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TITLE I
APPLICABILITY OF RULES

RULE 1. APPLICABLE RULES

(A) **Appeals.** The Ohio Rules of Appellate Procedure, as supplemented herein, shall govern procedure in appeals to this Court.

(B) **Original Actions.** The Ohio Rules of Civil Procedure, as supplemented herein, shall govern procedure in original actions filed in this Court.

RULE 2. [Reserved]

TITLE II
APPEALS FROM JUDGMENTS AND ORDERS
OF COURTS OF RECORD

**RULE 3. FILING OF DOCUMENTS; COSTS;
MULTIPLE APPEALS; COUNSEL; NOTICE OF APPEAL**

(A) **Filing Documents.** The Clerks of the Courts of Common Pleas of the counties of Ashtabula, Geauga, Lake, Portage, and Trumbull serve as the Clerk of this Court of Appeals in their respective counties. All documents required to be filed in this Court shall be filed with the Clerk of the Court of Appeals of the county in which the appeal or original action originated. Documents submitted directly to this Court at its headquarters in Warren will not be considered filed, either when mailed or when received.

(B) **Costs Deposits; Costs; Multiple Appeals.**

(1) **Costs Deposits.** The deposit as security for the payment of costs due on the filing of any appeal is hereby set at the sum of \$100, plus such other fees as the Clerk of Courts is authorized by law to collect. No petition in an original action (mandamus, prohibition, procedendo, quo warranto, and habeas corpus) will be accepted for filing in the Court unless the party bringing the action first deposits with the Clerk of Courts the sum of \$100, plus such other fees as the Clerk of Courts is authorized by law to collect, as security for the payment of the costs. Subpoenas will not be issued in an original action unless a security deposit in the amount of \$20 per witness is deposited with the Clerk.

If the party bringing the appeal or original action, or the party seeking the attendance of witnesses, files with the Clerk a sworn affidavit of inability to secure

costs by prepayment, the Clerk shall receive and file the appeal or the complaint or subpoena of witnesses without security deposits. The Court reserves the right to require further verification of the party's indigent status.

(2) Costs. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court; if a judgment is affirmed, costs shall be taxed against appellant, unless otherwise ordered; if a judgment is reversed costs shall be taxed against the appellee, unless otherwise ordered; if a judgment is reversed in part and affirmed in part, costs shall be equally divided between the appellant's side and the appellee's side, unless otherwise ordered by the Court.

(3) Multiple Appeals.

(a) Notice of Appeal. A separate Notice of Appeal shall be filed in the trial court for each case appealed whether or not the case was consolidated in the trial court for hearing with one or more other cases.

(b) Consolidation of Appeals for Hearing. In the event that two or more cases were heard together in the trial court but not consolidated therein as one case and such cases have been appealed to this Court, on application to and with leave of this Court, a single transcript of proceedings and a single set of briefs may be filed and used in all cases appealed, provided that the assignments of error and arguments pertaining thereto are sufficiently defined as to which case, or cases, they pertain.

(c) Costs. Separate Notices of Appeal filed for separate judgment entries that are subdivisions of the same trial court case number require only a single cost deposit pursuant to Loc.R. 3(B)(1) of the Eleventh District Court of Appeals.

(C) Counsel.

(1) Designation of Counsel. Every Notice of Appeal, pleading, motion and brief shall have typed or printed thereon the name, address, telephone number, fax number, e-mail address, if available, and registration number of counsel filing the appeal (or the party, if not represented by counsel); when counsel is a firm, whether partnership or corporate, a particular attorney within the firm having primary responsibility for the case shall also be indicated.

Counsel or the party shall alert the Court to any change in address or telephone number by adding the phrase "New Address" or "New Telephone Number" to indicate the change. This shall be done under the first designation of counsel.

In an appeal when there are multiple parties in the underlying action in the trial court, and when the appeal is taken as to less than all of those parties in the underlying

action, counsel for appellant shall designate in the Notice of Appeal which of those parties are to be served as appellees.

When the appeal is taken as to all adverse parties in the underlying action, appellant shall include the names and addresses of all such parties or their counsel to be served with a copy of the Notice of Appeal pursuant to Ohio Civ.R. 5.

Pursuant to Ohio Civ.R. 5 and Ohio App.R. 3(E), service shall be made by the Clerk of Courts on all parties or their counsel.

(2) Appointment of Counsel for Indigent Parties. A copy of the Financial Disclosure/Affidavit of Indigency of the client shall be attached to all motions for appointment of counsel and for transcripts of proceedings at state's expense.

(3) Withdrawal of Counsel.

(a) If counsel desires to withdraw from any action before this Court, counsel shall submit a motion to withdraw showing: (1) good cause; (2) proof of service of the motion upon the client and opposing counsel; and (3) the name, address, and telephone number of substitute counsel or, if none, that of the client.

(b) If court-appointed counsel desires to withdraw from any action before this Court, counsel shall submit a motion to withdraw and shall attach to the motion an affidavit executed by either counsel or the client citing the *specific reason(s)* for the withdrawal.

(4) Applications for Attorney Fees. Applications for attorney fees on appeal in cases in which counsel has been appointed shall be completed on the form prescribed by the Ohio Public Defender Commission. Such applications shall have appended a copy of the Financial Disclosure/Affidavit of Indigency of the client and a copy of the entry of appointment of counsel. Such applications shall be filed with the Clerk of Courts no earlier than the date this Court's decision has been journalized nor later than thirty (30) days thereafter.

(5) Admission Pro Hac Vice.

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

(b) Admission pro hac vice will be allowed on motion by an attorney admitted to practice in Ohio and registered with the Clerk of Courts for active status or by the

attorney seeking admission. The motion shall briefly state the qualifications of the attorney seeking admission. The motion shall be filed immediately proceeding the filing of a Notice of Appeal. The Court may withdraw admission pro hac vice at any stage of the proceedings.

(D) Notice of Appeal.

(1) Transcript Information. At the time of filing the Notice of Appeal, the appellant shall designate on the Notice of Appeal whether a complete or a partial transcript of the trial proceedings has been ordered, or whether appellant intends to file a statement pursuant to Ohio App.R. 9(C) or (D) in lieu of a transcript, or whether no transcript or statement pursuant to either Ohio App.R. 9(C) or (D) will be filed.

(2) Ohio Civ.R. 58(B) Compliance. In the filing of a Notice of Appeal in civil cases in which the trial court clerk has not complied with Ohio Civ.R. 58(B) *and the Notice of Appeal is deemed to be filed out of rule*, appellant shall attach an affidavit from the trial court clerk stating that service was not perfected pursuant to Ohio App.R. 4(A). The clerk shall then perfect service and furnish this Court with a copy of the appearance docket in which date of service has been noted. Lack of compliance shall result in the **sua sponte** dismissal of the appeal under Ohio App.R. 4(A).

(3) Judgment Entries Being Appealed. The appellant shall attach to the Notice of Appeal, a copy of the judgment entry or entries being appealed. Appellant's failure to attach a copy of the judgment entry or entries may result in the dismissal of the appeal **sua sponte** and without notice.

(4) Amending the Notice of Appeal. A motion for leave to file an Amended Notice of Appeal shall accompany any Amended Notice of Appeal filed pursuant to Ohio App.R. 3(F).

A sample Notice of Appeal form containing the above required information in accordance with this rule is set forth in Appendix A.

(E) Judgment Entries.

The Court of Appeals may transmit by fax, e-mail, or other electronic format to the Court of Appeals clerk any decision, judgment entry, or order which will be accepted as the original and the signatures of the judges shall be accepted as originals consistent with Ohio Civ.R. 5(E).

RULE 4. [Reserved]

RULE 5. [Reserved]

RULE 6. [Reserved]

**RULE 7. MOTIONS TO STAY THE EXECUTION
OF APPEALED JUDGMENTS**

(A) Filing.

(1) Any application or request to stay the execution of an appealed judgment shall be made in the form of a motion to this Court. In addition to filing such motion with the Clerk of Courts, the moving party shall immediately serve the motion upon the opposing counsel or party in accordance with Ohio Civ.R. 5. The response of the opposing side shall be due within seven (7) days from the filing of the motion to stay. This Court, within its discretion, can either extend or shorten the period for the filing of the response.

(2) If the moving party can demonstrate the existence of exigent circumstances, the Court may *ex parte* grant a temporary stay until the opposing side can file a response and a final determination can be rendered on the motion. If the moving party specifically requests in the stay motion that a temporary stay be granted before the opposing counsel or party can respond, the stay motion shall be accompanied by an affidavit in which the moving party or counsel explains: (1) the nature of the exigent circumstances; and (2) the efforts which have been made to give the opposing counsel or party notice of the request.

(B) Duties of the Clerk.

(1) **Transmission of Motion.** Immediately upon the filing of the motion, the clerk shall transmit the motion to the Deputy Administrator of the Court of Appeals by fax, e-mail, or other electronic format.

(2) Transmission of Order or Judgment Entry.

(a) The Court of Appeals shall transmit any order or judgment entry to the clerk by fax, e-mail, or other electronic format which shall constitute an original and upon receipt, the clerk shall immediately docket and journalize the entry pursuant to Loc.App.R. 3(E).

(b) Notice of Order or Judgment.

(1) Immediately upon the entry of judgment or order, the clerk shall comply with Ohio App.R. 30(A), and the clerk shall transmit a time-stamped copy of the order by fax, e-mail, or other electronic format to the parties or their counsel of record, the Deputy Administrator of the Court of Appeals, and any other persons or entities affected by the order, including, but not limited to, a county sheriff.

(C) Contents of Motion. Any motion to stay, whether in regard to a civil or criminal judgment, shall be accompanied by a memorandum which discusses the relevant factors concerning: (1) whether the stay should be granted; and (2) whether the posting of a supersedeas bond should be required. In addition, any motion to stay shall be accompanied by a copy of the trial court's judgment in which it overruled or denied a request to stay the appealed judgment. The failure of the moving party to satisfy the foregoing requirements may result in the sua sponte denial of the motion to stay.

(D) Response to the Motion. The response of the opposing party to the motion to stay shall consist of a memorandum which discusses the relevant factors pertaining to the two issues cited in subsection (B) of this rule. Even if the moving party fails to discuss both issues in the memorandum accompanying the motion, the opposing party still has an obligation to discuss both issues. The granting of a temporary stay by this Court does not relieve the opposing party of its obligation to submit a response to the motion, since a final decision on the motion still must be made.

(E) Motion to Stay in Criminal Appeals.

(1) If the motion to stay pertains to a criminal conviction, the moving party's memorandum in support shall also contain the following: (1) a statement of the specific offenses of which the appellant was found guilty; (2) a general statement of the facts upon which the conviction was based; (3) a statement of all criminal charges which are presently pending against the appellant in other actions; (4) a statement of the appellant's prior convictions; (5) a statement of appellant's ties to the local community, including any family ties and any employment; and (6) a statement of the bail, if any, the appellant was required to post while the case was pending before the trial court. To the extent that the moving party fails to address any of the foregoing, or if the opposing party contests the truthfulness of the information provided by the moving party, the opposing party should also address the foregoing in its memorandum .

(2) If the motion to stay pertains to a criminal conviction, the filing of the motion shall be deemed to act as a waiver of any privilege as to the confidentiality of

any materials contained in any presentence investigation report filed with the trial court. If this Court determines that a review of the presentence investigation report would be helpful in ruling upon a motion to stay, a request shall be made to the trial court to transfer custody of the report to this Court for that limited purpose. While the presentence investigation report is in the custody of this Court, the privilege of confidentiality shall be observed at all times.

RULE 8. [Reserved]

RULE 9. THE RECORD ON APPEAL

Form of Transcript of Proceedings. Any transcript of proceedings submitted to this Court as part of the record on appeal pursuant to Ohio App.R. 9 shall be in the form set forth in Ohio App.R. 9(B)(1) through (8). Failure to comply may result in the transcript being stricken from the record on appeal. The transcript of proceedings shall be filed in hard copy and also in an electronic format, *i.e.*, a disk or compact disk, where available. The electronic format will be in a format compatible with Microsoft Word and contain an electronic index with an attached disk or other electronic format.

RULE 10. EXTENSIONS FOR TRANSMITTING THE RECORD

(A) By the Trial Court. With the exception of Ohio App.R. 11.2 appeals, the trial court shall limit its extension of time for transmitting the record on appeal to the Clerk for the Court of Appeals pursuant to Ohio App.R. 10 to a total extension of time of no more than thirty (30) days so that the time as extended will in no event extend beyond the seventieth (70th) day after the filing of the Notice of Appeal; except in matters which have been placed on this Court's Accelerated Calendar, in which case the trial court shall limit its extension to twenty (20) days. The trial court shall set forth in any entry extending the time for transmitting the record on appeal the factual findings constituting good cause for such extension. No extension by the trial court beyond the seventieth day after filing the Notice of Appeal or any entry which does not set forth such factual findings will be recognized by this Court and will be considered as a failure by appellant to cause timely transmission of the record. Extensions for transmission of the record in Ohio App.R. 11.2 appeals shall be granted only by this Court.

(B) By the Court of Appeals. Motions for an extension of the time for transmitting the record on appeal to this Court shall be accompanied by an affidavit setting forth facts showing good cause for the extension.

When the motion for an extension is based upon the court reporter not

completing the transcript of proceedings, the court reporter shall prepare an affidavit listing all Court of Appeals transcripts currently being worked on, when ordered, number of pages, and estimate as to completion to be attached to the motion.

When extensions are requested, the request should be made for an extension to file the record, not for the transcript of proceedings only.

(C) Responsibility for Filing Transcript of Proceedings. Counsel or the appellant, and not the court reporter, has the sole responsibility for filing the transcript of proceedings and/or requesting timely extensions for the record.

(D) Extension of Time for Briefs. No request for an extension of time to file briefs due to the fact that the court reporter has not completed the transcript of proceedings will be granted by this Court unless accompanied by the court reporter's affidavit stating an estimate as to completion, listing all Court of Appeals transcripts currently being worked on, when ordered, the number of pages, and estimate as to completion for each.

RULE 11. RETURN OF PAPERS TO THE COURT

When a Notice of Appeal has been filed in a particular case, the entire trial court record, including the transcript of proceedings, becomes subject to the exclusive direction and control of the Court of Appeals. With a filing of the notice, any existing authority to allow removal of the transcript of the proceedings from the Clerk of Courts' office is automatically superseded by the authority of the Court of Appeals. Permission for removal of the transcript may be granted upon application on a form provided and approved by the judges of this Court. Any removal permitted shall be conditioned upon the return of the transcript within fourteen (14) days from the date of removal or fourteen (14) days before the date set for oral argument, whichever is earlier. *Copying and disassembling of a transcript filed with the Court of Appeals is prohibited.* Failure to comply with this rule may result in the issuance of a citation for contempt of court.

The Court of Appeals reserves the right to limit or restrict access to all items of record in its possession in order to preserve the proper chain of custody and maintain the evidential integrity of the record and its contents.

RULE 11.1 ACCELERATED CALENDAR

Pursuant to Ohio App.R. 11.1, this Court adopts an accelerated calendar, which shall be administered in the following manner:

(A) Docketing Statement. Each appellant and cross-appellant shall file a Docketing Statement (see Eleventh District Local Rules, Docketing Statement form) at the same time as the filing of the Notice of Appeal (see Eleventh District Local Rules, Notice of Appeal form). The purpose of the Docketing Statement is to determine whether an appeal will be assigned to the accelerated or the regular calendar. The Clerk of Courts will provide Docketing Statement forms as prescribed by this Court. The clerk of the trial court shall transmit a copy of the Docketing Statement with the Notice of Appeal to the Clerk of the Court of Appeals and to the appellee.

(B) Assignment to the Accelerated Calendar. Based upon a review of the Docketing Statement and pursuant to Ohio App.R. 3(G), this Court may issue a scheduling notice accelerating the appeal. An unexcused failure of the appellant to meet the schedule as set forth in Ohio App.R. 11.1 may result in a dismissal of the appeal *sua sponte* and without notice. If the appellee fails to file his brief within the time provided by Ohio App.R. 11.1, appellee will not be heard at oral argument except by permission of the Court upon a showing of good cause submitted in writing prior to argument. The Court may assign an appeal to the accelerated or regular calendar at any stage of the proceedings.

A case may be assigned to the accelerated calendar if any of the following apply (see Ohio App.R. 3[G]):

- (1) No transcript of proceedings is required;
- (2) Length of transcript is such that its preparation time will not be a source of delay;
- (3) Agreed or narrative statement is submitted pursuant to Ohio App.R. 9 (C or D);
- (4) Record was made in administrative hearing and filed with trial court;
- (5) All parties to the case approve assignment to the accelerated calendar;
- (6) Criminal cases involving:
 - a) Crim.R. 11 challenges
 - b) Postconviction appeals alleging ineffective assistance of counsel
 - c) Challenges to sentencing to revocation of probation or to failure to grant probation
 - d) Crim.R. 29 or weight of evidence challenges, especially with lesser crimes
 - e) Routine DUI cases and other minor traffic offenses
 - f) Expungement cases
- (7) Civil cases involving:
 - a) Routine administrative appeals
 - b) Actions on account

- c) Slip and fall
- d) Civ.R. 60(B) motions
- e) Simple contract cases
- f) Minor negligence actions
- g) Property division in divorce cases or post-decree support motions

(C) Removal From the Accelerated Calendar. Counsel for the appellant or appellee may within ten (10) days after journalization of the scheduling notice file a motion requesting that the appeal be removed from the accelerated calendar. This motion shall set forth good cause for removal and shall be granted if good cause is shown.

(D) Accelerated Calendar Briefs. All briefs filed in a case that has been accelerated shall conform to local rules of this Court as to form and content, and shall not exceed fifteen (15) pages, excluding table of contents and appendices, if any. Appellant's brief shall be served and filed within fifteen (15) days after the date on which the record is filed. Appellee's brief shall be served and filed within fifteen (15) days after the date that appellant's brief is filed. Reply briefs shall not be filed unless ordered by the Court.

(E) Oral Argument. If either party requests oral argument, oral argument shall be scheduled and the parties or their attorneys shall be notified in accordance with these rules. A party shall specify their preference to waive oral argument or to orally argue their case before the Court. The request for oral argument or waiver of oral argument shall be made in writing at the time of filing the parties' initial briefs. The request shall be contained on the cover page of the brief. The Court may sua sponte schedule any case for oral argument. See Loc.App.R. 21(A).

(F) Accelerated Decisions. In its discretion, the Court may issue a memorandum decision or a full opinion; and, pursuant to Ohio App.R. 11.1(E), may state the reason for its ruling on each assignment of error in brief and conclusionary form. The decision may be by judgment entry.

This Court's Docketing Statement in accordance with this Rule is set forth in Appendix B.

RULE 11.2 PRIORITY APPEALS CONCERNING MINORS

(A) Priority of Ohio App.R. 11.2 Appeals. Ohio App.R. 11.2 appeals shall be given priority over all other cases, including criminal and administrative appeals, and shall be expedited for review and determination in compliance with the time guidelines set forth in the foregoing rule.

(1) Record. The trial court record, including the transcript of proceedings, shall be filed with the Clerk for the Court of Appeals when the record is complete for the purposes of the appeal or when forty (40) days have elapsed after the filing of the Notice of Appeal. Preparation of the record, including the transcript of proceedings, shall be given priority over the preparation of the records in other cases. Extensions for the filing of the record shall not be granted, except in the most unusual circumstances and only for the most compelling reasons in the interest of justice.

(2) Briefs. Appellant's brief shall be served and filed no later than twenty (20) days from the date the trial court record, including the transcript of proceedings, are filed with the Clerk for the Court of Appeals. Appellee's brief shall be served and filed no later than twenty days from the date that appellant's brief is filed. Should the guardian ad litem desire to file a brief, it shall be served and filed no later than twenty days from the date that appellant's brief is filed. Should appellant desire to file a reply brief, it shall be filed no later than ten (10) days from the date that either appellee or the guardian ad litem's brief is filed, whichever is later. Extensions for the 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.

(3) Oral Argument. The case will be considered for immediate decision after all briefs have been filed unless oral argument is requested or ordered. A request for oral argument shall be made in writing and filed with this Court within ten (10) days from the filing of the Notice of Appeal.

(4) Entry of Judgment. The Court shall enter judgment within thirty (30) days from submission of the briefs or from the oral argument, whichever is later, unless compelling reasons in the interest of justice require a longer time.

RULE 11.3 CRIMINAL APPEALS INVOLVING DENIAL OF PRETRIAL BAIL

(A) Priority. In accordance with R.C. 2937.222(D)(1), an appeal from a trial court's denial of pretrial bail to a criminal defendant shall be placed upon an expedited schedule so that the final disposition of the matter can occur as quickly as feasible. Once the trial record has been submitted and the briefing schedule has been completed, such an appeal shall be given the highest priority, to the extent that it will be set for disposition separately from the Court's regular calendar. In this respect, the appeal shall be accorded the same priority as a habeas corpus case which sets forth a viable claim for relief.

(B) Duties of the Clerk.

(1) Transmission of Notice of Appeal. Immediately upon the filing of the Notice of Appeal, the clerk shall transmit the Notice of Appeal to the Deputy Administrator of the Court of Appeals by fax, e-mail, or other electronic format.

(C) Record. The trial court record, including any transcript of proceedings, shall be filed with the Clerk for this Court in the respective county twenty (20) days from the filing of the Notice of Appeal. Preparation of the record, including any transcript of proceedings, shall be given priority over the preparation of the records in all other cases. Extensions for the filing of the record shall not be granted, except in the most extreme circumstances and only in the interest of justice.

When the employment of an acceptable substitute for the transcript or the entire record would facilitate the submission of the trial court record to the Clerk in less than twenty (20) days, counsel for both sides should consider following the procedures set forth in Ohio App.R. 9(C) or 9(D).

(D) Briefs. Appellant's brief must be served and filed within seven (7) days from the date the trial court record, including any transcript of proceedings, is filed with the Clerk for this Court in the respective county. Appellee's brief must be served and filed within seven (7) days from the date that appellant's brief was filed. Consistent with the expedited procedure for the instant appeal, no reply brief will be permitted. Extensions for the filing of briefs shall not be granted, except in the most extreme circumstances and only in the interest of justice.

(E) Oral Argument. The appeal will be submitted to a panel of judges for immediate determination after both briefs have been filed pursuant to Loc.App.R. 21. Oral argument may be ordered sua sponte when this Court decides that such a procedure is needed in order to render an appropriate judgment in the matter.

RULE 12. WAIVER OF ASSIGNED ERRORS

Assigned errors, once raised in a brief, may only be waived by the party submitting the brief, in a motion filed with this Court. This motion shall be submitted prior to or contemporaneously with oral arguments or submission on the briefs, otherwise leave of court is required. All parties to the appeal shall receive service of the motion prior to or contemporaneously with oral arguments or submission on the briefs. An assigned error, once properly waived, will not be addressed in the opinion of this Court.

Title III
GENERAL PROVISIONS

RULE 13. [Reserved]

RULE 14. [Reserved]

RULE 15. MOTIONS

(A) Number of Copies. An original and four (4) copies of all motions shall be filed with the Clerk of Courts. In the event a Notice of Appeal is consolidated with one or more trial court cases, the appropriate number of copies shall be filed for each case number.

(B) Responsive Submissions. Any party may file a response to a motion other than one for a procedural order within ten (10) days from the filing of the motion, but motions authorized by Ohio App.R. 7, 8, and 27 may be acted upon after reasonable notice, and the Court may shorten or extend the time for responding to any motion. Any other responsive submission filed without leave of court may be sua sponte stricken from the record.

RULE 16. FORM AND CONTENT OF APPELLATE BRIEFS

(A) Form. An original and three (3) copies shall be submitted in accordance with Ohio App.R. 19, stapled, bound, or otherwise securely fastened along the left margin. It is not necessary or desirable to enclose any brief in a paper or plastic cover or binder. Carbon copies are not acceptable without prior permission of the Court.

The text shall be typed in a medium weight, 12-point double spaced noncondensed type style such as Arial or another type that has no more than eighty (80) characters to a line of text. Quotations may be singled spaced. Italic type style may be used only for case citations and emphasis.

(1) Reference to the Record. Suggested abbreviations for "transcript of proceedings" and "transcript of the docket, journal entries and original papers" are "T.p." and "T.d.," respectively. Where documents which are part of the latter are relied upon to support the assignment of error, and where such documents consist of more than one page, citation will be to the document number assigned by the Clerk of Courts in preparing the transcript, followed by the page number integral to the document, *e.g.*, "Defendant's deposition T.d. 10, p. 50."

(B) Content. The brief of the appellant, and, correspondingly, that of the appellee, shall consist of five parts satisfactorily satisfying Ohio App.R. 16, as follows:

- I. Table of Contents and Assignments of Error.
- II. Statement of the Case.
- III. Statement of Facts.
- IV. Argument.
- V. Conclusion.

(1) Appendices. With the exception of those items enumerated in Ohio App.R. 16(E), appendices to the brief shall not be employed without leave of court.

[This rule is to discourage the practice of attaching unwieldy and unnecessary amounts of paper to parties' briefs. Since only documents included in the trial court record can be considered on appeal, and since this Court has the record before it, the attachment of the copies of documents to a brief is, with the exception of those enumerated in Ohio App.R. 16(E), usually either superfluous or inappropriate.]

(2) Mandatory Attachment. The parties shall include in the appendix, at the end of the initial briefs, legibly reproduced copies of: 1) the judgment entry appealed from; 2) any opinion of the trial court announcing the decision reflected by the judgment entry appealed from; 3) any written findings of fact and conclusions of law in the record on appeal; and 4) all magistrate decisions/reports containing findings of fact and recommendations which are partially or totally adopted by the court in its final order.

(3) Footnotes. The use of footnotes is discouraged. The excessive use of footnotes to meet page limitations for briefs, *i.e.*, reduced font size or condensed type style, shall result in a brief being stricken sua sponte.

(4) Citations. Copies of all cases cited in a brief that are available in electronic format need not be attached to a brief or memoranda.

(a) Unavailable in Electronic Format. A legible copy of all cases cited in a brief that are not available in electronic format shall be attached to the brief or memorandum in which they are cited and shall indicate the status of any appeal or disposition by the Ohio Supreme Court.

(b) Citation Form. All citations to authorities in briefs or memoranda shall be in accordance with the Manual of Citation adopted by the Ohio Supreme Court Reporter. The Manual of Citation is available on line at www.sconet.state.oh.us/ROD.

(c) Failure to Comply. Counsel are cautioned that a failure to comply with this

rule may result in the brief being stricken on motion or sua sponte, and/or in the dismissal of the appeal.

(C) Substance.

(1) Table of Contents and Assignments of Error. The prime function of the Table of Contents is to list and index the Assignments of Error and Issues Presented for Review. It is to be noted that the full statement of the Assignments of Error and Issues Presented for Review in the Table of Contents shall be deemed a satisfactory compliance with Ohio App.R. 16 (A)(3) and (4), as applicable. See Section C (2) infra. The secondary function of the Table of Contents is to list and index authorities cited.

The Table of Contents shall also serve as and consist of a combined index and table of authorities, with page references for each item listed. Indented as numbered subparagraphs under each assignment of error shall be the Issues Presented for Review applicable to that assignment. The authorities cited in support of an issue shall be set out in alphabetical order in a further indented paragraph. It is to be noted that the appellee may recast or substitute issues to support his contentions in demonstrating the absence of error.

(2) Statement of the Case. Ohio App.R. 16 (A)(5) requires the Statement of the Case to consist of three parts: (1) the nature of the case, (2) the course of proceedings, and (3) the disposition in the court below. This will be complied with by a separate subparagraph headed "Procedural Posture."

(a) The Procedural Posture (inclusive of the Statement of the Case, the relief sought, the relevant procedural history and status of the litigation) shall be succinctly set out and should rarely require more than a paragraph. Normally, a chronology of the events leading to the complaint or commencement of trial is neither necessary nor desired. The purpose of subparagraph (a) is to convey a digest of those relevant, necessary, and essentially procedural events critical to the appeal and extracted from the record, thereby accurately describing "the course of proceedings and . . . disposition . . . below." Ohio App.R. 16 (A)(5). The orders, entries, or other action of the court constituting the basis of the appeal may be reiterated, but in no event should there be inconsistency between the statement of and citation to the result below in Part II of the brief, and the statement of that action of the court which is the basis of the appeal, and which is set out to form the basis of the assignment(s) of error in Part III of the brief.

(3) Statement of the Facts. Ohio App.R. 16(A)(6) requires a statement of facts, and will be complied with by a separate paragraph headed "Statement of Facts."

(a) The Statement of Facts consists of a recitation of those portions of the

record which support the appellant's assignments of error. This Statement of Facts, demonstrated by citation to the record (see Section A[1], supra) may be segmented under appropriate headings, where more than one issue is presented for review, to provide a factual basis for determining the applicability of each successive issue presented.

(4) Argument. The Argument shall comprise the main body of the brief, and shall be organized consistently with the Assignments of Error and Issues Presented for Review as set forth in the Table of Contents. The Assignments of Error shall be fully set forth verbatim, as shall the Issues Presented for Review, as stated in the Table of Contents.

The Assignments of Error shall assert precisely the manner in which the trial court is alleged to have erred, *e.g.*, "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS HIS CONFESSION FROM THE EVIDENCE." An Assignment of Error shall not be set forth as a proposition of law as envisioned by Rule VI of the Rules of Practice of the Supreme Court of Ohio. Such a statement is wholly inappropriate at this appellate level.

(a) The statement of the Assignments of Error is not complete for the purpose of Part III of the brief without citation to that portion of the record before the Court on appeal wherein the lower court committed the error complained of, *e.g.*, "The trial court erred in overruling plaintiff-appellant's motion for summary judgment (T.p. 25) or (Plaintiff's affidavit T.d. 50, T.d. 100)."

(b) The issues applicable to each Assignment of Error shall be stated verbatim and in the same order as in the Table of Contents, and the argument under each Assignment of Error shall be organized accordingly. The Issues Presented for Review are akin to the propositions of law contemplated by Rule VI of the Rules of Practice of the Supreme Court of Ohio, and may be set out accordingly.

(5) Conclusion. The conclusion may briefly summarize the Argument and shall state the precise relief sought on appeal.

(D) Length of Brief. No initial and no answer brief of the parties shall exceed thirty-five (35) pages in length, exclusive of the Table of Contents, Assignments of Error and appendices, if any, except as provided in Loc.R. 11.1(D). Reply briefs shall be restricted to matters of rebuttal of the answer brief, and shall not exceed ten (10) pages in length, exclusive of the Table of Contents and appendices, if any, except as provided in Loc.R. 11.1(D). These maximums may be exceeded only with permission of the Court granted upon written application and for good cause shown.

(E) Failure to Comply. Counsel are cautioned that a failure to comply with this Rule may result in the brief being stricken on motion or sua sponte, and/or in the

dismissal of the appeal, without prior notice in either instance.

The following sample “Table of Contents and Assignments of Error” containing the above-required information is in accordance with this rule.

TABLE OF CONTENTS AND ASSIGNMENTS OF ERROR

	Page
First Assignment of Error	10
The trial court erred to the prejudice of defendant-appellant in overruling his motion for directed verdict made at the close of plaintiff-appellee's case.	
Issue(s) Presented for Review and Argument	11
1. In an action for damages predicated on breach of contract where the record fails to show any evidence that the contract was supported by legally sufficient consideration, the plaintiff-appellee has failed to establish an essential element necessary for a prima facie case, and judgment must be entered for the defendant-appellant upon appropriate motion therefor.	
Authorities	
<i>ABC Corp. v. Doe</i> , (1965), 178 Ohio St. 213	11
R.C. §2401.01	11
59 Ohio Jurisprudence 2d (1975) 371,.....	12
Evidence, Section 101	
Second Assignment of Error	13
The trial court erred to the prejudice of defendant-appellant in admitting into evidence, over his objection, testimony that plaintiff-appellee "probably" suffered \$9,000 lost profits.	
Issue(s) Presented for Review and Argument	13
1. Non-expert opinion testimony and uncorroborated speculations as to lost profits are incompetent as evidence of damages.	
Authorities	
Black, <i>Evidence in a Nutshell</i>	14
1 CHASE L. REV (1975) V. Black, <i>Evidentiary Aspects of the Necessity for a Casual Relationship Between Breach of Contract and Damages, in COLLECTED LEGAL PAPERS</i> 101 (1975)	
Third Assignment of Error	15
The trial court erred to the prejudice of defendant-appellant in overruling his motion for judgment notwithstanding the verdict.	
Issue(s) Presented for Review and Argument	15, 11
1. A judgment for damages predicated upon breach of contract is contrary to law where the record contains no evidence of legally sufficient consideration.	
Authorities	
Civ.R. 50(B)	15
4 KONT Ann.Rep. 101 (1975).....	16
2. A judgment for \$10,000 damages predicated upon breach of contract is	

contrary to the manifest weight of the evidence where the record shows only \$1,000 actual damages.

Authorities
ABC Corp. v. XYZ Corp (Jan. 1, 1974), 1st Dist. No. 74001, 2001-Ohio-1234..... 17
Doe v. Roe (1970), 61 O.O. 101 18

RULE 17. [Reserved]

RULE 18. BRIEFING SCHEDULE ON APPEAL/CROSS-APPEAL

Where two or more Notices of Appeal are filed in the same cause and the parties filing the Notices of Appeal are opposing each other, the party filing the appeal later in time (Ohio App.R. 4[A]), shall caption the Notice of Appeal as a Notice of Cross-Appeal, and the briefing schedule for both parties shall be as follows:

- (A) Assignments of error and brief of appellant/cross-appellee: Twenty (20) days after record is filed;
- (B) Consolidated answer brief, and assignments of error and brief of appellee/cross-appellant: Twenty (20) days from the date the assignments of error and brief of appellant/cross-appellee is filed;
- (C) Consolidated reply brief and answer brief of appellant/cross-appellee: Twenty (20) days from the date the consolidated answer brief, and assignments of error and brief of appellee/cross-appellant is filed;
- (D) Reply brief of appellee/cross-appellant: Ten (10) days from the date the consolidated reply brief and answer brief of appellant/cross-appellee is filed.
This subsection shall also apply to appeals without a cross-appeal.

The briefing schedule for the parties on appeals without a cross-appeal shall be in compliance with the time guidelines set forth in Ohio App.R. 18(A).

RULE 19. [Reserved]

**RULE 20. PREHEARING CONFERENCE;
MEDIATION**

Under App.R. 20, this court's prehearing and mediation conference procedure will operate as follows:

(A) Prehearing Conference Scheduling.

(1) Civil and administrative appeals will be reviewed by this court's Administrative Counsel promptly after the filing of the notice of appeal to determine whether a prehearing conference under App.R. 20 would assist the court or the parties. In addition, any party may telephone the court's Administrative Counsel to request a prehearing conference to be held or to be canceled. Such request will be confidential if the requesting party desires.

(2) If an appeal is selected for conference, upon seven twenty-one days notice from the court, unless excused, counsel and parties (including insurance adjusters) are required to attend a prehearing conference before the court's Administrative Counsel when possible in the county of origin. Persons excused in advance by the Administrative Counsel from attending in person shall be available by telephone. At the discretion of the Administrative Counsel, conferences may be conducted telephonically.

(B) Purposes and Conduct of Prehearing Conference.

(1) The primary purposes of the prehearing mediation conference are to explore settlement possibilities through mediation and to address anticipated procedural matters. Additionally, any other matters that the Administrative Counsel determines may aid in the disposition of the proceedings will be considered.

(2) The statements and comments made in settlement negotiations during the prehearing conference are confidential except to the extent disclosed by the prehearing conference order under Paragraph (C) and shall not be disclosed by the Administrative Counsel nor by parties or their counsel.

(3) If a prehearing conference is scheduled, a party may telephone the court's Administrative Counsel and request that the court issue a **sua sponte** order extending the time in which to transmit the record or file the brief and assignments of error. Requests for extensions may also be made orally at the prehearing conference and after the conference by telephone if agreed to by all parties.

(C) Prehearing Conference Order. At the conclusion of the prehearing conference, this court's administrative judge, upon recommendation of the Administrative Counsel, may enter an order setting forth the actions taken and the agreements reached by the parties.

(D) Noncompliance Sanctions. If a party or attorney fails to comply with the provisions of this Rule or the provisions of the prehearing conference order or settlement agreement, this court may assess reasonable expenses caused by the failure, including attorney fees. This court may also assess all or a portion of the appellate costs or dismiss the appeal.

RULE 21. ORAL ARGUMENT

(A) Requests for Oral Argument Required. If either party requests oral argument, oral argument shall be scheduled and the parties or their attorneys shall be notified in accordance with these rules. For both the regular and accelerated calendar, a party shall specify their preference to waive oral argument or to orally argue their case before the court. The request for oral argument or waiver of oral argument shall be made in writing at the time of filing the parties' initial briefs. The request shall be contained on the cover page of the brief. The Court may sua sponte schedule any case for oral argument.

(B) Location for Oral Argument. Oral argument will be heard in the county where the case originated, unless, for good cause shown, the Court determines that the case may be heard in another county in the district. To expedite oral argument, a party or their attorney may file a motion to orally argue the case in the first available adjoining county, which motion may be granted for good cause shown.

(C) Notice to Parties. The parties or their attorneys shall be notified in writing of the date, time, and location of the oral argument. No continuance of oral argument will be granted unless a written motion establishing exceptional circumstances and good cause for the continuance is filed no later than ten days after the date of the written notice. When oral argument is not requested by any party, the case will be immediately submitted for a decision without a hearing.

(D) Time Allowed for Argument. Pursuant to Ohio App.R. 21(B), oral argument will be fifteen minutes per side. However, the Court may, in its discretion, grant additional time for argument.

(E) Supplemental Authority. If relevant authority is issued by another court after the briefing schedule has been completed, a party may file with this Court a citation to that authority but shall not file additional written argument.

RULE 22. [Reserved]

RULE 23. [Reserved]

RULE 24. [Reserved]

RULE 25. MOTIONS TO CERTIFY

Motions to certify to the Supreme Court of Ohio because of conflict with a judgment of another Court of Appeals, upon the same question, shall be filed in accordance with Ohio App.R. 25. The motion to certify shall set forth specifically the rule of law upon which the alleged conflict exists in such form that could be set forth in a journal entry that will satisfy Section 2, Rule IV of the Rules of Practice of the Supreme Court of Ohio, in the event the motion is granted. Ohio App.R. 15 shall apply to such motions to certify and to briefs in support and opposition to such motions.

RULE 26. [Reserved]

RULE 27. [Reserved]

RULE 28. [Reserved]

RULE 29. [Reserved]

RULE 30. [Reserved]

RULE 31. [Reserved]

RULE 32. [Reserved]

RULE 34. [Reserved]

RULE 41. [Reserved]

RULE 42. [Reserved]

RULE 43. [Reserved]

ADMINISTRATIVE RULES

RULE 101. ORIGINAL ACTIONS

(A) How Instituted. An original action shall be instituted by the filing of a petition, together with four (4) copies thereof. Service of the petition shall be made in accordance with the Ohio Rules of Civil Procedure. Upon an initial review of the petition in any original action, this Court shall issue an alternative writ instructing the respondent as to the nature of the required response to the petition.

(B) Dispositive Motions.

(1) In regard to actions in mandamus, prohibition, procedendo, and quo warranto, the actions shall generally proceed in accordance with the Ohio Rules of Civil Procedure. In attempting to obtain a final resolution of these types of original actions, a party may file any dispositive motion which is recognized under the civil rules, such as a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment. When any party files a dispositive motion, a brief in support shall be filed with the motion. A brief in opposition to the motion, along with any cross-motion, shall be filed within twenty (20) days after the filing of the initial motion. A reply brief, if any, and/or a response to the cross-motion, if any, shall be filed within twenty (20) days after the filing of the brief in opposition to the motion. No other briefs or memorandum shall be filed except with leave of court, unless a cross-motion has been filed, in which event, the movant may file a reply within twenty (20) days from the filing of opposing party's response. Briefs shall comply with the rules of appellate procedure and Loc.R. 12. Thereafter, the matter will be submitted to the Court for disposition. All motions shall be ruled upon without oral argument unless otherwise ordered by this Court.

(2) In regard to an original action in habeas corpus, if this Court concludes that the petition in habeas corpus states a viable claim for relief, an evidentiary hearing shall be scheduled as soon as possible. If this Court concludes that the petition in habeas corpus may not state a viable claim for relief, an alternative writ shall be issued requiring the respondent to file a written response to the petition. If a written response is required, the action shall then proceed in accordance with the procedure under subsection (B)(1) of this rule concerning the submission of dispositive motions.

(C) Evidence in Original Actions.

(1) If a final decision on any original action cannot be based upon the dispositive motions filed by the respective parties, the parties shall then be given a

period of sixty (60) days in which to conduct any necessary discovery. At the conclusion of this sixty-day period, the parties shall determine whether it is possible that the action can be resolved by means of an agreed statement of facts. If the parties can reach an agreement concerning a statement of all relevant facts in the action, their agreed statement of facts shall be submitted to the Court within twenty (20) days after the completion of the sixty-day discovery period. Upon receipt of the agreed statement of facts, this Court shall issue a judgment entry setting forth a schedule for the submission of the parties' merit briefs. The action shall then be submitted to the Court based upon the agreed statement of facts and the briefs. The foregoing procedure can be followed in habeas corpus actions when such procedure is practical and will not defeat the interests of justice.

(2) If an agreed statement of facts is not filed within twenty days after the completion of the sixty-day discovery period, the matter shall then be scheduled for an evidentiary hearing as soon as possible. The evidentiary hearing shall be conducted by a single judge, a panel of three judges, or a court magistrate. Following the completion of the hearing, the matter shall then proceed to final disposition.

(D) Reference to Magistrate. Original actions in this Court may, either upon motion of a party or of the Court, be referred by the Court to a court magistrate, pursuant to Ohio Civ.R. 53. Unless otherwise indicated in the order of reference to a court magistrate, the court magistrate shall have all the powers specified in Ohio Civ.R. 53, and the proceedings and decision of the court magistrate shall be governed by Ohio Civ.R. 53.

Any objections to a decision of a court magistrate shall be filed in accordance with Ohio Civ.R. 53(D)(3). Such objections will be considered by a three-judge panel of this Court. The Court may adopt the court magistrate's decision if no written objections are filed unless it determines that there is an error of law or other defect on the face of the court magistrate's decision. Any decision rendered by the three-judge panel shall be made in accordance with Ohio Civ.R. 53(E)(4)(b). The Court shall rule on any objections. The Court may adopt, reject, or modify the court magistrate's decision, hear additional evidence, recommit the matter to the court magistrate with instructions, or hear the matter. Unless the three-judge panel decides to hear additional evidence pursuant to Ohio Civ.R. 53(E)(4)(b), no oral hearing will be held on the objections prior to the issuance of the panel's final decision in the matter.

(E) Original Actions Relating to Elections. Because of the necessity of a prompt disposition of an original action relating to a pending election, or in order to give the Court adequate time for full consideration of such case, if such action is filed within ninety (90) days prior to the election, this Court shall issue a judgment entry setting forth any special procedure to be used in order to ensure the prompt resolution of the action.

(F) Enlargement or Reduction of Time. The Court for good cause shown may upon motion enlarge or reduce the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time. Notice to the parties of such enlargement or reduction of time may be by telephone and later confirmed by order of the Court.

RULE 102. TRANSCRIPT OF APPELLATE EVIDENTIAL HEARINGS

Pursuant to this Court's Judgment Entry of November 12, 1993, all evidential hearings before a judge or magistrate of this Court shall be recorded by means of this Court's video electronic recording devices. Therefore, the resulting videotape constitutes the official transcript of proceedings for such a hearing. Any party to the hearing may obtain a copy of the official transcript by making an oral request to the Deputy Administrator, accompanied by the submission of a blank videotape cassette. The official transcript shall be recorded onto the blank cassette, which shall then be returned to the party. If the party intends to cite the official transcript in support of any subsequent motion, objection, or proceeding before this Court, counsel for the party must, in accordance with the procedure set forth in Ohio App.R. 9(A), cause the relevant portions of the official transcript to be reproduced in typed or printed form, certify the accuracy of this written copy, and then submit to this Court with respect to such proceedings.

RULE 103. FAILURE TO PROSECUTE

Unless it is demonstrated that no undue delay and no prejudice has been caused to the opposing party by the failure to comply with these rules or the Rules of Appellate Procedure, the following shall be deemed good cause for dismissal of an appeal pursuant to Ohio App.R. 3(A), 11(C), or 18(C):

- (A) Failure to file a Docketing Statement as required by Loc.App.R. 11;
- (B) Failure to file with the Notice of Appeal the appropriate filings required by Ohio App. R. 9(B), and Loc.App.R. 3;
- (C) Failure to timely order in writing from the court reporter any necessary transcript of proceedings, or to timely file any necessary statement of evidence pursuant to Ohio App.R. 9(C) or (D), or a notice that no transcript or narrative statement will be filed as required by Loc.App.R. 3;
- (D) Failure to cause the record on appeal to be timely transmitted to the clerk of this Court;

(E) Failure to timely file a brief with assignments of error and issues presented for review;

(F) Any other non-compliance with the appellate rules or the rules of this Court.

RULE 104. PRESIDING JUDGE

On or before January 15 every year, or as soon thereafter as practicable, a presiding judge shall be designated by judgment entry signed by a majority of the judges of this Court, and filed with the Clerk for the Court of Appeals in Trumbull County pursuant to Rule 3(A)(2) of the Rules of Superintendence for the Courts of Ohio. The presiding judge shall perform all duties incumbent upon the office. Such designation and duties shall continue until further order of the Court. The judge who is senior in service on the Court shall preside on any three-judge panel of which the presiding judge is not a member. However, only the presiding judge of the Eleventh District Court of Appeals shall be so designated in written opinions.

RULE 105. ADMINISTRATIVE JUDGE

On or before January 15 every year, or as soon thereafter as practicable, an administrative judge shall be designated by judgment entry signed by a majority of the judges of this Court, and filed with the Clerk for the Court of Appeals in Trumbull County pursuant to Rule 4(A)(2) of the Rules of Superintendence for the Courts of Ohio. The administrative judge shall perform all duties incumbent upon the office.

RULE 106. EFFECTIVE DATE AND APPLICABILITY

These rules shall take effect January 1, 1978. All 2007 additions and amendments are approved and adopted as of May 14, 2007 and effective June 1, 2007.