The Supreme Court *of* Ohio

Rules *of* Practice

2017

effective jan. 1, 2017

The Supreme Court *of* Ohio

RULES OF PRACTICE

2017

MAUREEN O'CONNOR

Chief Justice

TERRENCE O'DONNELL

SHARON L. KENNEDY

JUDITH L. FRENCH

WILLIAM M. O'NEILL

PATRICK F. FISCHER

R. PATRICK DEWINE

Justices

MICHAEL L. BUENGER

Administrative Director

Office of the Clerk

SANDRA H. GROSKO
CLERK OF THE COURT

OFFICE OF THE CLERK
8th Floor
65 South Front Street
Columbus, Ohio 43215-3431
614.387.9530
614.387.9539 Fax
www.supremecourt.ohio.gov/clerk

RULES OF PRACTICE OF
THE SUPREME COURT OF OHIO

(Including amendments effective Jan. 1, 2017)

The following Rules of Practice of the Supreme Court of Ohio include all amendments adopted and effective through January 1, 2017, and apply to practice and procedure in cases before the Supreme Court of Ohio.

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

Filings may be made by delivering the documents in person or by mail addressed to the clerk of the Supreme Court at the following address:

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

Filings may also be made through the Supreme Court's E-Filing Portal, which is available at: **http://www.supremecourt.ohio.gov/Clerk/eFiling/**.

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

The Supreme Court's website may be accessed to review frequently asked questions and answers about filing: **www.supremecourt.ohio.gov**. Questions regarding the Rules of Practice or the status of cases pending before the Supreme Court may be directed to the clerk's office at the following phone numbers: **614.387.9530**.

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RULES OF PRACTICE OF THE SUPREME COURT OF OHIO

INTRODUCTION

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

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

The Supreme Court has original jurisdiction in the following types of cases:

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

The Supreme Court has appellate jurisdiction in the following types of cases:

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

The Supreme Court holds regular sessions that are open to the public. Generally, these sessions are held in the Supreme Court courtroom on the first floor of the Thomas J. Moyer Ohio Judicial Center, 65 South Front Street, Columbus, Ohio. Calendars of the court sessions are available in the Clerk's Office and on the Supreme Court of Ohio's website at: **www.supremecourt.ohio.gov**.

SECTION 1. GENERAL RULES.

S.Ct.Prac.R. 1.01. Title.

These rules shall be known as the "Rules of Practice of the Supreme Court of Ohio."

Effective Date: January 1, 2013

S.Ct.Prac.R. 1.02. Purpose.

The purpose of the Rules of Practice of the Supreme Court of Ohio is to promote the efficient administration of justice in cases filed with the Supreme Court.

Effective Date: January 1, 2013

S.Ct.Prac.R. 1.03. Authority.

The Rules of Practice of the Supreme Court of Ohio are promulgated pursuant to Article IV, Section 5 of the Ohio Constitution.

Effective Date: January 1, 2013

S.Ct.Prac.R. 1.04. Applicability.

The Rules of Practice of the Supreme Court of Ohio shall apply to all documents filed with the Supreme Court.

Effective Date: January 1, 2013
Amended: January 1, 2017

S.Ct.Prac.R. 1.05. Citation.

The Rules of Practice of the Supreme Court of Ohio shall be cited as "S.Ct.Prac.R. _____."

Effective Date: January 1, 2013

S.Ct.Prac.R. 1.06. Construction.

(A) Shall, may, and should

"Shall" is mandatory. "May" is permissive. "Should" is suggested or recommended.

(B) And

If the sense requires it, "and" may be read "or" and "or" may be read "and."

(C) Common and technical use of words and phrases

Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by definition by rule or otherwise, shall be construed accordingly.

(D) Singular and plural

The singular includes the plural, and the plural includes the singular.

(E) Gender

Words of one gender include the other genders.

(F) Tense

Words in the present tense include the future.

(G) Rule presumed prospective

A rule shall be presumed to be prospective in its operation unless expressly made retrospective.

(H) Specific rule prevails over general

If a general rule conflicts with a specific rule, it shall be construed, if possible, so that effect is given to both. If the conflict between the rules is irreconcilable, the specific rule prevails as an exception to the general rule, unless the general rule is the later adoption and the manifest intent is that the general rule prevails.

Effective Date: January 1, 2013

SECTION 2. REQUIREMENTS FOR ATTORNEYS PRACTICING BEFORE THE SUPREME COURT.

S.Ct.Prac.R. 2.01. Prerequisites to Filing and Appearance.

(A) Requirements

(1) General

(a) In order to file documents other than those required to perfect an appeal, or to participate in oral argument, attorneys shall be registered for active status with the Office of Attorney Services of the Supreme Court as required by Gov.Bar R. VI or shall have complied with the pro hac vice requirements of S.Ct.Prac.R. 2.02.

(b) Only persons who are attorneys qualified pursuant to division (A)(1)(a) of this rule may file documents on behalf of another person or on behalf of an entity.

(2) Death-penalty cases

In addition to meeting the requirements of division (A)(1)(a) of this rule, in death-penalty cases, any appointed attorney shall satisfy the certification requirements of the Rules for Appointment of Counsel in Capital Cases and appear on the list of attorneys certified to represent capital defendants on appeal.

(3) E-Filing Portal

(a) The use of the Supreme Court's E-Filing Portal is optional.

(b) All persons who choose to file documents through the E-Filing Portal shall register and set up an account through the E-Filing Portal. Registered users shall be responsible for maintaining the accuracy of their E-Filing Portal account information.

(c) No registered user of the E-Filing Portal shall authorize or permit anyone to use the registered user's E-Filing Portal account except on behalf of the registered user, in which event the registered user shall be deemed to be the filer.

(B) Notice of appearance and withdrawal

(1) For attorneys registered for active status with the Office of Attorney Services of the Supreme Court of Ohio, the first document filed by a party serves as the notice of appearance of counsel for the attorneys who represent the filing party.

(2) Any attorney who first appears in a case after the first document has been filed by the party that the attorney represents shall do one of the following:

(a) File a notice of appearance identifying the party on whose behalf the attorney is appearing;

(b) Specify on the document being filed that this is the attorney's first appearance in the case;

(c) If the document is filed through the E-Filing Portal, add the attorney and identify the party the attorney represents.

(3) Any attorney who has made an appearance in a case and later withdraws from representation of a party shall file a notice of withdrawal.

(4) For an attorney not registered for active status with the Office of Attorney Services of the Supreme Court of Ohio, to make an appearance the attorney shall comply with S.Ct.Prac.R. 2.02.

(C) Striking of documents

The Supreme Court may strike documents filed by attorneys who do not comply with this rule, may strike from the docket the names of attorneys who are not in compliance with this rule, or may take any other action as the Supreme Court deems appropriate.

Effective Date: June 1, 1994
Amended: April 1, 1996; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015; July 22, 2015; January 1, 2017

S.Ct.Prac.R. 2.02. Pro Hac Vice Admission.

(A) General

(1) The Supreme Court may permit an attorney who is not registered for active status with the Office of Attorney Services of the Supreme Court of Ohio to appear pro hac vice and to file documents or participate in oral argument in a case before the Supreme Court of Ohio if the attorney has complied with the requirements of Gov.Bar R. XII and this rule.

(2) The Supreme Court may withdraw pro hac vice admission at any time.

(B) Motion

(1) Pro hac vice admission will be allowed only on motion of an attorney who has complied with all the requirements of Gov.Bar R. XII. The motion shall succinctly state the qualifications of the attorney seeking admission and shall contain all information required by Gov.Bar R. XII(2)(A)(6)(a) through (e), including the affidavit. A copy of the certificate of registration furnished by the Office of Attorney Services of the Supreme Court as required by Gov.Bar R. XII(2)(A)(6) shall also be attached.

(2) If the Supreme Court grants a motion for pro hac vice admission then the attorney shall be deemed to have made an appearance in the case and a notice of appearance under S.Ct.Prac.R. 2.01(B)(2) is not required.

(3) If an attorney required by S.Ct.Prac.R. 2.01 to be admitted pro hac vice has perfected an appeal without filing a motion for pro hac vice admission, the attorney shall file the motion no later than thirty days after the filing of the appeal.

(4) If an attorney seeks to participate pro hac vice in oral argument and has not already been admitted in the case, the motion for pro hac vice admission shall be filed at least thirty days before oral argument.

(C) Refusal to file

The Clerk of the Supreme Court shall refuse to file motions for pro hac vice admission that are not timely submitted or that fail to comply with these rules.

(D) Notification and renewal

(1) Within thirty days of being admitted pro hac vice before the Supreme Court, the attorney shall file a notice of permission to appear pro hac vice with the Office of Attorney Services of the Supreme Court as required by Gov.Bar R. XII.

(2) In any case that is pending as of the first day of a new calendar year, the attorney admitted pro hac vice shall comply with the registration renewal requirements of Gov.Bar R. XII within thirty days of the start of that calendar year.

Effective Date: June 1, 1994
Amended: April 1, 1996; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2011; October 1, 2011; January 1, 2013; January 1, 2017

S.Ct.Prac.R. 2.03. Designation of Counsel of Record.

(A) General

The attorney representing a party shall be designated as counsel of record for that party. When two or more attorneys represent a party, only one attorney shall be designated as counsel of record to receive notices and service on behalf of that party. The designation shall be made on the cover page of the first document filed by the party in the Supreme Court. If no attorney is designated counsel of record, the first attorney listed for the party on the cover page of the first document filed shall be considered the counsel of record. To change a party's designation of its counsel of record, the party shall file a new designation of counsel of record.

(B) Notification

(1) The Clerk of the Supreme Court shall send notices and orders in a case to counsel of record at the office address that counsel has registered with the Office of Attorney Services of the Supreme Court under Gov.Bar R. VI. If no office address is registered, the Clerk will send notices and orders to the residence address that counsel has registered with the Office of Attorney Services.

(2) Counsel of record may request that the Clerk send notices and orders in a case to an address other than one registered with the Office of Attorney Services by filing a notice with the Clerk designating the address to be used in that case.

Effective Date: June 1, 1994
Amended: April 1, 1996; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

SECTION 3. FILING REQUIREMENTS.

S.Ct.Prac.R. 3.01. Citation, Style, and Format.

Parties may refer to the Supreme Court's Writing Manual: A Guide to Citations, Style, and Judicial Opinion Writing for guidance on the style of documents filed with the Supreme Court.

Effective Date: January 1, 2013

S.Ct.Prac.R. 3.02. Filing with the Supreme Court.

(A) Filing

(1) Definition and filings treated as public records

(a) Filing is effectuated when the Clerk's Office file-stamps a document and dockets it in a case.

(b) Documents filed with the Supreme Court shall be available for public access pursuant to Sup.R. 44 through 47. A document that has been sealed pursuant to a court order, administrative agency order, or board order, or is the subject of a motion to seal pending in the Supreme Court, shall remain under seal and not be made available for public access unless ordered by the Supreme Court.

(2) Filing paper documents

(a) Filing paper documents with the Supreme Court shall be made by submitting the documents to the Clerk of the Supreme Court during the regular business hours of the Clerk's Office. Only documents that are timely received and in compliance with these rules shall be filed by the Clerk.

(b) Paper documents may be submitted for filing in person; by delivery service; by mail addressed to the Clerk, The Supreme Court of Ohio, 65 S. Front St., 8th Floor, Columbus, Ohio 43215-3431; or by e-mail as specified in division (A)(4) of this rule.

(c) Paper documents received in the Clerk's Office after 5:00 p.m. shall not be considered for filing until the next business day.

(3) Filing electronic documents through the E-Filing Portal

(a) Filing of electronic documents shall be made by submitting the documents through the E-Filing Portal. Confirmation of receipt by the E-Filing Portal is only a confirmation of receipt of the documents, not a confirmation that the documents were accepted for filing.

(b) Any document filed through the E-Filing Portal pursuant to division (A)(3) of this rule shall meet all requirements of these rules, except that multiple copies of a document are not required unless requested by the Clerk pursuant to S.Ct.Prac.R. 3.10.

(c) A document filed through the E-Filing Portal pursuant to division (A)(3) of this rule shall be submitted as a Portable Document Format ("PDF") file.

(d) Filing documents through the E-Filing Portal does not alter any filing deadlines imposed by the Rules of Practice of the Supreme Court of Ohio.

(e) Documents received after 5:00:00 p.m. local observed time in Columbus, Ohio through the E-Filing Portal shall not be considered for filing until the next business day. The time of receipt of a document is the time-stamp provided by the Supreme Court's E-Filing Portal, and the time-stamp provided by any other computer system shall not alter the time of receipt and effect of this rule.

(f) After review by the Clerk's Office, a separate communication that indicates whether the documents were accepted for filing will be sent to the e-mail address registered with the account of the person who submitted the documents through the E-Filing Portal.

(4) Consideration for filing

Documents submitted by mail, delivery service, or through the E-Filing Portal shall not be considered for filing until received by the Clerk's Office.

(5) Confirmation of delivery and filing deadlines

(a) Confirmation of delivery by any source other than the Clerk's Office or the E-Filing Portal does not verify actual receipt by the Clerk's Office.

(b) The alteration of hours or procedures by any delivery service, including but not limited to the United States Postal Service, shall not affect the filing deadlines and requirements imposed by these rules.

(B) Prohibition against untimely filings

No document may be filed after the filing deadlines imposed by these rules, set by Supreme Court order, or as extended in accordance with S.Ct.Prac.R. 3.03(B)(2) or 11.04(C). The Clerk shall refuse to file a document that is not timely received in accordance with S.Ct.Prac.R. 3.02(A). Motions to waive this rule are prohibited and shall not be filed.

(C) Rejection of noncomplying documents

The Clerk may reject documents that are not clearly legible or that fail to comply with the requirements of these rules.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 28, 1997; July 1, 2004; October 1, 2005; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015; April 14, 2015; July 22, 2015; January 1, 2017

S.Ct.Prac.R. 3.03. Computation and Extension of Time.

(A) Computation of time

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

(2) Notwithstanding Civ.R. 6(A), when the period of time prescribed or allowed is less than seven days, as in expedited election cases under S.Ct.Prac.R. 12.08, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

(3) When the Clerk's Office of the Supreme Court is closed to the public for the entire day that constitutes the last day for doing an act, or is closed before the usual closing time on that day, then that act may be performed on the next day that is not a Saturday, Sunday, or legal holiday.

(B) Extension of time

(1) General prohibition against extensions of time

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

(2) Extension of time to file certain documents

(a) (i) Except in expedited election cases under S.Ct.Prac.R. 12.08, parties may stipulate to extensions of time to file merit briefs, including reply briefs, under S.Ct.Prac.R. 16.02 through 16.05; merit briefs, including reply briefs, under S.Ct. Prac.R. 11.05; or the response to a complaint or evidence under S.Ct.Prac.R. 12.04 and 12.06. A stipulated extension of time shall be effective only if it is filed with the Clerk within the time prescribed by these rules for filing the brief or other document that is the subject of the stipulation. The stipulation shall state the new date for filing agreed to by the parties.

(ii) Each party may obtain in a case only one stipulated extension of time not to exceed twenty days, provided the party has not previously obtained an extension of time from the Supreme Court under division B(2)(b) of this rule. The Clerk shall refuse to file a stipulation to an extension of time that is not tendered timely in accordance with this rule, or if a request for extension of time has already been granted to the party filing the stipulation under division (B)(2)(b) of this rule.

(b) (i) In an expedited election case or any other case where a stipulation to an extension of time cannot be obtained, a party may file a request for extension of time to file a merit brief, including a reply brief, the response to a complaint, or evidence. The Supreme Court will grant a party only one extension of time, not to exceed ten days, provided the request for extension of time states good cause for an extension and is filed with the Clerk within the time prescribed by the rules for filing the brief or other document that is the subject of the request.

(ii) The Clerk shall refuse to file a request for extension of time that is not tendered timely in accordance with this rule or if a stipulation to an agreed extension of time has already been filed under division (B)(2)(a) of this rule by the party filing the request.

(3) Effect of extension of time upon other parties on the same side

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 28, 1997; July 1, 2004; October 1, 2005; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 3.04. Filing Fees to Institute a Case.

The following filing fees are imposed by R.C. 2503.17 and shall be paid before a case is filed:

For filing a notice of appeal $100
For filing a notice of cross-appeal $100
For filing an order of a court of appeals certifying a conflict $100
For instituting an original action $100

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; October 16, 2009; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 3.05. Security Deposits in Original Actions.

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

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 3.06. Affidavit of Indigence or Entry of Appointment of Counsel in Lieu of Fees.

[*See Appendix A following these rules for an affidavit-of-indigence form.*]

(A) Affidavit of indigence

An affidavit of indigence may be filed in lieu of filing fees or security deposits. The affidavit shall be notarized and executed within six months prior to being filed in the Supreme Court by the party on whose behalf it is filed. The affidavit shall state the specific reasons the party does not have sufficient funds to pay the filing fee or the security deposit. The Clerk of the Supreme Court shall refuse to file an affidavit of indigence that does not comply with this rule.

(B) Entry appointing counsel

Where counsel has been appointed by a trial or appellate court to represent an indigent party, a copy of the entry of appointment may be filed in lieu of an affidavit of indigence.

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 3.07. Cover Page.

Each document filed in the Supreme Court shall contain a cover page, which shall be white. The cover page shall contain only the following information:

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

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

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

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

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

(F) The name, attorney-registration number, address, telephone number, facsimile number, and e-mail address, if available, of each attorney who has filed an appearance in the case; an indication as to which party each attorney represents; and, where two or more attorneys represent a party, designation of counsel of record in accordance with S.Ct.Prac.R. 2.03. A party who is not represented by an attorney shall indicate the party's name, address, and telephone number.

Effective Date: June 1, 1994
Amended: April 1, 1996; June 1, 2000; February 1, 2001; July 1, 2004; February 1, 2007; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2017

S.Ct.Prac.R. 3.08. Signature.

(A) Paper documents

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

(B) Electronic documents

A document that is filed by e-mail or through the E-Filing Portal pursuant to S.Ct.Prac.R. 3.02 shall include a scanned version of the person's original signature or a signature line with a forward slash followed by an "s" followed by the person's name in print (e.g., /s "John T. Smith").

Effective Date: June 1, 1994
Amended: April 1, 1996; June 1, 2000; February 1, 2001; July 1, 2004; February 1, 2007; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015

S.Ct.Prac.R. 3.09. Mechanical Requirements.

(A) Applicability to paper and electronic documents

The requirements of this rule apply to both paper documents and electronic documents submitted through the E-Filing Portal or by e-mail, unless a provision is clearly inapplicable to electronically filed documents.

(B) General

(1) Typeface

(a) Every original document filed with the Supreme Court shall be single-sided, shall be typewritten or prepared by, computer, word processor or other standard typographic process, and shall comply with the requirements of this rule.

(b) The text of all documents shall be at least 12-point type and in one of the following typefaces:

(i) Times New Roman;

(ii) Cambria;

(iii) Calibri;

(iv) Arial Standard (i.e., not Black, Rounded, Unicode, or Narrow);

(v) Palatino Linotype.

(c) If one of the typefaces specified by division (B)(1)(b) of this rule is not available, the filing party shall use a typeface that is substantially equivalent to the typefaces listed in that division and that has no more than eighty characters to a line of text.

(d) Italic type may be used only for case citations and emphasis.

(e) The Clerk of the Supreme Court may accept a handwritten document for filing only in an emergency, provided the document is legible.

(f) The text of all documents must be sufficiently dark to be legible when scanned.

(2) Paper

(a) All documents shall be on opaque, unglazed, 20 to 22-pound weight white paper, 8 1/2 by 11 inches in size.

(b) The original shall not be stapled or otherwise bound and shall not contain dividers or tabs.

(c) All margins shall be at least one inch, and the left margin shall be justified.

(d) Documents shall not be enclosed in notebooks or binders and shall not have plastic cover pages.

(3) Spacing and footnotes

The text of all documents shall be double-spaced. Footnotes and quotations may be single-spaced; however, they shall also be in 12-point type.

(C) Copy of an opinion or decision

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

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

(b) An electronically generated copy that meets the requirements of division (B)(3) of this rule, except that an electronically generated copy of an opinion may be single-spaced.

(2) Unless otherwise required by these rules or the Supreme Court Rules for the Reporting of Opinions, parties are discouraged from attaching to briefs any legal decision generally accessible through online legal-research databases.

(D) Supplements to briefs

Any supplement to the briefs filed pursuant to S.Ct.Prac.R. 16.09 may be prepared and reproduced by photocopying the relevant documents in the record, even if those documents do not comply with the mechanical requirements of division (B) of this rule, provided that the requirements as to paper size and paper type are met and each page of the supplement is clearly legible. Both sides of the paper may be used in preparing a supplement.

(E) Volumes

(1) Paper documents

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

(2) Electronic documents

Any electronic document filed with the Supreme Court that exceeds three-hundred pages shall be submitted as two or more Portable Document Format ("PDF") files, with each PDF file containing a cover page and a certificate of service.

(F) Failure to comply

Documents that fail to comply with the requirements of this rule may be stricken by the Supreme Court.

Effective Date: June 1, 1994
Amended: April 1, 1996; June 1, 2000; February 1, 2001; July 1, 2004; February 1, 2007; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015

S.Ct.Prac.R. 3.10. Number and Form of Copies.

(A) Applicability to filing through the E-Filing Portal

Generally, this rule does not apply to documents submitted through the E-Filing Portal or by e-mail. If, however, the Clerk deems it necessary, the Clerk may request that the filing party provide copies of documents filed through the E-Filing Portal. The copies shall be identical to the filed version and shall comply with the provisions of this rule.

(B) Number of copies

The original of a document filed in the Supreme Court shall be accompanied by an appropriate number of copies as follows, unless otherwise provided by S.Ct.Prac.R. 3.02(A)(3)(b) or 3.02(A)(4)(c):

Notice of appeal	1
Notice of cross-appeal	1
Praecipe filed in death-penalty appeal	1
Jurisdictional memorandum	8
Waiver of memorandum in response	0
Brief in an appeal or original action	16
List of additional authorities filed pursuant to S.Ct.Prac.R. 17.08	16
Supplement to a merit brief filed pursuant to S.Ct.Prac.R. 16.09	2
Complaint in an original action	10 plus an additional copy for each named respondent
Evidence in an original action	10
Request for extension of time	0
Stipulation to an agreed extension of time	0
Notices related to attorney representation under S.Ct.Prac.R. 2.01 through 2.03	0
Affidavits of compliance	1
Application for dismissal filed pursuant to S.Ct.Prac.R. 4.05	1
Any other document	10

(C) Date-stamped copy

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

(D) Form of copies

(1) Copies of documents shall be on opaque, unglazed, 20- to 22-pound weight white paper, 8 1/2 by 11 inches in size.

(2) Copies shall be secured firmly by a single staple in the upper-left hand corner of the document or shall be spiral bound.

(3) With the exception of jurisdictional memoranda and merit briefs, which shall be single-sided, both sides of the paper may be used as long as the document is clearly legible.

(4) Copies shall not be enclosed in notebooks or binders and shall not have plastic cover pages.

Effective Date: June 1, 1994
Amended: April 1, 1996; June 1, 2000; February 1, 2001; July 1, 2004; February 1, 2007; January 1, 2008; January 1, 2010; October 1, 2011; January 1, 2013; January 1, 2015

S.Ct.Prac.R. 3.11. Service of Documents; Notice When Documents Are Rejected for Filing.

(A) Applicability to paper and electronic documents

The requirements of this rule apply to both paper documents and electronic documents submitted through the E-Filing Portal or by e-mail.

(B) Service requirement

(1) (a) Except as provided by division (B)(1)(b) of this rule, when a party or an amicus curiae files any document with the Clerk of the Supreme Court, that party or amicus curiae shall also serve a copy of the document on all parties to the case. Service on a party represented by counsel shall be made on counsel of record.

(b) A party is not required to serve a copy of a complaint filed to institute an original action, a form containing omitted personal identifiers as required by Sup.R. 45(D), or an affidavit of indigence or entry appointing counsel submitted in lieu of a filing fee.

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

(3) In a case involving a felony, when a county prosecutor files a notice of appeal under S.Ct. Prac.R. 7.01 or an order certifying a conflict under S.Ct.Prac.R. 8.01, the county prosecutor shall also serve a copy of the notice or order on the Ohio Public Defender.

(C) Manner of service

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

(2) In appeals from the Board of Tax Appeals under S.Ct.Prac.R. 10.01, service of a notice of appeal or cross-appeal shall be made by certified mail.

(3) In expedited election cases under S.Ct.Prac.R. 12.08, service of all documents, except the complaint filed to institute the original action, shall be personal, by e-mail, or by facsimile transmission.

(D) Certificate of service; certificate of filing

(1) (a) Unless a document is filed jointly and is signed by all parties to the case, or is not required to be served pursuant to division (B)(1)(b) of this rule, all documents presented for filing with the Clerk shall contain a certificate of service. The certificate of service shall state the date and manner of service and identify the names of the persons served and shall be signed by the party or the amicus curiae who files the document.

(b) The Clerk shall refuse to accept for filing any document that does not contain a certificate of service, unless these rules require that the document is to be served by the Clerk.

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

(E) Failure to provide service

(1) When a party or amicus curiae fails to serve a party or parties to the case in accordance with division (B) of this rule, any party adversely affected may file a motion to strike the document that was not served. Within ten days after a motion to strike is filed, the party or amicus curiae against whom the motion is filed may file a memorandum in response.

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

(F) Notice to other parties when document is rejected for filing

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 28, 1997; July 1, 2004; October 1, 2005; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015

S.Ct.Prac.R. 3.12. Maintaining Privacy of Personal Identifying Information.

[*See Appendix B for a sample personal-identifier form.*]

(A) Presumption of public access

Pursuant to Sup.R. 44 through 47 and as indicated in S.Ct.Prac.R. 3.02(A)(1)(b), documents filed with the Supreme Court are public records.

(B) Redaction of personal identifiers

(1) To protect legitimate personal privacy interests, social security numbers and other personal identifying information shall be redacted from documents before the documents are filed with the Supreme Court in accordance with Sup.R. 45(D). The responsibility for redacting personal identifying information rests solely with the attorneys and parties who file the documents. The Clerk of the Supreme Court will not review the documents to confirm that personal identifying information has been excluded.

(2) If personal identifying information is redacted or omitted from a document, the information shall be provided to the Supreme Court on a separate form that indicates what information has been redacted or omitted, and provides the location of the redacted or omitted information.

(C) Motion for leave to redact

Notwithstanding S.Ct.Prac.R. 3.13, a party may file a motion for leave to redact the original of a previously filed document if personal identifying information was not omitted or redacted when the document was initially filed.

Effective Date: June 1, 1994
Amended: April 1, 1996; June 1, 2000; February 1, 2001; July 1, 2004; February 1, 2007; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 3.13. Corrections or Additions to Previously Filed Documents.

(A) General

A party who wishes to make corrections or additions to a previously filed document shall file a revised document and copies that completely incorporate the corrections or additions.

(B) Time to file

(1) The revised document shall be filed within the time permitted by these rules for filing the original document, except that corrections or additions shall not be made to a motion if a memorandum opposing the motion has already been filed.

(2) Time permitted by these rules for filing any responsive document shall begin to run when the revised document is filed.

(3) The Clerk of the Supreme Court shall refuse to file a revised document that is not submitted in the form and within the deadlines prescribed by this rule.

(C) Revised document supersedes original

A revised document that is properly filed under this rule will supersede the original document, and the Supreme Court will not consider the original document that was filed.

Effective Date: June 1, 1994
Amended: April 1, 1996; June 1, 2000; February 1, 2001; July 1, 2004; February 1, 2007; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015

S.Ct.Prac.R. 3.14. Name of Case.

(A) Appeals, certified conflicts, and certified questions of state law

Unless rule, statute, or the discretion of the Clerk of the Supreme Court requires otherwise, an appeal, certified conflict, or certified question of state law shall be docketed under the case name assigned to the action by the court or agency whose decision is being appealed or certified.

(B) Original actions, petition challenges, election contests, and apportionment cases

Unless rule, statute, or the discretion of the Clerk requires otherwise, an original action, petition challenge, election contest or apportionment case shall be docketed as provided on the initial document that is filed to institute the case.

(C) Practice-of-law cases

Unless the discretion of the Clerk requires otherwise, a practice-of-law case shall be docketed as provided on the board report that is filed to institute the case.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; August 1, 2004; January 1, 2008;¬ January 1, 2010; January 1, 2013

S.Ct.Prac.R. 3.15. Filing of Joint Notice of Appeal.

When multiple parties appeal from the same decision of a court of appeals or an administrative agency, they may join as appellants in the filing of a single notice of appeal.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; August 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

SECTION 4. GENERAL MOTIONS AND APPLICATIONS.

S.Ct.Prac.R. 4.01. Motions; Responses.

(A) Motion for order or relief

(1) Unless otherwise addressed by these rules, an application for an order or other relief shall be made by filing a motion for the order or relief. The motion shall state with particularity the grounds on which it is based.

(2) A motion to stay a lower court's decision pending appeal shall include relevant information regarding bond. A copy of the lower court's decision and any applicable opinion shall be attached to the motion.

(B) Response to a motion

(1) If a party files a motion with the Supreme Court, any other party may file a response to the motion within ten days from the date the motion is filed, unless otherwise provided in these rules or by order of the Supreme Court.

(2) A reply to a response to a motion shall not be filed by the moving party. The Clerk of the Supreme Court shall refuse to file a reply to a response to a motion, and motions to waive this rule are prohibited and shall not be filed.

(C) Supreme Court action

The Supreme Court may act upon a motion before the deadline for filing a response to the motion, if the interests of justice warrant immediate consideration by the Supreme Court.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 28, 1997; July 1, 2004; October 1, 2005; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 4.02. Request for Mediation.

Except in a criminal appeal or a case related to the practice of law, a party may file a motion to refer the case to mediation pursuant to S.Ct.Prac.R. 19.01. The Clerk of the Supreme Court shall refuse to file a motion to refer a criminal appeal or a case related to the practice of law to mediation.

Effective Date: January 1, 2010
Amended: January 1, 2013

S.Ct.Prac.R. 4.03. Frivolous Actions; Sanctions; Vexatious Litigators.

(A) Supreme Court sanction

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

(B) Vexatious litigator

If a party habitually, persistently, and without reasonable cause engages in frivolous conduct under division (A) of this rule, the Supreme Court may, sua sponte or on motion by a party, find the party to be a vexatious litigator. If the Supreme Court determines that a party is a vexatious litigator under division (A) of this rule, the court may impose filing restrictions on the party. The restrictions may include prohibiting the party from continuing or instituting legal proceedings in the Supreme Court without first obtaining leave, prohibiting the filing of actions in the Supreme Court without the filing fee or security for costs required by S.Ct.Prac.R. 3.04 and 3.05, or any other restriction the Supreme Court considers just.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 28, 1997; July 1, 2004; October 1, 2005; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 4.04. Recusal or Disqualification of a Justice.

(A) Definition

As used in this rule, "justice" means the Chief Justice or any justice of the Supreme Court or any judge of the court of appeals assigned to sit in place of the Chief Justice or a justice pursuant to Article IV, Section 2 of the Ohio Constitution.

(B) Request to recuse

(1) A party to a case pending before the Supreme Court or the counsel for a party may request the recusal of a justice by filing a request with the Clerk of the Supreme Court. The request shall

be in the form of a letter addressed to the Clerk that includes the name and number of the case and the name of the justice whose recusal is being requested. The letter shall be accompanied by an affidavit, signed by the party or party's counsel, that includes the specific basis for the recusal request and facts in support of the request. Notwithstanding the requirements of S.Ct.Prac.R. 3.11(D), the party or counsel filing the request shall provide a copy of the letter and affidavit to all parties to the case.

(2) The request for recusal shall be filed promptly when a party or party's counsel becomes aware of the existence of a basis for recusal. In a case in which oral argument is scheduled, the request for recusal shall be submitted to the Clerk no later than fifteen days before the date of oral argument, except with leave of court.

(3) An amicus curiae shall not file a request for recusal.

(4) The Clerk shall refuse to file a request for recusal if it is illegible and fails to comply with the requirements of this rule.

(C) Response to request

The justice named in the request shall submit a written response to the Clerk indicating whether the justice will recuse from the case. The response of the justice shall be provided to the Clerk as soon as practicable. The Clerk shall file the response of the justice and serve a copy by certified mail on all parties to the case.

(D) Disclosure to parties of a potential basis for disqualification; waiver

(1) A justice who believes there may be a basis for disqualification under Jud.Cond.R. 2.11 may disclose the basis for the disqualification and may ask the parties and their counsel, exclusive of an amicus curiae, to consider whether to waive disqualification. The disclosure and request shall be made in writing and submitted to the Clerk. The Clerk shall file the disclosure and request and serve a copy by certified mail on all parties to the case.

(2) The parties and their counsel shall file a response with the Clerk within fifteen days of receipt of the disclosure and request. The failure of a party or counsel to respond timely to a disclosure and request shall be considered a waiver of disqualification.

Effective Date: April 1, 2011
Amended: January 1, 2013

S.Ct.Prac.R. 4.05. Application for Dismissal of a Case.

In any case filed with the Supreme Court, a party who filed the case may at any time file an application for dismissal of the case. The application shall briefly state the reasons requesting dismissal of the case and shall comply with the service requirements of S.Ct.Prac.R. 3.11(C).

Effective Date: January 1, 2013

S.Ct.Prac.R. 4.06. Substitution of Parties

(A) General

(1) Original actions

In original actions, except as provided for in division (B) of this rule, substitution of a party shall be governed by the applicable provisions of the Ohio Rules of Civil Procedure.

(2) Other case types

In all other cases, except as provided for in division (B) of this rule, if substitution of a party is necessary, a motion shall be filed that designates the person to be substituted and states the reasons the substitution is required.

(B) Public officers; death or separation from office

Unless otherwise provided for by this rule, when a public officer in the officer's official capacity is a party to an appeal or other proceeding in the Supreme Court of Ohio and ceases to hold office while the matter is pending, the action does not abate and the successor officer is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party. Any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time. The omission to enter such an order shall not affect the substitution.

Effective: January 1, 2017

SECTION 5. CASE TYPES.

S.Ct.Prac.R. 5.01. Appeals of Right.

(A) Definition

As used in these rules, an "appeal of right" is one of the following:

(1) An appeal from a decision of a court of appeals in a case in which the death penalty has been affirmed for an offense committed prior to January 1, 1995;

(2) An appeal from the decision of a court of appeals under App.R. 26(B) in a capital case;

(3) An appeal from a decision of a court of appeals in a case that originated in the court of appeals and that invokes the appellate jurisdiction of the Supreme Court;

(4) An appeal from a decision of a court of common pleas in a case in which the death penalty has been imposed for an offense committed on or after January 1, 1995;

(5) An appeal from a decision of a court of common pleas in a case contesting an election under R.C. 3515.15.

(B) Instituting a case

(1) An appeal of right as designated in S.Ct.Prac.R. 5.01(A)(1), (2), and (4) shall be filed as provided for in S.Ct.Prac.R. 11.01.

(2) An appeal of right as designated in S.Ct.Prac.R. 5.01(A)(3) and (5) shall be filed as provided for in S.Ct.Prac.R. 6.01.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; August 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 5.02. Jurisdictional Appeals.

(A) Definition

As used in these rules, a "jurisdictional appeal" is an appeal from a decision of a court of appeals that asserts one or more of the following:

(1) The case involves a substantial constitutional question, including an appeal from the decision of a court of appeals under App.R. 26(B) in a noncapital case, pursuant to Article IV, Section 2(B)(2)(a)(ii) of the Ohio Constitution;

(2) The case involves a felony pursuant to Article IV, Section 2(B)(2)(b) of the Ohio Constitution;

(3) The case involves a question of public or great general interest pursuant to Article IV, Section 2(B)(2)(e) of the Ohio Constitution.

(B) Instituting a case

A jurisdictional appeal shall be filed as provided for in S.Ct.Prac.R. 7.01 and shall proceed in accordance with S.Ct.Prac.R. 7.08.

Effective Date: January 1, 2013

S.Ct.Prac.R. 5.03. Certified-Conflict Cases.

(A) Definition

As used in these rules, a "certified-conflict" case is a case in which the court of appeals has issued an order certifying a conflict pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution.

(B) Procedure

A certified-conflict case shall be filed as provided for in S.Ct.Prac.R. 8.01.

Effective Date: January 1, 2013

S.Ct.Prac.R. 5.04. Certification of Questions of State Law from Federal Courts.

(A) Definition

As used in these rules, a "certified question of state law" case is a case in which the Supreme Court may answer a question of state law certified to it by a court of the United States.

(B) Instituting a case

A certified-question-of-state-law case shall be filed as provided for in S.Ct.Prac.R. 9.01 and shall proceed in accordance with S.Ct.Prac.R. 9.05 through 9.08.

Effective Date: January 1, 2013

S.Ct.Prac.R. 5.05. Administrative-Agency Appeals.

(A) Definition

As used in these rules, an "administrative agency" appeal is an appeal that involves review of the action of the Board of Tax Appeals, the Public Utilities Commission, or the Power Siting Board.

(B) Instituting a case

An administrative-agency appeal shall be filed as provided for in S.Ct.Prac.R. 10.01 through 10.03.

Effective Date: January 1, 2013

S.Ct.Prac.R. 5.06. Original Actions.

(A) Definition

As used in these rules, an "original action" is a case that invokes the original jurisdiction of the Supreme Court pursuant to Article IV, Section 2(B)(1)(a) through (e) of the Ohio Constitution.

(B) Instituting a case

An original action shall be filed as provided for in S.Ct.Prac.R. 12.02.

Effective Date: January 1, 2013

S.Ct.Prac.R. 5.07. Practice-of-Law Cases.

(A) Definition

As used in these rules, a "practice of law" case is a case that involves admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law as provided for in Article IV, Section 2(B)(1)(g) the Ohio Constitution.

(B) Instituting a case

A practice-of-law case shall be filed as provided for in S.Ct.Prac.R. 13.01.

Effective Date: January 1, 2013

S.Ct.Prac.R. 5.08. Petition Challenges, Election Contests, and Apportionment Cases.

(A) Definitions

As used in these rules:

(1) A "petition challenge" case is a case that invokes the jurisdiction of the Supreme Court as provided for in Article II, Section 1g of the Ohio Constitution.

(2) An "election contest" case is a case filed pursuant to R.C. 3515.08(B).

(3) An "apportionment" case is a case that invokes the jurisdiction of the Supreme Court as provided for in Article XI, Section 13 of the Ohio Constitution.

(B) Procedure

(1) A petition-challenge case shall be filed as provided in S.Ct.Prac.R. 14.01.

(2) An election-contest case shall be filed as provided in S.Ct.Prac.R. 14.02.

(3) An apportionment case shall be filed as provided in S.Ct.Prac.R. 14.03.

Effective Date: January 1, 2013

SECTION 6. APPEALS OF RIGHT.

S.Ct.Prac.R. 6.01. Institution of an Appeal of Right.

(A) Perfection of appeal

(1) To perfect an appeal of right as defined by S.Ct.Prac.R. 5.01(A)(3), the appellant shall file a notice of appeal in the Supreme Court within forty-five days from the entry of the judgment being appealed.

(2) To perfect an appeal of right as defined by S.Ct.Prac.R. 5.01(A)(5), the appellant shall file a notice of appeal in the Supreme Court within twenty days from the entry of the judgment being appealed.

(3) The time period designated in this rule for filing a notice of appeal is mandatory, and the appellant's failure to file within this time period shall divest the Supreme Court of jurisdiction to hear the appeal. The Clerk of the Supreme Court shall refuse to file a notice of appeal that is received for filing after this time period has passed.

(B) Notice of appeal

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

(a) The name of the court whose judgment is being appealed;

(b) The case name and number assigned to the case by the court;

(c) The date of the entry of the judgment being appealed;

(d) That either of the following is applicable:

(i) The case originated in the court of appeals;

(ii) The case originated in the court of common pleas and is an appeal of a contest of an election under R.C. 3515.15.

(2) (a) A date-stamped copy of the court's judgment entry that is being appealed shall accompany the notice of appeal. For purposes of this rule, a date-stamped copy of the court's judgment entry shall mean a copy bearing the file stamp of the clerk of the court and reflecting the date the court filed its judgment entry for journalization with its clerk.

(b) In an appeal from a case that originated in the court of appeals, if the opinion of the court of appeals serves as its judgment entry, a date-stamped copy of the opinion shall be attached.

(C) Subsequent notices of appeal and cross-appeal

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

(2) A notice of appeal shall be designated and treated as a notice of cross-appeal if both of the following requirements are met:

(i) It is filed after the original notice of appeal was filed in the case;

(ii) It is filed by a party against whom the original notice of appeal was filed.

Effective Date: January 1, 2013
Amended: January 1, 2015

S.Ct.Prac.R. 6.02. Ordering of the Record and Briefing.

(A) The record

Upon the filing of an appeal of right pursuant to S.Ct.Prac.R. 6.01, the Clerk of the Supreme Court shall issue an order for the transmittal of the record from the clerk of the court where the judgment on appeal was rendered.

(B) Briefing

After the record is filed by the Clerk of the Supreme Court, briefing in an appeal of right shall proceed as provided for by S.Ct.Prac.R. 16.01 through 16.09.

Effective Date: January 1, 2013

SECTION 7. JURISDICTIONAL APPEALS.

S.Ct.Prac.R. 7.01. Institution of Jurisdictional Appeal.

(A) Perfection of appeal

(1) Time to file and documents required

(a) (i) To perfect a jurisdictional appeal from a court of appeals to the Supreme Court as defined by S.Ct.Prac.R. 5.02(A), the appellant shall file a notice of appeal in the Supreme Court within forty-five days from the entry of the judgment being appealed. The date the court of appeals filed its judgment entry for journalization with its clerk, in accordance with App.R. 22, shall be considered the date of entry of the judgment being appealed.

(ii) Except as provided by S.Ct.Prac.R. 7.01(A)(3), the appellant shall also file a memorandum in support of jurisdiction, in accordance with S.Ct.Prac.R. 7.02, at the time the notice of appeal is filed.

(b) Except as provided in divisions (A)(2), (3), (4), (5), and (6) of this rule, the time period designated in this rule for filing a notice of appeal and memorandum in support of jurisdiction is mandatory, and the appellant's failure to file within this time period shall divest the Supreme Court of jurisdiction to hear the appeal. The Clerk of the Supreme Court shall refuse to file a notice of appeal or a memorandum in support of jurisdiction that is received for filing after this time period has passed.

(2) Subsequent notices of appeal and cross-appeal

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

(b) A notice of appeal shall be designated and treated as a notice of cross-appeal if both of the following requirements are met:

(i) It is filed after the original notice of appeal was filed in the case;

(ii) It is filed by a party against whom the original notice of appeal was filed.

(c) If a notice of cross-appeal is filed, a combined memorandum both in response to appellant/cross-appellee's memorandum and in support of jurisdiction for the cross-appeal shall be filed by the deadline imposed in S.Ct.Prac.R. 7.05.

(3) Motion for stay in advance of filing a memorandum in support of jurisdiction

(a) In a jurisdictional appeal, if the appellant seeks from the Supreme Court an immediate stay of the court of appeals' judgment that is being appealed, the appellant may file a notice of appeal in the Supreme Court without an accompanying memorandum in support of jurisdiction, provided both of the following conditions are satisfied:

(i) A motion for stay of the court of appeals' judgment is filed with the notice of appeal;

(ii) A date-stamped copy of the court of appeals' opinion and judgment entry being appealed is attached to the motion for stay.

(b) If pursuant to S.Ct.Prac.R. 7.01(A)(3)(a) a memorandum in support of jurisdiction is not filed with the notice of appeal, then a memorandum in support of jurisdiction shall be filed no later than forty-five days from the date of the entry of the court of appeals' judgment being appealed. The Supreme Court will dismiss the appeal if the memorandum in support of jurisdiction is not timely filed pursuant to this provision.

(4) Motion for a delayed appeal in felony cases

(a) In a felony case, when the time has expired for filing a notice of appeal in the Supreme Court, the appellant may file a delayed appeal by filing a notice of appeal and a motion for delayed appeal that complies with the following requirements:

(i) The motion shall state the date of entry of the judgment being appealed and the reasons for the delay;

(ii) Facts supporting the motion shall be set forth in an affidavit;

(iii) A date-stamped copy of the court of appeals' opinion and the judgment entry being appealed shall be attached to the motion.

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

(c) The provision for delayed appeal does not apply to appeals involving postconviction relief or appeals brought pursuant to App.R. 26(B). The Clerk shall refuse to file motions for delayed appeal involving postconviction relief or App.R. 26(B).

(5) Effect of a timely filed application for reconsideration with court of appeals

(a) When a party timely files an application for reconsideration in the court of appeals pursuant to App.R. 26(A)(1), the time for filing a notice of appeal from the court of appeals' entry of judgment shall be tolled.

(b) If a timely application for reconsideration is filed in the court of appeals, and the appellant seeks to appeal from the court of appeals' entry of judgment, the appellant shall file a notice of appeal within forty-five days of the court of appeals' decision denying the application for reconsideration, or if reconsideration is granted, from the subsequent entry of judgment.

(c) To file an appeal from the court of appeals' opinion and judgment entry after the court of appeals has ruled on an application for reconsideration, the appellant shall comply with the time frame imposed by S.Ct.Prac.R. 7.01(A)(5)(b) and shall include both of the following:

(i) A notice of appeal that complies with the requirements of S.Ct.Prac.R. 7.01(B) and that indicates the date of the filing of the application for reconsideration, the date of the court of appeals' decision on the application for reconsideration, and the date of the court of appeals' opinion and judgment entry that is being appealed;

(ii) A memorandum in support of jurisdiction that complies with the requirements of S.Ct.Prac.R. 7.02 and that also has attached a date-stamped copy of the court of appeals' decision denying the application for reconsideration, or if reconsideration is granted, the subsequent entry of judgment.

(6) Effect of en banc consideration by the court of appeals

(a) When a party timely files an application for en banc consideration in the court of appeals pursuant to App.R. 26(A)(2), the time for filing a notice of appeal from the court of appeals' entry of judgment shall be tolled.

(b) If a timely application for en banc consideration is filed in the court of appeals and the appellant seeks to appeal from the court of appeals' entry of judgment, the appellant shall file a notice of appeal within forty-five days of the court of appeals' decision denying the application for en banc consideration, or if en banc consideration is granted, the subsequent entry of judgment.

(c) To file an appeal from the court of appeals' opinion and judgment entry after the court of appeals has ruled on an application for en banc consideration, the appellant shall comply with the time frame imposed by S.Ct.Prac.R. 7.01(A)(6)(b) and shall include both of the following:

(i) A notice of appeal that complies with the requirements of S.Ct.Prac.R. 7.01(B), and that indicates the date of the filing of the application for en banc consideration, the date of the court of appeals' decision on the application for en banc consideration, and the date of the court of appeals' opinion and judgment entry that is being appealed;

(ii) A memorandum in support of jurisdiction that complies with the requirements of S.Ct.Prac.R. 7.02, and that also has attached a date-stamped copy of the court of appeals' decision denying the application for en banc consideration, or if en banc consideration is granted, the subsequent entry of judgment.

(d) If a timely sua sponte en banc consideration is initiated by the court of appeals but an appeal to the Supreme Court has not been perfected, the appellant may file a notice of appeal within forty-five days of the court of appeals' final en banc decision.

(e) To file an appeal from the court of appeals' opinion and judgment entry after the court of appeals completes the sua sponte en banc consideration process, the appellant shall comply with the time frame imposed by S.Ct.Prac.R. 7.01(A)(6)(d) and shall include both of the following:

(i) A notice of appeal that complies with the requirements of S.Ct.Prac.R. 7.01(B) and that indicates the date of the decision of the court of appeals initiating the sua sponte en banc consideration, the date of the court of appeals' final decision on the sua sponte en banc consideration, and the date of the court of appeals' opinion and judgment entry that is being appealed;

(ii) A memorandum in support of jurisdiction that complies with the requirements of S.Ct.Prac.R. 7.02 and that also has attached a date-stamped copy of the court of appeals' decision initiating the sua sponte en banc consideration process and a date-stamped copy of the court of appeals' final en banc consideration decision.

(f) If a party perfected a jurisdictional appeal with the Supreme Court in accordance with S.Ct.Prac.R. 7.01(A), and the court of appeals subsequently initiates timely sua sponte en banc consideration, the party shall file a notice with the Supreme Court that an en banc decision is forthcoming from the court of appeals. The Supreme Court will stay consideration of the jurisdictional memoranda until after the court of appeals' en banc decision.

(B) Contents of notice of appeal

[*See Appendix C for a sample notice of appeal from a court of appeals.*]

(1) The notice of appeal for a jurisdictional appeal shall contain all of the following:

(a) The name of the court of appeals whose judgment is being appealed;

(b) The case name and number assigned to the case by the court of appeals;

(c) The date of the entry of the judgment being appealed;

(d) A statement that one or more of the following are applicable:

(i) The case raises a substantial constitutional question;

(ii) The case involves a felony;

(iii) The case is one of public or great general interest;

(iv) The case involves termination of parental rights or adoption of a minor child, or both;

(v) The case is an appeal of a court of appeals' determination under App.R. 26(B);

(vi) The case involves death-penalty postconviction proceedings.

(2) In a jurisdictional appeal, if a party has timely moved the court of appeals to certify a conflict under App.R. 25, the notice of appeal shall be accompanied by a notice of pending motion to certify a conflict, in accordance with S.Ct.Prac.R. 7.07(A), stating that a motion to certify a conflict is pending with the court of appeals.

(C) Notice to the court of appeals

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

(D) Jurisdiction of court of appeals after appeal to Supreme Court is perfected

(1) After an appeal is perfected from a court of appeals to the Supreme Court, the court of appeals is divested of jurisdiction, except to take action in aid of the appeal, to rule on an application

timely filed with the court of appeals pursuant to App.R. 26, or to rule on a motion to certify a conflict pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution.

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; August 1, 2004; January 1, 2008; January 1, 2010; July 1, 2010; October 1, 2011; January 1, 2013; January 1, 2017

S.Ct.Prac.R. 7.02. Memorandum in Support of Jurisdiction.

[*See Appendix D following these rules for a sample memorandum.*]

(A) Filing

In a jurisdictional appeal, unless otherwise provided in S.Ct.Prac.R. 7.01, the appellant shall file a memorandum in support of jurisdiction with the notice of appeal.

(B) Page limitation

(1) Except in postconviction death-penalty cases, a memorandum in support of jurisdiction shall not exceed fifteen numbered pages, exclusive of the table of contents and the certificate of service.

(2) In a postconviction death-penalty case there is no page limit for the memorandum in support of jurisdiction.

(C) Parts of the memorandum

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

(1) A table of contents, which shall include numbered propositions of law arranged in order;

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

(3) A statement of the case and facts;

(4) A brief and concise argument in support of each proposition of law.

(D) Required Attachments

(1) A date-stamped copy of the court of appeals' opinion and judgment entry being appealed shall accompany the memorandum in support of jurisdiction. If a delayed appeal was granted, a date-stamped copy of the court of appeals' opinion and judgment entry is not required to accompany the memorandum in support of jurisdiction. For purposes of this rule, a date-stamped copy of the court of appeals' judgment entry shall mean a copy bearing the file stamp of the clerk of the court of appeals and reflecting the date on which the court of appeals filed its judgment entry for journalization with its clerk under App.R. 22.

(2) In postconviction death-penalty cases, the appellant shall also attach the findings of fact and conclusions of law issued by the trial court or a notice that no findings of fact or conclusions of law were issued by the trial court.

(3) The appellant may also attach any other judgment entries or opinions issued in the case, if relevant to the appeal. The memorandum shall not include any other attachments.

(E) Refusal to file

Except as otherwise provided in S.Ct.Prac.R. 7.01(A), if the appellant does not tender a memorandum in support of jurisdiction for timely filing along with the notice of appeal, the Clerk of the Supreme Court shall refuse to file the notice of appeal.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015

S.Ct.Prac.R. 7.03. Memorandum in Response.

(A) Deadline for filing

(1) Within thirty days after the appellant's memorandum in support of jurisdiction is filed, the appellee may file a memorandum in response.

(2) If the appeal involves termination of parental rights or adoption of a minor child, or both, any memorandum in response shall be filed within twenty days after the memorandum in support of jurisdiction is filed.

(B) Page limitation and contents of memorandum

(1) Except in postconviction death-penalty cases, the memorandum in response shall not exceed fifteen numbered pages, exclusive of the certificate of service; shall not include any attachments; and shall contain both of the following:

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

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

(2) In a postconviction death-penalty case, there is no page limit for the memorandum in response.

(C) Case Number

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

(D) Multiple memoranda and time for response

If two or more memoranda in support of jurisdiction are filed in a case, the appellee shall file only one memorandum in response. The time specified in division (A) of this rule for filing the memorandum in response shall be calculated from the date the last memorandum in support of jurisdiction was filed in the case.

(E) Waiver of memorandum in response

The appellee may waive the filing of a memorandum in response. A waiver shall be on a form prescribed by the Clerk of the Supreme Court and shall be filed within twenty days after the memorandum in support of jurisdiction is filed.

[*See Appendix E following these rules for the prescribed waiver form.*]

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015

S.Ct.Prac.R. 7.04. Prohibition Against Supplemental and Reply Memoranda.

(A) Supplemental memoranda

(1) Except as provided in S.Ct.Prac.R. 3.13, jurisdictional memoranda shall not be supplemented.

(2) If a relevant authority is issued after the deadline has passed for filing a party's jurisdictional memorandum, that party may file a citation to the relevant authority but shall not file additional argument.

(B) Reply memoranda

The appellant shall not file a reply to the memorandum in response filed by the appellee under S.Ct.Prac.R. 7.03.

(C) Refusal to file

The Clerk of the Supreme Court shall refuse to file supplemental or reply memoranda received for filing in violation of this rule and motions to waive the provisions of this rule are prohibited and shall not be filed.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 7.05. Jurisdictional Memoranda in Case Involving Cross-Appeal.

(A) General

(1) In a case involving a cross-appeal, the appellee/cross-appellant shall file a combined memorandum both in response to appellant/cross-appellee's memorandum and in support of jurisdiction for the cross-appeal within thirty days of the filing of appellant/cross-appellee's memorandum in support of jurisdiction.

(2) Except as otherwise provided by this rule, the combined memorandum shall comply with all of the requirements contained in S.Ct.Prac.R. 7.02 and 7.03; however, a date-stamped copy of the court of appeals opinion and judgment entry being appealed need not be attached to the combined memorandum.

(3) Within thirty days after the filing of appellee/cross-appellant's combined memorandum, the appellant/cross-appellee shall file the last memorandum, which shall be limited to a response to appellee/cross-appellant's arguments in support of jurisdiction for the cross-appeal.

(B) Termination of parental rights or adoption

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

(C) Page limitation

Except in postconviction death penalty cases, a memorandum filed under this rule by the appellant/cross-appellee shall not exceed fifteen numbered pages, and the memorandum filed by the appellee/cross-appellant shall not exceed thirty numbered pages.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 7.06. Jurisdictional Memorandum of Amicus Curiae.

(A) General

(1) An amicus curiae may file a jurisdictional memorandum urging the Supreme Court to accept or decline to accept a jurisdictional appeal. Leave to file an amicus memorandum is not required.

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

(B) Deadline for filing

(1) An amicus memorandum in support of jurisdiction shall be filed by the appellant's deadline for perfecting an appeal to the Supreme Court or by the appellant's deadline for filing a memorandum in support of jurisdiction, whichever is later.

(2) An amicus memorandum in response shall be filed by the appellee's deadline for filing a memorandum in response.

(3) The Clerk of the Supreme Court shall refuse to file an amicus memorandum that is not timely received.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 7.07. Effect of Pending Motion to Certify a Conflict upon a Jurisdictional Appeal.

(A) General

(1) If a party has perfected a jurisdictional appeal with the Supreme Court in accordance with S.Ct.Prac.R. 7.01(A), but also has timely moved the court of appeals to certify a conflict in the case, that party shall file a notice with the Supreme Court that a motion to certify a conflict is pending in the court of appeals.

(2) The Supreme Court will stay consideration of the jurisdictional memoranda filed in the jurisdictional appeal until the court of appeals has determined whether to certify a conflict in the case.

(B) Determination of no conflict by the court of appeals

(1) If the court of appeals determines that a conflict does not exist, the party that moved the court of appeals to certify a conflict shall immediately file a notice of that determination with the Supreme Court.

(2) In accordance with S.Ct.Prac.R. 7.08, the Supreme Court will consider the jurisdictional memoranda filed in the jurisdictional appeal.

(C) Determination of conflict by the court of appeals

(1) If both a certified conflict and jurisdictional appeal are perfected, the Supreme Court will review the court of appeals order certifying a conflict when it reviews the jurisdictional memoranda filed by the parties.

(2) In accordance with S.Ct.Prac.R. 7.08 and 8.02, the Supreme Court will issue an order determining both whether a conflict exists and whether to accept the jurisdictional appeal, and consolidating the cases if necessary.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 7.08. Determination of Jurisdiction.

(A) Time to review

(1) (a) After the time for filing jurisdictional memoranda has passed, the Supreme Court will review the jurisdictional memoranda filed and determine whether to accept the appeal and decide the case on the merits.

(b) If the appeal involves termination of parental rights or adoption of a minor child, or both, the Supreme Court will expedite its review and determination.

(2) (a) If the appellee has filed a waiver in lieu of a memorandum in response, the Supreme Court may review the memorandum in support of jurisdiction and determine whether to accept the appeal before the deadline for filing the memorandum in response.

(b) Upon review of the memorandum in support of jurisdiction and notwithstanding the appellee's filing of a waiver, the Supreme Court may direct the appellee to file a memorandum in response before it decides whether to accept the appeal.

(3) The Supreme Court may hold its determination of whether to accept a jurisdictional appeal pending the outcome of any other case before the Supreme Court that may involve a dispositive issue.

(B) Decision on jurisdiction

Upon review of the jurisdictional memoranda, the Supreme Court will do one of the following:

(1) Accept the appeal and order that the case be briefed in accordance with the applicable provisions of S.Ct.Prac.R. 16.01 through 16.08;

(2) Accept the appeal and hold the decision in the appeal for another case that is pending before the Supreme Court;

(3) Accept the appeal and enter judgment summarily;

(4) Decline to accept the appeal. In declining to accept an appeal the Supreme Court has determined that one or more of the following are applicable after review of the jurisdictional memoranda:

(a) The appeal does not involve a substantial constitutional question and should be dismissed;

(b) The appeal does not involve a question of great general or public interest;

(c) The appeal does not involve a felony;

(d) The appeal does involve a felony, but leave to appeal is not warranted.

(5) Take any other action the Supreme Court deems appropriate.

(C) Jurisdictional memorandum from state solicitor

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 7.09. Appointment of Counsel in Felony Cases.

If the Supreme Court accepts a jurisdictional appeal or a certified-conflict case involving a felony and an unrepresented party to the appeal is indigent, the Supreme Court will appoint the Ohio Public Defender or other counsel to represent the indigent party or order the court of appeals to appoint counsel as provided in S.Ct.Prac.R. 7.01(D)(2).

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015

S.Ct.Prac.R. 7.10. Improvidently Accepted Jurisdictional Appeals.

When a case has been accepted for determination on the merits pursuant to S.Ct.Prac.R. 7.08, the Supreme Court may later find that there is no substantial constitutional question or question of public or great general interest, that leave to appeal in a felony case was not warranted, or that the same question has been raised and passed upon in a prior appeal. Accordingly, the Supreme Court may sua sponte dismiss the case as having been improvidently accepted or summarily reverse or affirm on the basis of precedent.

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

SECTION 8. CERTIFIED-CONFLICT CASES.

S.Ct.Prac.R. 8.01. Institution of a Certified-Conflict Case.

(A) General

When a court of appeals issues an order certifying a conflict pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution, any interested party to the proceeding may institute a certified-conflict case by filing a notice of certified conflict in the Supreme Court.

(B) Procedure

The notice of certified conflict shall have attached or be accompanied by all of the following:

(1) A date-stamped copy of the court of appeals order certifying a conflict;

(2) A copy of the certifying court's opinion;

(3) Copies of the conflicting court of appeals' opinions.

(C) Party status

The party who files the order certifying a conflict shall be considered the appellant.

(D) Jurisdiction and refusal to file

Failure to file the court of appeals order certifying a conflict within thirty days after the date of such order shall divest the Supreme Court of jurisdiction to consider the order certifying a conflict. The Clerk of the Supreme Court shall refuse to file a notice of certified conflict that is received for filing after this time period has passed.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015; January 1, 2017

S.Ct.Prac.R. 8.02. Review of Court of Appeals Order Certifying a Conflict.

(A) General

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

(B) Clarity of order

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

(C) Determination of no conflict

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

(D) Determination of conflict

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 8.03. Briefing of Certified-Conflict Cases.

(A) Briefs

If the Supreme Court determines that a conflict exists, the parties shall file their merit briefs in conformance with S.Ct.Prac.R. 16.01 through 16.10.

(B) Scope

The parties shall brief only the issues identified in the order of the Supreme Court as issues to be considered, and those issues shall be clearly identified in the table of contents, in accordance with S.Ct.Prac.R. 16.02(B)(1).

(C) When a certified-conflict case is consolidated with a jurisdictional appeal

In cases where a certified-conflict case has been consolidated with an appeal under S.Ct.Prac.R. 7.07(C), the brief shall identify the issues that have been found by the Supreme Court to be in conflict and shall distinguish those issues from any other issues being briefed in the consolidated appeal.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 8.04. Improvidently Certified Conflicts.

When the Supreme Court finds a conflict pursuant to S.Ct.Prac.R. 8.02, it may later find that there is no conflict or that the same question has been raised and passed upon in a prior appeal. Accordingly, the Supreme Court may sua sponte dismiss the case as having been improvidently certified or summarily reverse or affirm on the basis of precedent.

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

SECTION 9. CERTIFICATION OF QUESTIONS OF STATE LAW FROM FEDERAL COURTS.

S.Ct.Prac.R. 9.01. Institution of a Case Certifying a Question of State Law.

(A) General

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

(B) Procedure

(1) A case certifying a question of state law shall be instituted by the clerk of the certifying court filing with the Clerk of the Supreme Court a date-stamped certification order from a court of the United States as specified by S.Ct.Prac.R. 9.02 and 9.03.

(2) A case certifying a question of state law may be initiated with a paper filing or through the E-Filing Portal.

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015; January 1, 2017

S.Ct.Prac.R. 9.02. Contents of Certification Order.

The certification order shall contain all of the following:

(A) The name of the case;

(B) A statement of facts showing the nature of the case, the circumstances from which the question of law arises, the question of law to be answered, and any other information the certifying court considers relevant to the question of law to be answered;

(C) The name of each of the parties;

(D) The names, addresses, telephone numbers, and attorney registration numbers of counsel for each party;

(E) A designation of one of the parties as the moving party.

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 9.03. Preparation of Certification Order; Notice of Filing.

(A) Certification order

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

(B) Notice of filing

Upon the filing of a certification order with the Supreme Court, the Clerk of the Supreme Court shall issue a notice of filing to all parties or their counsel of record at the address provided on the certification order. The notice shall inform the parties of the case number assigned by the Clerk, the date of the filing of the case, and the requirement to file preliminary memoranda in the case pursuant to S.Ct.Prac.R. 9.05.

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; October 1, 2011; January 1, 2013

S.Ct.Prac.R. 9.04. Parties.

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

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 9.05. Preliminary Memoranda; Court Determination of Whether to Answer Question Certified.

(A) Preliminary memoranda

(1) Within twenty days after a certification order is filed with the Supreme Court, each party shall file a memorandum, not to exceed fifteen pages in length, addressing all questions of law certified to the Supreme Court.

(2) An amicus curiae may file a memorandum conforming to the requirements of this rule and supporting either party within twenty days after a certification order is filed with the Supreme Court.

(B) Court determination

The Supreme Court will review the memoranda and issue an order identifying the question or questions it will answer or decline to answer. The Clerk of the Supreme Court shall send a copy of the order to the certifying court and to all parties or their counsel.

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 9.06. Record.

The Supreme Court sua sponte or on motion of a party may request that copies of all or any portion of the record before the certifying court be transmitted to the Clerk of the Supreme Court.

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 9.07. Briefing and Oral Argument.

(A) Briefing

If the Supreme Court decides to answer any of the questions certified to it, the parties shall brief the merits of the issue certified in accordance with S.Ct.Prac.R. 16.01 through 16.10. The petitioner shall proceed under the provisions of S.Ct.Prac.R. 16.01 through 16.10 that are applicable to an appellant and the respondent shall proceed under the provisions applicable to an appellee.

(B) Oral argument

After a case is briefed in accordance with S.Ct.Prac.R. 16.01 through 16.10, oral argument will be scheduled pursuant to S.Ct.Prac.R. 17.01(C).

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 9.08. Opinion.

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

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

SECTION 10. ADMINISTRATIVE-AGENCY APPEALS.

S.Ct.Prac.R. 10.01. Institution of an Appeal from the Board of Tax Appeals.

(A) Perfection of an appeal

(1) A notice of appeal from the Board of Tax Appeals shall be filed with the Supreme Court and the Board within thirty days from the date of the entry of the decision of the Board.

(2) The notice of appeal shall be accompanied by a date-stamped copy of the decision being appealed, set forth the claimed errors, comply with the service requirements of S.Ct.Prac.R. 3.11(C)(2), and otherwise be in conformance with R.C. 5717.04.

(3) If a party timely files a notice of appeal in the Supreme Court, any other party may file a notice of appeal pursuant to R.C. 5717.04.

(B) Proceedings

After the record in an appeal from the Board of Tax Appeals is filed by the Clerk of the Supreme Court, the parties shall brief the case in accordance with the applicable provisions of S.Ct.Prac.R. 16.01 through 16.10.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; August 1, 2004; January 1, 2008;¬ January 1, 2010; January 1, 2013; January 1, 2015; January 1, 2017

S.Ct.Prac.R. 10.02. Institution of an Appeal from the Public Utilities Commission.

(A) Perfection of an appeal

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

(2) (a) The notice of appeal shall be accompanied by a date-stamped copy of the decision being appealed, comply with the service requirements of S.Ct.Prac.R. 3.11(B)(2), and contain a certificate of filing pursuant to S.Ct.Prac.R. 3.11(D)(2).

(b) The notice of appeal shall identify where in the application for rehearing that was filed pursuant to R.C. 4903.10 the issues to be raised on appeal were preserved.

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

(B) Proceedings

After the record in an appeal from the Public Utilities Commission is filed by the Clerk of the Supreme Court, the parties shall brief the case in accordance with the applicable provisions of S.Ct.Prac.R. 16.01 through 16.10.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; August 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015; January 1, 2017

S.Ct.Prac.R. 10.03. Institution of an Appeal from the Power Siting Board.

(A) Perfection of an appeal

A notice of appeal or cross-appeal from the Power Siting Board shall be filed with the Supreme Court and the board in accordance with S.Ct.Prac.R. 10.02(A) and pursuant to R.C. 4906.12.

(B) Proceedings

After the record in an appeal from the Power Siting Board is filed by the Clerk of the Supreme Court, the parties shall brief the case in accordance with the applicable provisions of S.Ct.Prac.R. 16.01 through 16.10.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; August 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

SECTION 11. DEATH-PENALTY APPEALS.

S.Ct.Prac.R. 11.01. Institution of Death-Penalty Appeal of Right.

(A) Perfection of an appeal from the court of appeals

(1) To perfect an appeal of right pursuant to S.Ct.Prac.R. 5.01(A)(1) from a court of appeals for a case in which the death penalty has been imposed for an offense committed prior to January 1, 1995, the appellant shall file a notice of appeal, accompanied by the court of appeals' opinion and judgment entry, in the Supreme Court within forty-five days from the journalization of the entry of the judgment being appealed.

(2) To perfect an appeal of right pursuant to S.Ct.Prac.R. 5.01(A)(2) from a court of appeals' decision under App.R. 26(B) in a capital case, the appellant shall file a notice of appeal, accompanied by the court of appeals' opinion and judgment entry, in the Supreme Court within forty-five days from the journalization of the entry of the judgment being appealed.

(B) Perfection of an appeal from the court of common pleas

(1) To perfect an appeal of right pursuant to S.Ct.Prac.R. 5.01(A)(4) for a case in which the death penalty has been imposed for an offense committed on or after January 1, 1995, the appellant shall file a notice of appeal, accompanied by the court of common pleas' judgment entry, in the Supreme Court within forty-five days from the journalization of the entry of the judgment being appealed or the filing of the trial court opinion pursuant to R.C. 2929.03(F), whichever is later.

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

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

(C) Copy of the praecipe to court reporter

A notice of appeal filed pursuant to S.Ct.Prac.R. 11.01(B)(1) shall be accompanied by a copy of the praecipe that was served by the appellant on the court reporter pursuant to S.Ct.Prac.R. 11.03(C)(2). The appellant shall certify on this copy the date the praecipe was served on the reporter.

(D) Notice to lower court

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

(E) Jurisdiction of common pleas court and court of appeals after appeal to Supreme Court is perfected

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

Effective: June 1, 1994
Amended: April 1, 1996; June 1, 1998; June 1, 2000; July 1, 2004; October 1, 2005; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015

S.Ct.Prac.R. 11.02. Appointment of Counsel.

If a capital appellant is unrepresented and is indigent, the Supreme Court will appoint the Ohio Public Defender or other counsel qualified pursuant to Sup.R. 20 through 20.05 to represent the appellant or order the trial court or court of appeals to appoint qualified counsel.

Effective: June 1, 1994
Amended: April 1, 1996; June 1, 1998; June 1, 2000; July 1, 2004; October 1, 2005; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 11.03. Record on Appeal.

(A) Composition of record to be transmitted in an appeal from the court of appeals

In an appeal of right from the court of appeals filed pursuant to S.Ct.Prac.R. 5.01(A)(1) or (2), the record shall be transmitted in accordance with the applicable provisions of S.Ct.Prac.R. 15.01 through 15.09.

(B) Composition of the record to be transmitted in an appeal from the court of common pleas

(1) In an appeal of right from the court of common pleas filed pursuant to S.Ct.Prac.R. 5.01(A)(4), the record shall be transmitted in accordance with S.Ct.Prac.R. 11.03(B) through (E) and 11.04.

(2) Unless otherwise ordered by the Supreme Court, the record to be transmitted on appeal shall consist of the original papers filed in the trial court; the transcript of proceedings, an electronic version of the transcript, if available; and a certified copy of the docket and journal entries prepared by the clerk of the trial court.

(3) The custodian of the record shall not transmit any physical exhibits unless directed to do so by the Clerk of the Supreme Court or as provided by S.Ct.Prac.R. 11.03(B)(4).

(4) The custodian shall transmit the jury questionnaires and any audio exhibits, video exhibits, and documents such as papers, maps, or photographs.

(5) If exhibits are not transmitted pursuant to division (B)(3) of this rule, the custodian who certifies the record shall designate in the index the exhibits not being transmitted and identify the custodian of those exhibits.

(C) The transcript of proceedings; duty of appellant to order

(1) The transcript of proceedings shall be prepared by the court reporter appointed by the trial court to transcribe the proceedings for the trial court. The reporter shall transcribe into written form all of the trial court proceedings, including pretrial, trial, hearing, and other proceedings.

(2) Before filing a notice of appeal pursuant to S.Ct.Prac.R. 11.01(B)(1) in the Supreme Court, the appellant shall, by written praecipe, order from the reporter a complete transcript of the proceedings.

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

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

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

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

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

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

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

(g) No volume of a transcript shall exceed two hundred fifty pages in length, except it may be enlarged to three hundred pages, if necessary, to complete a part of the voir dire, opening statements, closing arguments, or jury instructions. When it is necessary to prepare more than one volume, each volume shall contain the number and name of the case and be numbered sequentially and consecutively from the previous volume, and the separate volumes shall be approximately equal in length.

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

(D) Statement of the evidence or proceedings when no report was made or when the transcript is unavailable

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee no later than twenty days prior to the time for transmission of the record pursuant to S.Ct.Prac.R. 11.04. The appellee may serve objections or proposed amendments to the statement within ten days after service. The statement and any objections or proposed amendments shall be forthwith submitted to the trial court for settlement and approval. The trial court shall act prior to the time for transmission of the record pursuant to S.Ct.Prac.R. 11.04, and, as settled and approved, the statement shall be included by the clerk of the trial court in the record on appeal.

(E) Correction or modification of the record

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

Effective: June 1, 1994
Amended: April 1, 1996; June 1, 1998; June 1, 2000; July 1, 2004; October 1, 2005; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 11.04. Transmission of the Record.

(A) Time for transmission; duty of appellant

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

(2) The appellant shall take any action necessary to enable the Clerk to assemble and transmit the record, including, if required, filing a motion for an extension of time for transmission of the record under division (C) of this rule. Before the record is transmitted, the appellant shall verify with the clerk of the trial court that the record is complete and accurate and shall provide notice of the verification to the clerk of the trial court for transmission with the record.

(B) Duty of trial court and Supreme Court clerks

(1)

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

(b) At least ten days before the clerk of the trial court transmits the record, the clerk shall send a copy of each index to all counsel of record in the case.

(c) When the clerk of the trial court transmits the record, it shall transmit the index with the record to the Clerk of the Supreme Court.

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

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

(C) Extension of time for transmission of the record

(1) The Supreme Court may extend the time for transmitting the record or, notwithstanding the provisions of S.Ct.Prac.R. 3.02, may permit the record to be transmitted after the expiration of the time prescribed by this rule or set by order of the Supreme Court.

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

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

(D) Retention of copy of the record in the trial court

(1) Before transmitting the record to the Clerk of the Supreme Court, the clerk of the trial court shall make a copy of the record. A copy of the original papers, transcript of proceedings, and any documentary exhibits shall be made by photocopying the original papers, transcript of proceedings, and documentary exhibits. A copy of any physical exhibits may be made by either photographing or videotaping the physical exhibits. A copy of a video, audio, or other electronic recording that is part of the record shall be made by making a duplicate recording.

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

Effective: June 1, 1994
Amended: April 1, 1996; June 1, 1998; June 1, 2000; July 1, 2004; October 1, 2005; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 11.05. Briefing.

(A) Briefs in an appeal from the court of appeals

In an appeal of right from the court of appeals filed pursuant to S.Ct.Prac.R. 11.1(A)(1) or (2), the parties shall brief the case in accordance with the applicable provisions of S.Ct.Prac.R. 16.01 through 16.10.

(B) Briefs in an appeal from the court of common pleas

In an appeal of right from the court of common pleas filed pursuant to S.Ct.Prac.R. 11.01(B)(1), the parties shall brief the case as follows:

(1) The appellant shall file a merit brief with the Supreme Court within one hundred eighty days from the date the Clerk of the Supreme Court files the record from the trial court;

(2) Within one hundred twenty days after the filing of the appellant's brief, the appellee shall file a merit brief;

(3) The appellant may file a reply brief within forty-five days after the filing of appellee's brief;

(4) The form of the briefs shall comply with the provisions of S.Ct.Prac.R. 16.01 through 16.10;

(5) A party may obtain one extension of time to file a merit brief in accordance with the provisions of S.Ct.Prac.R. 3.03(B)(2).

Effective: June 1, 1994
Amended: April 1, 1996; June 1, 1998; June 1, 2000; July 1, 2004; October 1, 2005; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 11.06. Application for Reopening.

(A) General

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

(B) Requirements

An application for reopening shall contain all of the following:

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

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

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

(4) An affidavit stating the basis for the claim that appellate counsel's representation was ineffective with respect to the propositions of law or arguments raised pursuant to S.Ct.Prac.R. 11.06(B)(3) and the manner in which the claimed deficiency prejudicially affected the outcome of the appeal, which affidavit may include citations to applicable authorities and references to the record;

(5) If the application is filed more than ninety days after the issuance of the mandate of the Supreme Court, any relevant parts of the record available to the applicant;

(6) All supplemental affidavits upon which the applicant relies;

(7) Specific citations to the record, as necessary to support the claims raised in the application.

(C) Response to an application for reopening

Within thirty days from the filing of the application, the attorney for the prosecution may file and serve affidavits, parts of the record, and a memorandum of law in response to the application. Any memorandum in response shall include specific citations to the record, as necessary to respond to the claims raised in the application.

(D) Page limitation

An application for reopening and a response to an application for reopening shall not exceed fifteen pages, exclusive of affidavits and parts of the record.

(E) Grounds for granting application

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

(F) Notice and appointment of counsel

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

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

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

(G) Procedure after granting an application

(1) If the application is granted, the case shall proceed as on an initial appeal in accordance with these rules except that the Supreme Court may limit its review to those propositions of law and arguments not previously considered.

(2) The time limits for preparation and transmission of the record pursuant to S.Ct.Prac.R. 11.04 shall run from entry of the order granting the application. The parties shall address in their briefs the claim that representation by prior appellate counsel was deficient and that the applicant was prejudiced by that deficiency.

(H) Evidentiary hearing

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

(I) Supreme Court decision

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2017

SECTION 12. ORIGINAL ACTIONS.

S.Ct.Prac.R. 12.01. Application of Rules.

(A) General

(1) S.Ct.Prac.R. 12.01 through 12.10 apply only to actions, other than habeas corpus, within the original jurisdiction of the Supreme Court under Article IV, Section 2 of the Ohio Constitution. The following Revised Code chapters also are applicable: Mandamus, R.C. Chapter 2731; Quo Warranto, R.C. Chapter 2733.

(2)

(a) In all original actions filed in the Supreme Court, these rules shall govern the procedure and the form of documents filed in the actions.

(b) The Ohio Rules of Civil Procedure shall supplement these rules unless clearly inapplicable. Where these rules conflict with the Ohio Rules of Civil Procedure, these rules shall control.

(B) Habeas corpus

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; August 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 12.02. Institution of an Original Action.

(A) General

(1) An original action shall be instituted by the filing of a complaint. The cover page of the complaint shall contain the nature of the proceeding and the name, title, and address of the respondent.

(2) The Clerk of the Supreme Court shall issue a summons and serve the summons and a copy of the complaint by certified mail sent to the address of the respondent as indicated on the cover page of the complaint. The summons shall inform the respondent of the time permitted to respond to the complaint pursuant to S.Ct.Prac.R. 12.04, 12.08, or 12.09.

(B) Complaint requirements

(1) All complaints shall contain a specific statement of facts upon which the claim for relief is based, shall be supported by an affidavit specifying the details of the claim, and may be accompanied by a memorandum in support of the writ.

(2) The affidavit required by this division shall be made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit.

(3) All relief sought, including the issuance of an alternative writ, shall be set forth in the complaint.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; August 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 12.03. Parties.

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; August 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 12.04. Response to Complaint; Court Action.

(A) Time to file response to complaint

(1) Except as provided by S.Ct.Prac.R. 12.08 and 12.09, the respondent shall file an answer to the complaint or a motion to dismiss within twenty-one days of service of the summons and complaint.

(2) If an amended complaint is filed under S.Ct.Prac.R. 3.13, and Civ.R. 15(A), the respondent shall file an answer to the amended complaint or a motion to dismiss within twenty-one days of the filing of the amended complaint.

(B) Responses

(1) The respondent may file a motion for judgment on the pleadings at the same time an answer is filed. The relator may not file a motion for judgment on the pleadings or a response to an answer.

(2) The relator may file a memorandum in response to a motion to dismiss or a memorandum in response to a motion for judgment on the pleadings within ten days of the filing of the motion.

(3) Neither party may file a motion for summary judgment.

(4) The Clerk of the Supreme Court shall refuse to file a response that is untimely or prohibited by this rule.

(C) Supreme Court action

After the time for filing an answer to the complaint or a motion to dismiss, the Supreme Court will dismiss the case; issue an alternative or a peremptory writ, if a writ has not already been issued; or deny the request for the writ.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; August 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2017

S.Ct.Prac.R. 12.05. Alternative Writs.

If an alternative writ is issued, the Supreme Court will issue a schedule for the presentation of evidence and the filing and service of briefs or other pleadings. Unless the Supreme Court orders otherwise, issuance of an alternative writ in a prohibition case stays proceedings in the action sought to be prohibited until final determination of the Supreme Court.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; August 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 12.06. Presentation of Evidence.

To facilitate the consideration and disposition of original actions, counsel should submit, when possible, an agreed statement of facts to the Supreme Court. All other evidence shall be submitted by affidavits, stipulations, depositions, and exhibits. Affidavits shall be made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; August 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 12.07. Briefing.

(A) General

All merit briefs shall conform to the requirements set forth in S.Ct.Prac.R. 16.01 through 16.10.

(B) Consequence of failure to file briefs

(1) If the relator fails to file a merit brief within the time provided by these rules or as ordered by the Supreme Court, the original action shall be dismissed for want of prosecution.

(2) Unless otherwise ordered by the Supreme Court, a dismissal under this rule operates as an adjudication on the merits.

(3) If the respondent fails to file a merit brief within the time provided by this rule or as ordered by the Supreme Court, the Supreme Court may accept the relator's statement of facts and issues as correct and grant the writ if the relator's brief reasonably appears to sustain the writ.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; August 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 12.08. Expedited Election Cases.

(A) Procedure

(1) Because of the necessity of a prompt disposition of an original action relating to a pending election, and in order to give the Supreme Court adequate time for full consideration of the case, if the action is filed within ninety days prior to the election, the respondent shall file an answer to the complaint within five days after service of the summons.

(2) Unless otherwise ordered by the Supreme Court, and pursuant to the provisions of S.Ct. Prac.R. 12.07, original actions governed by this rule shall proceed as follows:

(a) Relator shall file any evidence and a merit brief in support of the complaint within three days after the filing of the answer or, if no answer is filed, within three days after the answer was due;

(b) Respondent shall file any evidence and a merit brief within three days after the filing of relator's merit brief;

(c) Relator may file a reply brief within three days after the filing of respondent's merit brief.

(3) Motions to dismiss and for judgment on the pleadings shall not be filed in expedited election cases.

(B) Reconsideration

A motion for reconsideration may be filed in an expedited election case. Any motion for reconsideration shall be filed within three days after the Supreme Court's judgment entry or order is filed with the Clerk of the Supreme Court. A memorandum in response may be filed within three days of the filing of the motion for reconsideration.

(C) Service of documents

All documents in expedited election cases, except those filed to initiate a case under this rule, shall be served on the date of filing by personal service, facsimile transmission, or e-mail.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; August 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2017

S.Ct.Prac.R. 12.09. Expedited Adoption/Termination of Parental Rights Cases.

(A) General

In order to invoke expedited procedures in a case that involves the termination of parental rights or adoption of a minor child, or both, the relator shall designate on the cover page of the complaint that the original action involves termination of parental rights or adoption of a minor child, or both.

(B) Response

If the original action involves termination of parental rights or adoption of a minor child, or both, the respondent shall file an answer to the complaint or a motion to dismiss within fifteen days after service of the summons.

(C) Supreme Court action

After the time for filing a response to the complaint, the Supreme Court will decide on an expedited basis whether to dismiss the case or issue an alternative or a peremptory writ, if a writ has not already been issued.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; August 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 12.10. Reference to a Master Commissioner.

The Supreme Court may refer original actions to a master commissioner for the presentation of evidence, hearings, and oral argument.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; August 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

SECTION 13. MATTERS RELATED TO THE PRACTICE OF LAW.

S.Ct.Prac.R. 13.01. Application of Rules.

(A) General

S.Ct.Prac.R. 13.01 through 13.05 shall apply to cases that involve the admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law as provided for in Article IV, Section 2(B)(1)(g) of the Ohio Constitution.

(B) Applicable rules

These rules shall govern the procedure and form of documents filed in matters related to the practice of law, except where express provision is made to the contrary in the Rules for the Government of the Bar or the Rules for the Government of the Judiciary or where the application of a particular rule would be clearly inapplicable.

Effective Date: January 1, 2013

S.Ct.Prac.R. 13.02. Consideration and Disposition of Matters Related to the Practice of Law.

The Rules for the Government of the Bar and the Rules for the Government of the Judiciary govern when a matter related to the practice of law may be considered by the Supreme Court.

Effective Date: January 1, 2013

S.Ct.Prac.R. 13.03. Briefing.

(A) Time to file

The filing of objections or an answer along with the accompanying brief required by the Rules for the Government of the Bar or the Rules for the Government of the Judiciary shall proceed as ordered by the Supreme Court.

(B) Form

All briefs filed in support of objections or an answer shall conform to the requirements set forth in S.Ct.Prac.R. 3.07 through 3.12.

Effective Date: January 1, 2013

S.Ct.Prac.R. 13.04. Oral Argument.

(A) Scheduling

(1) Oral argument will be scheduled and heard after the filing of objections and briefs to a final certified report filed by the Board of Commissioners on Character and Fitness, the Board of Professional Conduct, or the Board on the Unauthorized Practice of Law.

(2) Division (A)(1) of this rule notwithstanding, in cases in which a party files objections to a certified report filed by the Board of Professional Conduct regarding a petition for reinstatement, a petition for revocation of probation, or in reciprocal discipline cases, oral argument will not be scheduled; however, the Supreme Court may order oral argument on the merits either sua sponte or in response to a request by either party. A request for oral argument shall be by motion and filed no later than twenty days after the objections and brief of petitioner or relator.

(B) Waiver of oral argument

(1) Any party may waive oral argument as provided for in S.Ct.Prac.R. 17.03.

(2) Any party who fails to file objections or an answer and the accompanying brief as required by the Supreme Court Rules for the Government of the Bar of Ohio or the Supreme Court Rules for the Government of the Judiciary of Ohio shall be deemed to have waived oral argument.

Effective Date: January 1, 2013
Amended: January 1, 2015; January 1, 2017

S.Ct.Prac.R. 13.05. Costs.

(A) General

(1) Costs shall be paid by order of the Supreme Court at the conclusion of the case.

(2) Costs shall be payable to the Supreme Court by cashier's check or money order.

(B) Definition of costs

As used in this rule, "costs" includes both of the following:

(1) The costs and expenses incurred by the Board of Commissioners on Character and Fitness or their panel, the Board of Professional Conduct or their panel, or the Board on the Unauthorized Practice of Law or their panel;

(2) The cost of publication.

(C) Interest

If costs are not paid within the time provided by the Supreme Court's order, interest at a rate of ten percent per annum shall accrue from the date payment was due.

(D) Collection

If costs are not paid within the time provided by the Supreme Court's order, the matter may be referred to the Office of the Ohio Attorney General for collection.

Effective Date: January 1, 2013
Amended: January 1, 2015

SECTION 14. PETITION CHALLENGES; ELECTION CONTESTS; APPORTIONMENT CASES.

S.Ct.Prac.R. 14.01. Petition Challenges.

(A) General

(1) To invoke the original jurisdiction of the Supreme Court pursuant to Article II, Section 1g of the Ohio Constitution, for the purpose of challenging an initiative, supplementary, or referendum petition or the signatures upon such petition, a party shall file a challenge with the Clerk of the Supreme Court. The challenge shall meet both of the following requirements:

(a) It shall designate on the cover page that it challenges an initiative, supplementary, or referendum petition pursuant to Article II, Section 1g of the Ohio Constitution.

(b) It shall contain a statement of the reasons for the challenge and a specific statement of facts upon which the challenge is based.

(2) The party filing a challenge shall be referred to as the relator. The secretary of state and the party submitting the petition that is the subject of the challenge shall be referred to as the respondents.

(B) Burden of relator

The relator shall have the burden of demonstrating by a preponderance of the evidence that the petition or signatures thereon do not comply with applicable law.

(C) Applicable rules

(1) In all challenge proceedings filed under this rule, these rules shall govern the procedure and the form of all documents.

(2) The Ohio Rules of Civil Procedure and the Ohio Rules of Evidence, including those related to depositions, interrogatories, requests for production of documents, and subpoenas, shall supplement these rules unless clearly inapplicable. Where these rules conflict with the Ohio Rules of Civil Procedure or the Ohio Rules of Evidence, these rules shall control.

(D) Reference to a master commissioner; oral argument

(1) The Supreme Court may refer challenge actions to a master commissioner for any purpose including resolution of discovery disputes, and to conduct a hearing for the presentation of evidence.

(2) The Supreme Court may also order oral argument before the court.

(E) Power of Supreme Court

In a challenge to an initiative, supplementary, or referendum petition brought under Article II, Section 1g of the Ohio Constitution, the Supreme Court may do all things necessary for an efficient and timely ruling on the challenge. The Supreme Court may sua sponte, or on motion by a party, issue a procedural order to govern the receipt of evidence, filing of briefs, conduct of hearings, and manner for ruling on any challenges.

(F) Service of documents

All documents filed under this rule, including the challenge, shall be served by the parties on the date of filing by personal service, facsimile transmission, or e-mail.

Effective Date: January 1, 2010
Amended: January 1, 2013

S.Ct.Prac.R. 14.02. Contest of an Election.

Contests of an election brought pursuant to R.C. 3515.08 shall proceed in accordance with the applicable provisions of R.C. Chapter 3515.

Effective Date: January 1, 2010
Amended: January 1, 2013

S.Ct.Prac.R. 14.03. Apportionment Cases.

(A) General

To invoke the original jurisdiction of the Supreme Court pursuant to Article XI, Section 13 of the Ohio Constitution, a party shall file a complaint with the Clerk of the Supreme Court. The complaint shall clearly identify that the case involves a challenge to apportionment or a plan of apportionment promulgated pursuant to Article XI.

(B) Procedure

After a complaint is filed pursuant to division (A) of this rule, the Supreme Court shall issue an order setting a schedule for the filing of briefs and evidence in the case.

(C) Reference to a master commissioner; oral argument

(1) The Supreme Court may refer apportionment cases to a master commissioner for any purpose, including resolution of discovery disputes, and to conduct a hearing for the presentation of evidence.

(2) The Supreme Court may also order oral argument before the court.

Effective Date: January 1, 2013

SECTION 15. RECORD ON APPEAL.

S.Ct.Prac.R. 15.01. Composition of the Record on Appeal.

(A) General

(1) In all appeals, the record on appeal shall consist of the following:

(a) The original papers and exhibits to those papers;

(b) The transcript of proceedings and exhibits, along with an electronic version of the transcript, if available;

(c) Either the original journal entries, or certified copies, and the docket prepared by the clerk of the court or other custodian of the original papers.

(2) Where applicable, the record on appeal shall consist of all the above items from both the court of appeals and the trial court.

(B) Audio and video exhibits and other documents

The custodian shall transmit any audio exhibits, video exhibits, and documents such as papers, maps, or photographs.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015

S.Ct.Prac.R. 15.02. When Record is to be Transmitted to Supreme Court from Court of Appeals.

In every case on appeal to the Supreme Court from a court of appeals, the clerk of the court of appeals or other custodian having possession of the record shall not transmit the record to the Clerk of the Supreme Court unless and until the Supreme Court issues an order to the custodian to transmit the record pursuant to S.Ct.Prac.R. 15.03.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 15.03. Certification and Transmission of Record from Court of Appeals.

(A) General

(1) Upon order of the Supreme Court, the clerk of the court of appeals or other custodian having possession of the record shall certify and transmit the record to the Clerk of the Supreme Court. Unless otherwise ordered by the Supreme Court, the record shall be transmitted within twenty days of the order.

(2) If the case involves termination of parental rights or adoption of a minor child, or both, preparation and transmission of the record shall be expedited and given priority over preparation and transmission of the records in other cases.

(B) Index

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 15.04. Submission of Record from Board of Tax Appeals.

(A) General

Transmission of the record in an appeal of a decision from the Board of Tax Appeals shall be as prescribed by R.C. 5717.04. For the purposes of filing the record with the Clerk of the Supreme Court, the Board may transmit a video or audio record of any hearing before the Board, and if a written transcript was created, it shall be included.

(B) Written transcript

If a written transcript of a hearing is not included, the appellant shall file a written transcript of the hearing with the Clerk of the Supreme Court when the appellant files its merit brief as provided by S.Ct.Prac.R. 16.02. The Supreme Court may dismiss an appeal where no written transcript has been provided, or sua sponte order the appellant to file a written transcript.

Effective Date: January 1, 2010
Amended: January 1, 2013

S.Ct.Prac.R. 15.05. Submission of Record from Public Utilities Commission.

The word "forthwith" as used in R.C. 4903.21, providing that upon service or waiver of service of the notice of appeal the Public Utilities Commission shall forthwith transmit to the Clerk of the Supreme Court a complete transcript of the proceeding, shall mean a period of thirty days. If at the expiration of thirty days the transcript has not been filed, the appellant shall have an additional three days in which to file a complaint in the Supreme Court for a writ of mandamus to compel the Commission to file the transcript. The appeal shall be dismissed if, at the expiration of thirty-three days, neither the transcript nor a complaint for a writ of mandamus has been filed.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 15.06. Items Not to Be Transmitted with the Record.

(A) Physical exhibits

The custodian of the record shall not transmit any physical exhibits unless directed to do so by the Clerk of the Supreme Court or as required by S.Ct.Prac.R. 15.01(B).

(B) Index of exhibits not transmitted

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 15.07. Transmission of Record in Death-Penalty Appeals.

(A) Offenses committed before January 1, 1995

In cases in which the death penalty has been imposed by the court of common pleas for an offense committed before January 1, 1995, the creation, transmission, supplementation, and correction of the record shall be governed by S.Ct.Prac.R. 15.01 through 15.09.

(B) Offenses committed on or after January 1, 1995

In cases in which the death penalty has been imposed by the court of common pleas for an offense committed on or after January 1, 1995, the creation, transmission, supplementation, and correction of the record shall be governed by S.Ct.Prac.R. 11.03 and 11.04.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 15.08. Supplementation of the Record.

If any part of the record is not transmitted to the Supreme Court but is necessary to the Supreme Court's consideration of the questions presented on appeal, the Supreme Court, sua sponte or on motion of a party, may direct that a supplemental record be certified and transmitted to the Clerk of the Supreme Court in accordance with S.Ct.Prac.R. 15.03(B).

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 15.09. Return of Record.

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

Effective Date: January 1, 2010
Amended: January 1, 2013

SECTION 16. BRIEFS ON THE MERITS.

S.Ct.Prac.R. 16.01. Limitation on Application of Briefing Rules.

The filing deadlines imposed by S.Ct.Prac.R. 16.02 through 16.07 do not apply to appeals involving the imposition of the death penalty for an offense committed on or after January 1, 1995, and instituted under S.Ct.Prac.R. 11.01(B)(1). Filing deadlines for briefs in those appeals are governed by S.Ct.Prac.R. 11.05(B).

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 16.02. Appellant's Brief.

[*See Appendix F following these rules for a sample brief.*]

(A) Time to file

(1) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant shall file a merit brief with the Supreme Court within twenty days from the date the Clerk of the Supreme Court files the record from the court of appeals.

(2) In every other appeal, the appellant shall file a merit brief within forty days from the date the clerk files the record from the court of appeals or the administrative agency. In any case, the appellant shall not file a merit brief prior to the filing of the record by the clerk.

(B) Contents

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

(1) A table of contents listing with references to the pages of the brief where each of the following appears:

(a) The table of authorities cited;

(b) The statement of facts;

(c) The argument with numbered propositions of law;

(d) The appendix.

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

(3) A statement of the facts with page references, in parentheses, to supporting portions of both the original transcript of testimony and any supplement filed in the case pursuant to S.Ct.Prac.R. 16.09 through 16.10;

(4) An argument, headed by the proposition of law that appellant contends is applicable to the facts of the case and that could serve as a syllabus for the case if the appellant prevails. If several propositions of law are presented, the argument shall be divided with each proposition set forth as a subheading;

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

(a) The date-stamped notice of appeal to the Supreme Court, the notice of certified conflict, or the federal court certification order, whichever is applicable;

(b) The judgment or order from which the appeal is taken;

(c) The opinion, if any, relating to the judgment or order being appealed;

(d) All judgments, orders, and opinions rendered by any court or agency in the case, if relevant to the issues on appeal;

(e) Any relevant rules or regulations of any department, board, commission, or any other agency, upon which the appellant relies;

(f) Any constitutional provision, statute, or ordinance upon which the appellant relies, to be construed, or otherwise involved in the case;

(g) In appeals from the Public Utilities Commission, the appellant's application for rehearing.

(C) Page limit

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

(2) In a death penalty appeal of right filed pursuant to S.Ct.Prac.R. 5.01(A)(1), (2), or (4), the appellant's brief has no page limitation.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 16.03. Appellee's Brief.

(A) Time to file

(1) In every appeal involving termination of parental rights or adoption of a minor child, or both, within twenty days after the filing of the appellant's brief the appellee shall file a merit brief.

(2) In every other appeal, the appellee shall file a merit brief within thirty days after the filing of the appellant's brief.

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

(B) Contents

(1) The appellee's brief shall comply with the provisions in S.Ct.Prac.R. 16.02(B), answer the appellant's contentions, and make any other appropriate contentions as reasons for affirmance of the order or judgment from which the appeal is taken.

(2) A statement of facts may be omitted from the appellee's brief if the appellee agrees with the statement of facts given in the appellant's merit brief.

(3) The appendix need not duplicate any materials provided in the appendix of the appellant's brief.

(C) Page limit

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

(2) In a death-penalty appeal of right filed pursuant to S.Ct.Prac.R. 5.01(A)(1), (2), or (4), the appellee's brief shall not have a page limitation.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 16.04. Appellant's Reply Brief.

(A) Time to file

(1) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant may file a reply brief within fifteen days after the filing of the appellee's brief.

(2) In every other appeal, the appellant may file a reply brief within twenty days after the filing of the appellee's brief.

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

(B) Page limit

(1) Except in death penalty appeals of right, the reply brief shall not exceed twenty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

(2) In a death-penalty appeal of right filed pursuant to S.Ct.Prac.R. 5.01(A)(1), (2), or (4), the reply brief has no page limitation.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 16.05. Merit Briefs in Case Involving Cross-Appeal.

(A) Requirements

In a case involving a cross-appeal, each of the parties shall be permitted to file two briefs, and each brief shall conform to the requirements of S.Ct.Prac.R. 16.02(B).

(B) First brief

(1) (a) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant/cross-appellee shall file the first merit brief within twenty days from the date the clerk files the record from the court of appeals.

(b) In every other appeal, the appellant/cross-appellee shall file the first merit brief within forty days from the date the clerk files the record from the court of appeals or the administrative agency.

(2) (a) Except in death-penalty appeals of right filed pursuant to S.Ct.Prac.R. 5.01(A)(1), (2), or (4), this first brief shall not exceed fifty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix.

(b) In a death-penalty appeal of right filed pursuant to S.Ct.Prac.R. 5.01(A)(1), (2), or (4), the first brief has no page limitation.

(C) Second brief

(1) (a) In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellee/cross-appellant shall file the second merit brief within twenty days after the filing of the first brief.

(b) In every other appeal, the appellee/cross-appellant shall file the second merit brief within thirty days after the filing of the first brief. The second brief shall be a combined brief containing both a response to the appellant/cross-appellee's brief and the propositions of law and arguments in support of the cross-appeal.

(2) (a) Except in death-penalty appeals of right filed pursuant to S.Ct.Prac.R. 5.01(A)(1), (2), or (4), the second brief shall not exceed fifty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and the appendix.

(b) In a death-penalty appeal of right filed pursuant to S.Ct.Prac.R. 5.01(A)(1), (2), or (4), the second brief has no page limitation.

(D) Third brief

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

(b) In every other appeal, the appellant/cross-appellee shall file the third merit brief within thirty days after the filing of the second brief. If the appellant/cross-appellee elects to file a reply brief in that party's appeal, the third brief shall be a combined brief containing both a reply and a response to the arguments in the cross-appeal. Otherwise, the third brief shall include only a response in opposition to the cross-appeal.

(2) (a) Except in death-penalty appeals of right filed pursuant to S.Ct.Prac.R. 5.01(A)(1), (2), or (4), the third brief shall not exceed fifty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

(b) In a death-penalty appeal of right filed pursuant to S.Ct.Prac.R. 5.01(A)(1), (2), or (4), the third brief has no page limitation.

(E) Fourth brief

(1) The fourth brief may be filed by the appellee/cross-appellant only as a reply brief in the cross-appeal.

(a) In every appeal involving termination of parental rights or adoption of a minor child, or both, if a fourth brief is filed, it shall be filed within fifteen days after the filing of the third brief.

(b) In every other appeal, if a fourth brief is filed, it shall be filed within twenty days after the filing of the third brief.

(2)

(a) Except in death-penalty appeals of right filed pursuant to S.Ct.Prac.R. 5.01(A)(1), (2), or (4), a fourth brief shall not exceed twenty numbered pages, exclusive of the table of contents, the table of authorities cited, the certificate of service, and any appendix.

(b) In a death-penalty appeal of right filed pursuant to S.Ct.Prac.R. 5.01(A)(1), (2), or (4), the fourth brief has no page limitation.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 16.06. Brief of Amicus Curiae.

(A) General

An amicus curiae may file a brief urging affirmance or reversal, and leave to file an amicus brief is not required. The brief shall conform to the requirements of S.Ct.Prac.R. 16.02 through 16.05, except that an amicus filing a brief in support of an appellant need not include the appendix required by S.Ct.Prac.R. 16.02(B)(5).

(B) Time to file

(1) The cover page of an amicus brief shall identify the party on whose behalf the brief is being submitted or indicate that the brief does not expressly support the position of any parties to the appeal.

(2) If the amicus brief is in support of an appellant, the brief shall be filed within the time for filing allowed to the appellant to file a merit brief, the amicus curiae may file a reply brief within the time allowed to the appellant to file a reply brief.

(3) If the amicus brief is in support of an appellee or does not expressly support the position of any party, then the brief shall be filed within the time for filing allowed to the appellee to file a merit brief.

(C) Refusal to file

The Clerk of the Supreme Court shall refuse to file an amicus brief that is not submitted timely and that does not comply with the requirements of this rule.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 16.07. Consequence of Failure to File Briefs.

(A) Dismissal of appeal

If the appellant fails to file a merit brief within the time provided by S.Ct.Prac.R. 16.02 or as extended in accordance with S.Ct.Prac.R. 3.03, the Supreme Court may dismiss the appeal.

(B) Reversal of judgment

If the appellee fails to file a merit brief within the time provided by S.Ct.Prac.R. 16.03 or as extended in accordance with S.Ct.Prac.R. 3.03, the Supreme Court may accept the appellant's statement of facts and issues as correct and reverse the judgment if the appellant's brief reasonably appears to sustain reversal.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 16.08. Prohibition Against Supplemental Briefing.

Except as provided in S.Ct.Prac.R. 3.13, 17.08, and 17.09, merit briefs shall not be supplemented. If a relevant authority is issued after the deadline has passed for filing a party's merit brief, that party may file a citation to the relevant authority but shall not file additional argument. In cases scheduled for oral argument, citations to additional authority may be filed pursuant to S.Ct.Prac.R. 17.08.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; June 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2017

S.Ct.Prac.R. 16.09. Supplements to the Briefs.

(A) Appellant's supplement

In every civil case on appeal to the Supreme Court from a court of appeals or an administrative agency, the appellant may prepare and file a supplement to the briefs that contains those portions of the record necessary to enable the Supreme Court to determine the questions presented. Parties to an appeal are encouraged to consult and agree on the contents of the supplement to minimize the appellee's need for filing a supplement. Documents not necessary to determine the questions presented shall not be included in the supplement. The fact that parts of the record are not included in the supplement shall not prevent the parties or the Supreme Court from relying on those parts of the record.

(B) Appellant's time to file

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

(C) Appellee's supplement

The appellee may file a supplement to the merit briefs in the manner required by division (A) of this rule. The appellee's supplement shall not unnecessarily duplicate documents contained in the appellant's supplement.

(D) Appellee's time to file

The appellee's supplement shall be filed with the appellee's merit brief.

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 16.10. Pagination and Indexing of Supplements.

(A) Pagination

The pages of the supplement shall be consecutively numbered in the bottom right-hand corner.

(B) Transcripts

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

(C) Index

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

Effective Date: June 1, 1994
Amended: April 1, 1996; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

SECTION 17. ORAL ARGUMENT.

S.Ct.Prac.R. 17.01. Cases in which Oral Argument Will Be Scheduled.

(A) Cases from other courts

Oral argument in the following cases will be scheduled and heard after the case has been briefed on the merits in accordance with S.Ct.Prac.R. 11.05, or 16.01 through 16.08:

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

(2) If the case is a jurisdictional appeal that is accepted by the Supreme Court pursuant to S.Ct. Prac.R. 7.08;

(3) If the case is filed pursuant to S.Ct.Prac.R. 8.01 and the Supreme Court determined the existence of a conflict certified to it by a court of appeals in accordance with that rule.

(B) Appeals from administrative agencies

In an appeal from the Board of Tax Appeals, the Public Utilities Commission, or the Power Siting Board, oral argument will be scheduled and heard after the case has been briefed on the merits in accordance with S.Ct.Prac.R. 16.01 through 16.08.

(C) State-law questions

In a certified state law case under S.Ct.Prac.R. 9.01, oral argument will be scheduled and heard after the case has been briefed on the merits in accordance with S.Ct.Prac.R. 9.07.

(D) Precedence of oral argument

An oral-argument assignment before the Supreme Court takes precedence over assignments in other courts of this state.

Effective: June 1, 1994
Amended: April 1, 1996; April 1, 2000; February 1, 2001; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 17.02. Oral Argument in Other Cases.

(A) General

In an original action, or in an appeal that is not scheduled for oral argument pursuant to S.Ct. Prac.R. 17.01, the Supreme Court may order oral argument on the merits either sua sponte or in response to a request by any party.

(B) Motion for oral argument

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

Effective: June 1, 1994
Amended: April 1, 1996; April 1, 2000; February 1, 2001; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 17.03. Waiver of Oral Argument.

(A) General

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

(B) Failure to file merit brief

Any party who fails to file a merit brief pursuant to S.Ct.Prac.R. 16.02, 16.03, or 11.06 shall be deemed to have waived oral argument.

(C) Parties not waiving oral argument

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

(D) Failure to appear

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

Effective: June 1, 1994
Amended: April 1, 1996; April 1, 2000; February 1, 2001; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 17.04. Scheduling of Oral Argument in Cases Involving Termination of Parental Rights or Adoption.

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

Effective: June 1, 1994
Amended: April 1, 1996; April 1, 2000; February 1, 2001; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 17.05. Time and Procedures for Oral Argument.

(A) Time for oral argument

(1) In death-penalty appeals of right filed pursuant to S.Ct.Prac.R. 11.01, thirty minutes shall be allotted to each side for oral argument.

(2) In all other cases scheduled for oral argument, fifteen minutes shall be allotted to each side for argument on the merits. In cases where there are multiple parties per side, the parties shall share the time allotted to each side.

(B) Variation of time

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

(C) Reservation of time

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

Effective: June 1, 1994
Amended: April 1, 1996; April 1, 2000; February 1, 2001; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 17.06. Oral Argument by Amicus Curiae.

(A) General

(1) No time for oral argument shall be allotted to counsel who have filed amicus curiae briefs; however, with leave of the Supreme Court and the consent of counsel for the side whose position the amicus curiae supports, counsel for the amicus curiae may present oral argument within the time allotted to that side.

(2) If an amicus curiae wishes to participate in oral argument but either does not receive the consent of counsel for the side whose position the amicus curiae supports or does not expressly support the position of any parties to the case, the amicus curiae may seek leave from the Supreme Court to participate in oral argument, but such leave will be granted only in the most extraordinary circumstances.

(B) Motion for leave

A motion of amicus curiae for leave to participate in oral argument shall be filed at least fifteen days before the date scheduled for oral argument.

Effective: June 1, 1994
Amended: April 1, 1996; April 1, 2000; February 1, 2001; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 17.07. Reference of Certain Cases to Master Commissioner for Oral Argument.

(A) Appeals from the Board of Tax Appeals

(1) Appeals from the Board of Tax Appeals shall be referred to a regular or special master commissioner for oral argument unless the parties waive the argument or the Supreme Court, sua sponte or upon motion, decides to hear the argument itself.

(2) A motion for the Supreme Court to hear oral argument shall be filed within twenty days after the filing of the appellee's brief.

(B) Other matters

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

Effective: June 1, 1994
Amended: April 1, 1996; April 1, 2000; February 1, 2001; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 17.08. List of Additional Authorities Relied Upon During Oral Argument.

(A) General

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

(B) Exception

If relevant authority is issued less than seven days before the date of oral argument, a party may file a citation to the relevant authority but shall not cite to any other authority that was issued more than seven days before oral argument. The party shall not file additional argument.

Effective: June 1, 1994
Amended: April 1, 1996; April 1, 2000; February 1, 2001; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015; January 1, 2017

S.Ct.Prac.R. 17.09. Supplemental Filings After Oral Argument.

(A) Prohibition of supplemental briefing

Unless ordered by the Supreme Court, the parties shall not tender for filing and the Clerk of the Supreme Court shall not file any additional briefs or other materials relating to the merits of the case after the case has been orally argued.

(B) Citation to relevant authority

If a relevant authority is issued after oral argument, a party may file a citation to the relevant authority but shall not file additional argument.

Effective: June 1, 1994
Amended: April 1, 1996; April 1, 2000; February 1, 2001; April 1, 2002; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

SECTION 18. ENTRY OF SUPREME COURT JUDGMENT; MOTIONS FOR RECONSIDERATION; ISSUANCE OF MANDATE.

S.Ct.Prac.R. 18.01. Entry of Judgment.

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 18.02. Motion for Reconsideration.

(A) Time to file

Except as provided in S.Ct.Prac.R. 12.08(B), any motion for reconsideration must be filed within ten days after the Supreme Court's judgment entry or order is filed with the Clerk of the Supreme Court.

(B) Basis for filing

A motion for reconsideration shall not constitute a reargument of the case and may be filed only with respect to the following Supreme Court decisions:

(1) Refusal to accept a jurisdictional appeal;

(2) The sua sponte dismissal of a case;

(3) The granting of a motion to dismiss;

(4) A decision on the merits of a case.

(C) Amicus curiae

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

(D) Refusal to file

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

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 18.03. Memorandum in Response to Motion for Reconsideration.

(A) Time to file

Except as provided in S.Ct.Prac.R. 12.08(B), a party opposing reconsideration may file a memorandum in response to a motion for reconsideration within ten days of the filing of the motion.

(B) Amicus curiae

An amicus curiae may file a memorandum in response to a motion for reconsideration within ten days of the filing of the motion.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 18.04. Issuance of Mandate.

(A) General

After the Supreme Court has decided an appeal on the merits, the Clerk of the Supreme Court shall issue a mandate. The mandate shall be issued ten days after entry of the judgment, unless a motion for reconsideration is filed within that time in accordance with S.Ct.Prac.R. 12.08(B) or 18.02.

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

(2) If a motion for reconsideration is granted, the mandate shall be issued ten days after the entry of the judgment is filed with the Clerk.

(B) When mandate is not issued

No mandate shall be issued on the Supreme Court's refusal to accept a jurisdictional appeal.

(C) Mandate

A certified copy of the judgment entry shall constitute the mandate.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013

S.Ct.Prac.R. 18.05. Assessment of Costs.

(A) General

(1) Appeals

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

(a) If an appeal is dismissed, to the appellant;

(b) If the judgment or order being appealed is affirmed, to the appellant;

(c) If the judgment or order being appealed is reversed, to the appellee;

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

(2) Original actions

Unless otherwise ordered by the Supreme Court, costs in an original action shall be assessed as follows at the conclusion of the case:

(a) If an original action is dismissed, to the relator;

(b) If the request for a writ is denied, to the relator;

(c) If the request for a writ is granted and a writ is issued, to the respondent;

(d) If a limited writ is granted or a writ is granted in part, the parties shall bear their respective costs.

(B) Definition of "costs"

As used in this rule, "costs" includes the filing fee paid to initiate an appeal or original action, the postage costs in an original action, and any additional costs assessed by the court.

Effective Date: June 1, 1994
Amended: April 1, 1996; April 1, 2000; July 1, 2004; January 1, 2008; January 1, 2010; January 1, 2013; January 1, 2015

SECTION 19. MEDIATION PROCEEDINGS.

S.Ct.Prac.R. 19.01. Referral of Cases for Mediation.

(A) Referral

(1) The Supreme Court may, sua sponte or on motion by a party, refer to its mediator for mediation any case that originated in the court of appeals, any appeal from an administrative agency, any original action, or, pursuant to S.Ct.Prac.R. 4.02 any civil case that the Supreme Court deems appropriate. The mediator may conduct mediation conferences at which the parties shall explore settling the case, simplifying the issues, and expediting the procedure, and may consider any other matter that might aid in resolving the case.

(2) Unless otherwise provided by court order, referral of a case for mediation stays all filing deadlines in a case until further notice. The Clerk of the Supreme Court shall not accept for filing any documents while a case is in mediation unless expressly permitted by S.Ct.Prac.R. 19.01(A)(3) or by court order.

(3) Only the following documents may be filed while a case is in mediation:

(a) A motion to lift the mediation stay;

(b) A response to a motion to lift the mediation stay;

(c) A second notice of appeal or notice of cross-appeal;

(d) An application to dismiss the case pursuant to S.Ct.Prac.R. 4.05;

(e) A notice related to counsel

(f) A motion for leave to redact personal identifiers as defined by Sup.R. 44(H);

(g) A motion to remand.

(B) Statements

(1) Any party seeking a monetary settlement shall prepare a statement setting forth the amount of the demand and a detailed explanation for it. Such party shall submit this statement to the opposing parties and to the mediator ten days prior to the scheduled mediation. This statement will not be filed in the case.

(2) Parties may submit to the mediator a confidential statement analyzing the settlement potential of the case. The mediation counsel will not disclose this statement to the other parties, unless the submitting party consents to disclosure. This statement will not be filed in the case.

(C) Attendance

(1) If a case is referred for mediation, each party to the case, or the representative of each party who has full settlement authority, and the attorney for each party shall attend the mediation conferences, unless excused by the mediator. If a party or its representative is excused from a conference, the party or its representative must provide its attorney authority beyond initial mediation positions, and the party or its representative must be available for consultation during the course of the mediation.

(2) If a party or an attorney fails to attend the mediation conference without being excused, the Supreme Court may assess the party or the attorney reasonable expenses caused by the failure, including reasonable attorney fees or all or a part of the expenses of the other party. The Supreme Court may also dismiss the action, strike documents filed by the offending party, or impose any other appropriate penalty.

(D) Extension of time to file briefs or other documents

Notwithstanding S.Ct.Prac.R. 3.03(B), the Supreme Court, sua sponte or upon motion by a party, may extend filing deadlines or stay the case referred under this rule, if the extension or stay will facilitate mediation. A request for an extension of time shall be filed with the Clerk of the Supreme Court within the time prescribed by the rules for filing the brief or other document that is the subject of the request.

(E) Supreme Court orders

The Supreme Court may issue orders to supervise mediation. At the conclusion of the mediation, the Supreme Court will enter an appropriate order.

Effective Date: January 1, 2010
Amended: January 1, 2013; January 1, 2015

S.Ct.Prac.R. 19.02. Privileges and Confidentiality.

(A) General

The definitions contained in R.C. 2710.01 apply to Supreme Court mediation. The privileges contained in R.C. 2710.03 and the exceptions contained in R.C. 2710.05 apply to mediation

communications. The privileges may be waived under R.C. 2710.04. Mediation communications are confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to disclosure. The Supreme Court may impose penalties for any improper disclosures made in violation of this rule.

(B) Exceptions

All mediation communications are confidential with the following exceptions:

(1) Parties may share all mediation communications with their attorneys,

(2) The mediator may inform the Supreme Court or report to the proper authorities certain information, including the following:

(a) Allegations of abuse or neglect of a child;

(b) Certain threats of harm to other people or oneself;

(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.

Effective Date: January 1, 2010
Amended: January 1, 2013

SECTION 20. PRESERVATION OF RECORDS AND FILES.

S.Ct.Prac.R. 20.01. Custodian of Documents.

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

Effective Date: June 1, 1994
Amended: April 1, 1996; January 1, 2010; January 1, 2013

APPENDICES

Note: Some of the following samples include material taken from actual Supreme Court cases. However, the material has been edited to conform to the requirements of the current rules. Fictitious attorney names and related data have also been used. Additionally, any rule references in the documents are not accurate as they were to prior versions of the Rules of Practice.

The authorities cited in the samples are cited in accordance with the Supreme Court's Writing Manual: A guide to Citations, Style and Judicial Opinion Writing issued by the Reporter of the Supreme Court. However, conformance to the Reporter's style manual is not required, provided citations conform to another generally recognized and accepted style manual. See, for example, A Uniform System of Citation (current edition) ("Blue Book"); University of Chicago Manual of Legal Citation (current edition) ("Maroon Book"); Association of Legal Writers and Directors Citation Manual (current edition) ("ALWD Citation Manual"); and Judicial Opinion Writing Manual (current edition) ("ABA Manual").

APPENDIX A	Affidavit of indigence form
APPENDIX B	Personal identifier form
APPENDIX C	Sample notice of appeal from a court of appeals
APPENDIX D	Sample memorandum in support of jurisdiction
APPENDIX E	Waiver of memorandum in response form
APPENDIX F	Sample merit brief of appellant
APPENDIX G	Filing fee credit card form

IN THE SUPREME COURT OF OHIO

Affidavit of Indigence

I, _____, do hereby state that I am without the necessary funds to pay the costs of this action for the following reason(s):
[Note: S.Ct.Prac.R. 3.06 requires your affidavit of indigence to state the reason(s) you are unable to pay the docket fees and/or security deposit. Failure to state specific reasons that you are unable to pay will result in your affidavit being rejected for filing by the Clerk.]

Pursuant to Rule 3.06, of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fee and security deposit, if applicable, be waived.

_____

Affiant

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

_____
Notary Public

My Commission Expires: _____.

[Note: This affidavit must be executed not more than six months prior to being filed in the Supreme Court in order to comply with S.Ct.Prac.R. 3.06. Affidavits not in compliance with that section will be rejected for filing by the Clerk.]

IN THE SUPREME COURT OF OHIO

_____	:	**Case No.**
_____		
Appellant,	:	
Relator,	:	
Petitioner, **v.**	:	
_____	:	
Appellee.		
Respondent.		

Confidential Personal Identifiers Contained in Filing

(Rule 45(D) of the Rules of Superintendence for the Courts of Ohio. *Effective* July 1, 2009)

REFERENCE LIST

	COMPLETE PERSONAL IDENTIFIER *Use this column to list the personal identifiers that have been redacted from the document that is to be placed in the case file.*	**CORRESPONDING REFERENCE** *Use this column to list the reference or abbreviation that will refer to the corresponding complete personal identifier.*	**LOCATION** *Use this column to identify the document or documents where the reference appears in place of the personal identifier.*
1.			
2.			
3.			
4.			

□ **Check if additional pages are attached.**

_____
Signature of person submitting the information

Date_____

THIS IS PAGE _____ OF ____ PAGES

IN THE SUPREME COURT OF OHIO

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

NOTICE OF APPEAL OF APPELLANT JOHN B. DEVENNISH

John Miller (1234567) (COUNSEL OF RECORD)
Susan Smith (7654321)
Miller, Miller & Smith
100 South High Street, Suite 100
Columbus, Ohio 43215
(614) 233-1111
Fax No. (614) 233-2222
jmiller@e-mail

COUNSEL FOR APPELLANT, JOHN B. DEVENNISH

Jane Doe (0909090)
Columbus City Attorney
Peter Jones (0999999) (COUNSEL OF RECORD)
Chief Labor Attorney
City of Columbus Dept. of Law
90 West Broad Street
Columbus, Ohio 43215
(614) 222-3456
pjones@e-mail

COUNSEL FOR APPELLEES, CITY OF
COLUMBUS AND COLUMBUS MUNICIPAL
CIVIL SERVICE COMMISSION

Notice of Appeal of Appellant John B. DeVennish

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

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

Respectfully submitted,
John Miller, Counsel of Record

_____
Susan Smith

COUNSEL FOR APPELLANT,
JOHN B. DEVENNISH

Certificate of Service

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

_____
Susan Smith

COUNSEL FOR APPELLANT,
JOHN B. DEVENNISH

IN THE SUPREME COURT OF OHIO

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

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JOHN B. DEVENNISH

John Miller (1234567) (COUNSEL OF RECORD)
Susan Smith (7654321)
Miller, Miller & Smith
100 South High Street, Suite 100
Columbus, Ohio 43215
(614) 233-1111
Fax No. (614) 233-2222
jmiller@e-mail

COUNSEL FOR APPELLANT, JOHN B. DEVENNISH

Jane Doe (0909090)
Columbus City Attorney
Peter Jones (0999999) (COUNSEL OF RECORD)
Chief Labor Attorney
City of Columbus Dept. of Law
90 West Broad Street
Columbus, Ohio 43215
(614) 222-3456
pjones@e-mail

COUNSEL FOR APPELLEES, CITY OF
COLUMBUS AND COLUMBUS MUNICIPAL
CIVIL SERVICE COMMISSION

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

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

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

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

The implications of the decision of the court of appeals affect every governmental entity in Ohio, and touch the lives of tens of thousands of public employees in the state. The public's interest in the orderly operation of government is profoundly affected by a holding that the agreements of municipalities are not binding on agencies of the municipality. Such a rule would sabotage the integrity of governmental contracts, and undermine

the fundamental principle that the rule of law constrains governments as well as citizens. Similarly, the public interest is affected if the plain meaning of a statute duly adopted by the General Assembly can be judicially altered to subvert the legislature's intent that the labor relations of governmental units throughout the state be controlled by certain uniform principles.

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

The decision of the court of appeals sets a precedent that would exclude an entire subject matter—promotions—from collective bargaining by public employees. Under this rule, public employees would be denied the right to bargain over one of the most significant terms and conditions of employment affecting their career paths. The result of this rule would be preposterous. Employee representatives would bargain with the municipalities' representatives about the full range of terms and conditions that affect their employment, but would see the central issue of promotions relegated to the unilateral determinations of civil service commissions, which would be unconstrained by any agreement of the city.

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

The judgment of the court of appeals has great general significance also because it undermines collective bargaining by permitting cities to circumvent their collective bargaining agreements. If civil service commissions had exclusive jurisdiction over promotional matters, despite contrary provisions of collective bargaining agreements, the force and value of agreements and the objectives of the Act would be severely compromised.

Municipal administrative agencies, such as civil service commissions, could negate at will agreements made under the Act. Such a prospect is contrary to current case law and the stated purpose of the Act.

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

Contrary to the holding in *Rocky River*, the lower court's interpretation of R.C. 4117.08(B) impairs the functioning of the Act. The decision would invite a return to pre-collective bargaining days. This court rejected such a regression in *Kettering v. State Emp. Relations Bd.,* 26 Ohio St.3d 50, 56, 496 N.E.2d 983 (1986):

> A myopic insistence on returning a significant portion of Ohio's public employee labor relations to the pre-Act *ad hoc* 'system,' under the rubric of local self-government powers, only invites a return to the very litigation and controversy which had prompted the General Assembly to address that distressing state of affairs. * * *

(Footnote omitted.) See also, *Dublin v. State*, 118 Ohio Misc.2d 18, 2002-Ohio-2431, 769 N.E.2d 436 (C.P.); *Sanders v. Summit Cty. Veterans' Serv. Comm.*, 9th Dist. Summit No. 20800, 2002-Ohio-2653, ¶ 20.

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

In sum, this case puts in issue the essence of public employee collective bargaining and the fate of public labor relations, thereby affecting every governmental entity and employee in Ohio. To promote the purposes and preserve the integrity of the Public Employees' Collective Bargaining Act, to assure uniform application of the Act, to promote orderly and constructive negotiations between employers and their public employees, and to

remove impediments to the collective bargaining process, this court must grant jurisdiction to hear this case and review the erroneous and dangerous decision of the court of appeals.

STATEMENT OF THE CASE AND FACTS

The case arises from the attempt of appellant John B. DeVennish ("DeVennish") to attain the rank of sergeant in the Columbus Police Department. The Columbus Municipal Civil Service Commission (the "commission") ruled that DeVennish was not eligible to take the necessary promotional examination because, under the rules and regulations of the commission, he did not meet the minimum requirement of three years of continuous accredited service as a permanent employee immediately prior to the date of the examination.

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

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

The court of appeals erred in ruling that the Public Employees' Collective Bargaining Act excludes promotions from the mandatory topics of collective bargaining. The court of appeals also erred in failing to recognize that a municipality binds its civil service commission when it enters into a collective bargaining agreement with a public employee union.

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

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

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

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

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

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

(Emphasis added.)

This provision excludes from collective bargaining only lists for *original* appointments, not promotional appointments. This statute codifies a distinction widely accepted in traditional private sector labor law: original hiring practices are left to the employer's discretion and are not appropriate subjects of collective bargaining; promotions, in contrast, are proper subjects of collective bargaining. See, e.g., *Ford Motor Co. v. Huffman,* 345 U.S. 330, 341-342, 73 S.Ct. 681, 97 L.E. 1048 (1953); *Amalgamated Transit Union Internatl., AFL-CIO v. Donovan* 767 F.2d 939 (D.C. Cir. 1985); *Houston Chapter, Associated Gen. Contrs. of Am., Inc.*, 143 N.L.R.B. 409 (1963).

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

> Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the right and responsibility of each public employer to:
>
> * * *
>
> (5) * * * promote * * * employees.

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

The court of appeals held that, under this clear statutory scheme, the determination of who is eligible for a promotion, and therefore eligible for a promotional civil service examination, is a prohibited topic for collective bargaining. This holding ignores the evident meaning of R.C. 4117.08 and improperly broadens the narrow exceptions enumerated in R.C. 4117.08(B). The court of appeals erroneously interpreted the statutory phrase "establishment of eligible lists *from* the examination" (emphasis added) to include the determination of an applicant's eligibility to sit *for* an examination. Such a judicial expansion of a clear and carefully drafted statutory exclusion violates the rules of statutory construction established and applied by this court. See *State ex rel. Keller v. Forney,* 108 Ohio St. 463, 141 N.E. 16 (1923); *Kroff v. Amrhein*, 94 Ohio St. 282, 114 N.E. 267 (1916); *Erich v. Mayfield Village*, 8th Dist. Cuyahoga No. 76675 (July 13, 2000); *Leland v. Lima*, 3d Dist. Allen No. 1-02-59, 2002-Ohio-6188, ¶ 20-21.

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

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

As the State Employee Relations Board and several Ohio courts have ruled, and as the appellee city has acknowledged in other forums, a civil service commission has no separate legal identity or capacity apart from

the city that created it. A collective bargaining agreement entered into by a municipality, as a public employer, therefore, binds a civil service commission as well.

Furthermore, the provisions of a collective bargaining agreement entered into by a municipality must prevail over a conflicting regulation of a civil service commission. This court held in *Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 539 N.E.2d 103, that the exercise by municipalities of Home-Rule powers is constitutionally limited to the exercise of powers that do not conflict with any general law. Thus, the provisions of R.C. Chapter 4117, a general state law, prevail over conflicting municipal enactments, such as the commission's regulations. See *State ex rel. Dayton Fraternal Order of Police, Lodge No. 44, v. State Emp. Relations Bd.,* 22 Ohio St.3d 1, 22 OBR 1, 488 N.E.2d 181 (1986); *Kettering v. State Emp. Relations Bd.*, 26 Ohio St.3d 50, 496 N.E.2d 983; and *Dist. 1199, Health Care & Soc. Serv. Union, SEIU, AFL-CIO v. State Emp. Relations Bd.*, 10th Dist. Franklin No. 02AP-391, 2003-Ohio-3436.

CONCLUSION

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

Respectfully submitted,
John Miller, Counsel of Record

_____
Susan Smith
COUNSEL FOR APPELLANT,
JOHN B. DEVENNISH

Certificate of Service

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

_____

Susan Smith

COUNSEL FOR APPELLANT,
JOHN B. DEVENNISH

IN THE SUPREME COURT OF OHIO

_____	:	
	:	Case No. _____
v.	:	
	:	
_____	:	

Waiver of Memorandum in Response*

I am filing this waiver pursuant to S.Ct.Prac.R. 7.03(E). I do not intend to file a response to the memorandum in support of jurisdiction unless one is requested by the Court.

_____	_____
Name	Address
_____	_____
Attorney Registration #	City & State
_____	_____
Phone Number	Zip Code

Please enter my appearance as follows (check one):

Enter my appearance as counsel of record for all appellees.

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

_____ _____

_____ _____

I certify that I am sending a copy of this form, on this date, to all other parties in compliance with S.Ct. Prac.R. 3.11(B).

_____
Signature

_____
Date

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

IN THE SUPREME COURT OF OHIO

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

MERIT BRIEF OF APPELLANT JOHN B. DEVENNISH

John Miller (1234567) (COUNSEL OF RECORD)
Susan Smith (7654321)
Miller, Miller & Smith
100 South High Street, Suite 100
Columbus, Ohio 43215
(614) 233-1111
Fax No. (614) 233-2222
jmiller@e-mail

COUNSEL FOR APPELLANT, JOHN B. DEVENNISH

Jane Doe (0909090)
Columbus City Attorney
Peter Jones (0999999) (COUNSEL OF RECORD)
Chief Labor Attorney
City of Columbus Dept. of Law
90 West Broad Street
Columbus, Ohio 43215
(614) 222-3456
pjones@e-mail

COUNSEL FOR APPELLEES, CITY OF
COLUMBUS AND COLUMBUS MUNICIPAL
CIVIL SERVICE COMMISSION

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STATEMENT OF FACTS

This case arises from the attempt of appellant John B. DeVennish ("DeVennish") to attain the rank of sergeant in the Columbus Police Department. DeVennish joined the Columbus police force on March 17, 1985. (Supp. 38.) He voluntarily resigned in good standing on
April 30, 1991 to work in private industry. (Supp. 38, Tr. 15.) On October 6, 1999, DeVennish rejoined the Columbus police force and graduated first academically in his police academy class. (Supp. 38, Tr. 16.)

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

DeVennish appealed this decision to the commission. (Supp. 31.) Pending that appeal, he was permitted to take the promotional examination. (Supp. 143.) On the posted list of test scores, DeVennish ranked twenty-first out of one hundred seventy-nine applicants. (Supp. 143.) On July 22, 2001, the commission dismissed DeVennish's appeal on the ground that he did not have three years of continuous service prior to the examination. (Appx. 18.) In so doing, the commission refused to honor the provisions of a contract, effective December 29, 1998, between the city of Columbus (the "city") and the Fraternal Order of Police, Capital City Lodge No. 9 (the "FOP") pursuant to R.C. Chapter 4117. (See Supp. 118.)

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

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

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

(Supp. 83-84.)

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

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

On October 24, 2003, the Franklin County Court of Appeals affirmed the judgment of the common pleas court. (Appx. 3, 9.) The court of appeals ruled that the promotional provisions of the collective bargaining agreement did not apply to DeVennish on grounds that: (a) Section E, Article 15 of the collective bargaining agreement between the city and the FOP addressed a matter that was not an appropriate subject of bargaining under R.C. 4117.08(B) and, therefore, the agreement could not supersede the existing civil service regulation; (b) the Columbus Municipal Civil Service Commission was an entity separate from the city of Columbus and had the right, under the Home-Rule provisions of the Ohio Constitution, to enforce its own rules and regulations; and (c) the commission had never formally adopted the promotional standard set forth in the collective bargaining agreement between the city and the FOP and was not bound by the agreement between the city and the FOP.

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

ARGUMENT

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

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

1. The conduct and grading of civil service examinations;
2. The rating of candidates;
3. The establishment of eligible lists from examinations; and
4. The original appointments from the eligible lists.

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

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

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

(Emphasis added.)

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

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

The court of appeals' error is compounded by its obvious misreading of the specific exclusions in the statute. The court of appeals erroneously interpreted the phrase, "the establishment of eligible lists *from* the examinations," to include the determination of an applicant's eligibility to sit *for* an examination. Such judicial expansion of a clear and carefully drafted statutory exclusion violates the rules of statutory construction established and applied by this court, and the critical constitutional concerns for separation of powers that animate those rules. In *State ex rel. Keller v. Forney* (1923), 108 Ohio St. 463, 141 N.E. 16, this court held that exceptions to a general law must be strictly construed, because of the presumption that matters not clearly excluded from the operation of the law are clearly included in the operation of the law. Similarly, in *Kroff v. Amrhein*, 94 Ohio St. 282, 286, 114 N.E. 267 (1916), this court held that exceptions in a remedial statute should be strictly construed. In so ruling, the court embraced "the familiar rule that the exclusion clearly made in the exception only emphasizes the inclusion of all other things germane to the statute which are not so excluded." Id.; *Leland v. Lima*, 3rd Dist. Allen No. 1-02-59, 2002-Ohio-6188, ¶ 20-21.

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

> Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the right and responsibility of each public employer to:
>
> * * *
>
> (5) * * * promote * * * employees.
>
> * * *
>
> The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement.

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

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

The exceptions enumerated in R.C. 4117.08(B) are the conduct and grading of civil service examinations, the establishment of eligible lists from the examination, the rating of candidates, and the original appointment from the eligible lists. The court of appeals found that the establishment of eligible lists from the examination encompasses the determination of the eligibility of an applicant to sit for the examination. The lower court's decision erroneously interprets R.C. 4117.08. The decision ignores the plain meaning of the statute, improperly broadens a narrow and clearly drafted exclusion, and offends the basic tenets of statutory construction. Not surprisingly, the decision is contrary not only to the law of Ohio, but also to the settled law throughout the United States. The court of appeals' decision must be reversed. Applying the unmistakable language of R.C. 4117.08, this court should hold that the subject of eligibility to sit for a promotional civil service examination is a proper subject for bargaining. As demonstrated in the next section, once a collective bargaining agreement addresses a subject, that agreement prevails over conflicting civil service rules. See *Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 539 N.E.2d 103 (1989).

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

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

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

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

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

The law provides no role for a civil service commission in the collective bargaining process. The comprehensive legislative scheme defines who the public employer is, who can bargain on behalf of the public employer, and the matters over which bargaining must occur. Promotions are expressly included as a topic of bargaining. This coherent process requires the conclusion that a civil service commission has no independent role regarding promotions. As with any municipal agency, the commission is bound by the contracts of the municipality, particularly those entered into pursuant to express statutory authority. Any contrary conclusion would frustrate the legislative scheme and severely disrupt governmental operations.

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

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

> A myopic insistence on returning a significant portion of Ohio's public employee labor relations to the pre-Act *ad hoc* 'system,' under the rubric of local self-government powers, only invites a return to the very litigation and controversy which had prompted the General Assembly to address that distressing state of affairs. * * *

(Footnote omitted.)

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

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

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

Id. at 7.

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

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

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

CONCLUSION

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

The decision below must be reversed. A reversal will promote the exemplary purposes of the Act and preserve the

Respectfully submitted,
John Miller, Counsel of Record

_____ Susan Smith
COUNSEL FOR APPELLANT,
JOHN B. DEVENNISH

Certificate of Service

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

_____
Susan Smith

COUNSEL FOR APPELLANT,
JOHN B. DEVENNISH

SUPREME COURT OF OHIO

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