \_\_\_\_\_

Related Appeals Nos.: \_\_\_\_\_

Does this case involve multiple parties? Yes \_\_\_ No \_\_\_

Does this case involve multiple claims? Yes \_\_\_ No \_\_\_

Does Civ.R. 54(B) apply? Yes \_\_\_ No \_\_\_

Is there a "no just reason for delay" certification? Yes \_\_\_ No \_\_\_

Record (indicate type of record to be filed): \_\_\_\_\_



There will be a full \_\_\_ partial \_\_\_ transcript of the proceedings filed. If partial, designate parts: \_\_\_\_\_

There will be an App.R. 9(C) statement: \_\_\_\_\_

There will be an App.R. 9(D) agreed statement: \_\_\_\_\_

No transcript, statement, or agreed statement to be filed: \_\_\_\_\_

Has a notice of appeal been previously filed in this court concerning this case?

Yes \_\_\_ No \_\_\_

If yes, what was the previous appellate case number? \_\_\_\_\_

Nature of the case (for example, personal injury; administrative appeal; will contest; domestic relations; etc.): \_\_\_\_\_

Is appellate counsel different from trial counsel? Yes \_\_\_ No \_\_\_

Does this case turn upon an interpretation or application of a particular case(s) or statute(s)? Yes \_\_\_ No \_\_\_ If yes, please list the cases or statutes: \_\_\_\_\_

How would you characterize the extent of your settlement discussions prior to judgment in the trial court? None \_\_\_ Minimal \_\_\_ Modest \_\_\_ Extensive \_\_\_

Have post-judgment settlement discussions occurred? Yes \_\_\_ No \_\_\_

Would a preliminary mediation conference be of any assistance in resolving this matter? (Note – the primary purpose of the mediation conference is to encourage the parties to explore any possibilities for the settlement of this case before incurring additional expenses, or, if settlement is not possible, to limit the issues on appeal.)

Yes \_\_\_ No \_\_\_ Please explain: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

#### **TRANSCRIPT INFORMATION [App.R. 9(B)]**

\_\_\_ I have ordered a complete transcript of proceedings from the court reporter.

\_\_\_ I have ordered a partial transcript of proceedings from the court reporter.

\_\_\_ A statement of the evidence pursuant to App.R. (C) or (D) is to be prepared in lieu of a transcript of proceedings.

\_\_\_ No transcript of proceedings or statement of the evidence pursuant to either App.R. 9(C) or (D) is necessary and I have notified the court reporter of that fact in writing pursuant to App.R. 9(B).

\_\_\_ The transcript of proceedings has been completed and already made part of the record.

Name: \_\_\_\_\_

Attorney for: \_\_\_\_\_