

## **PROPOSED AMENDMENTS TO LOCAL APPELLATE RULE 21**

**Comments Requested:** The Court of Appeals of Ohio, Eighth Appellate District will accept public comments until June 12, 2023, on the proposed amendments to Loc.App.R. 21.

Comments on the proposed amendments should be submitted in writing to: Erin M. O’Toole, Court Administrator, Eighth District Court of Appeals, 1 W. Lakeside Ave., Rm. #202, Cleveland, Ohio 44113 or emo@8thappeals.com not later than June 12, 2023. Please include your full name and mailing address in any comments submitted by e-mail.

*If approved following the public comment period, the proposed effective date of the amendments is July 1, 2023.*

### **Summary of Proposed Amendments:**

#### **Loc.App.R. 21:**

<ul style="list-style-type: none"><li>- Loc.App.R. 21(A): Provision added directing parties to specify their preferred forum for oral argument (i.e., in person or remote) on the cover page of their brief if requesting an oral argument hearing.</li><li>- Loc.App.R. 21(A) recognizes “in person” oral argument hearing as the default forum unless the parties comply with the requirements for remote oral argument in section (E) of the rule.</li></ul>
<ul style="list-style-type: none"><li>- Loc.App.R. 21(C): Waiver provision updated to capture the fact that the court does not automatically schedule all cases for oral argument as it previously did.</li><li>- Loc.App.R. 21(C)(1): Language added to recognize that either appellant or appellee may be the nonmoving party to a motion for waiver of oral argument.</li></ul>
<ul style="list-style-type: none"><li>- Loc.App.R. 21(E)(2): New provision that incorporates the procedures for remote oral argument previously stated on the court’s website. It makes clear that if both parties request remote oral argument on the cover of their briefs, then the case will be scheduled for remote oral argument. If parties disagree as to the preferred forum, the party requesting remote oral argument must file a motion no later than 10 days after the appellee’s brief is filed and set forth reasons for remote</li></ul>

argument in lieu of in-person oral argument. The selection of the forum will be determined by the merit panel.

- Loc.App.R. 21(E)(3): It requires motions for remote oral argument to be timely filed unless there is an emergency. The court will make every effort to accommodate any COVID-related or other health concerns.
- Loc.App.R. 21(E)(4): Added language to former section 21(E)(2) that now requires all litigants to appear in the same remote format as self-represented imprisoned litigants. Both parties will be either by Zoom or by telephone.

### **Key to Proposed Amendments:**

- 1. Existing language appears in regular type. Example: text.**
- 2. Existing language to be deleted appears in strikethrough. Example: ~~text~~.**
- 3. New language to be added appears in underline. Example: text.**

## RULE 21. ORAL ARGUMENT

(A) **Oral Argument Procedure.** A case will ~~not~~ only be set for oral argument ~~unless~~ if a party requests it. A party may request oral argument by including the words “ORAL ARGUMENT REQUESTED” prominently on the cover page of the ~~appellant’s opening brief or the appellee’s brief.~~ If any party requests oral argument, the case will be scheduled for oral argument for all parties party’s initial brief and by designating their preferred forum (i.e., “IN PERSON ORAL ARGUMENT REQUESTED” or “REMOTE ORAL ARGUMENT REQUESTED”). If any party requests oral argument, the case will be scheduled for oral argument for all parties in person unless the requirements for remote oral argument have been complied with per section (E) below.

- (1) The court shall notify each counsel (or party if not represented by counsel) of the time and place of oral argument and manner (in person or remote) through the court’s electronic transmission facilities (or by postcard if the party is not represented by counsel and not utilizing the e-filing system). Notice of the court’s oral argument schedule will be published

in the Daily Legal News and posted on the court's website under Court Calendar at <https://appeals.cuyahogacounty.us/>.

- (2) If no party to an appeal requests oral argument, the court will submit the case to a panel for decision and the parties will be notified of the date on which the case is submitted.
- (3) The court may, sua sponte, schedule a case for oral argument at which all persons otherwise permitted to argue shall appear and present oral argument. The court may limit oral argument to specific issues.

**(B) Time Allowed for Argument.** Each side will be allowed 15 minutes for oral argument, including appellant's requested rebuttal time (if any), but may move to expand the time for good cause. This request must be filed by separate motion at the time the party's brief is filed. If there is more than one appellant or appellee, they must divide the 15 minutes absent an order granting additional time.

**(C) Waiver of Argument.** A party's After an oral argument has been requested by a party or scheduled by the court, any party wishing to waive the argument shall file a motion to waive oral argument. This motion will not automatically result in cancellation of the scheduled argument. Oral argument will take place at the scheduled date and time unless the court grants the motion to waive.

- (1) Motion to Waive Oral Argument. A party may file a motion to waive oral argument no less than ten calendar days before the date scheduled for argument. If an appellee a non-moving party wishes to be heard at argument despite an appellant's the opposing party's motion to waive, within five calendar days after the appellant's motion is filed, appellee may move that the argument go forward as scheduled. Absent such a motion by appellee, an appellant's waiver will be deemed proceed with the non-moving party arguing to the court alone unless the non-moving party files a request motion to also waive oral argument as to all parties within five calendar days of the moving party's motion to waive argument.
- (2) Untimely Motions. A motion to waive filed less than ten calendar days before oral argument may only be granted by unanimous consent of the assigned merit panel.

**(D) Postponing or Advancing Argument.**

- (1) Procedure. Counsel who anticipates being unavailable for oral argument in a pending appeal at any time after briefing is completed but before argument is scheduled must advise the Assignment Commissioner of their unavailability in writing. The notice shall be in letter format, addressed to the Assignment Commissioner, Ohio Court of Appeals, Eighth Appellate District, 1 West Lakeside Avenue, Room 202, Cleveland, Ohio 44113, and shall include the case caption, the appellate case number, and the dates on which counsel anticipates being unavailable for oral argument. The letter may be delivered to the Assignment Commissioner by U.S. Mail, personal delivery, or via email to [assign@8thappeals.com](mailto:assign@8thappeals.com).
- (2) Cases Scheduled for Argument. Once oral argument has been scheduled and notice has been provided, a case will not be 28 advanced or postponed on motion of a party except for good cause shown.

**(E) Remote Oral Argument Forum.**

- (1) In its discretion, the court reserves the right to hold oral arguments remotely via videoconferencing or telephonically. ~~The procedure for requesting remote oral argument and other requirements are posted on the court's website under <https://appeals.cuyahogacounty.us/more-links/helpfulinformation/requesting-remote-oral-argument-policy>.~~
- (2) If both parties request remote oral argument on the cover page of the initial brief, oral argument will be held by remote technology. If only one party requests remote oral argument and no other preferred forum is requested by a party, oral argument will be held by remote technology. If parties disagree as to the preferred forum, the party requesting remote oral argument must file a motion no later than 10 days after the appellee's brief is filed and set forth reasons for remote argument in lieu of in-person oral argument. The selection of the forum will be determined by the merit panel.

- (3) Absent an emergency, the court will not consider untimely motions for remote argument. The court will make every effort to accommodate any COVID-related or other health concerns, assuming the court receives notification as soon as possible but, absent an emergency, not less than 14 days before the hearing.
- (4) When a self-represented litigant is imprisoned and timely complies with ~~paragraph (E)~~ paragraph (A)(1) above, the court will schedule the oral argument to be held by remote technology. All litigants shall appear in the same remote format as self-represented imprisoned litigants (i.e., by videoconferencing or telephonically). A self-represented litigant who is imprisoned may move to waive the oral argument in compliance with paragraph (C) of this rule. Failure of the self-represented litigant to appear at the scheduled oral argument will result in the matter being submitted on the briefs unless the court orders otherwise.

**(F) Precedence of Oral Argument.** If counsel of record on an appeal has an assignment, including but not limited to pretrial or trial proceedings, before any municipal court or court of common pleas that conflicts with an oral argument scheduled before the Eighth District Court of Appeals, the oral argument assignment before the Eighth District Court of Appeals takes precedence.