

**OPINION NO. 2006-011****Syllabus:**

Because Rule 9 of the Rules of Local Practice of the Erie County Court of Common Pleas requires the clerk of court to journalize a judgment “forthwith,” should the court of common pleas wish to change that requirement to require journalization within a specific number of days following filing, it may amend its rule to replace the word “forthwith,” as used in Local Rule 9.03, with a specific number of days, so long as the stated number of days does not conflict with the time requirements of Ohio Sup. R. 7(A) or a statute or any other rule adopted by the Ohio Supreme Court.

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**To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio**

**By: Jim Petro, Attorney General, March 13, 2006**

You have requested an opinion concerning the authority of a court of common pleas to require the clerk of that court to journalize judgment entries within a shorter time period than that set forth in Ohio Sup. R. 7(A). Your specific questions are as follows:

1. Rule 7(A) of the Rules of Superintendence for the Supreme Court of Ohio provides that a judgment entry specified in Civil Rule 58 and in Criminal Rule 32 shall be filed and journalized within thirty days of the verdict, decree, or decision. May judges of the court of common pleas by directive or order in a judgment entry require the clerk of courts to journalize a judgment entry within a shorter period than that required in Rule 7(A) such as a three (3) day period?
2. If permissible, would a Court of Common Pleas be required to first adopt a local rule of court and follow procedures outlined in Rule 5(A)(1) through (3) of the Rules of Superintendence for the Supreme Court of Ohio?

In answering your questions, let us begin with a brief examination of the office of clerk of court and the relationship of that office to the court of common pleas of the same county. Pursuant to R.C. 2303.01, the General Assembly has provided for the election of a clerk of court in each county. In accordance with R.C. 2303.03, the clerk of court also serves as the clerk of the county's court of appeals. The General Assembly has vested in a clerk of court various statutory powers and duties,<sup>1</sup> and has expressly provided that, "[t]he clerk of the court of common pleas shall exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law; and in the performance of his duties he shall be *under the direction of his court.*" R.C. 2303.26 (emphasis added). *See, e.g., State ex rel. Wanamaker v. Miller*, 164 Ohio St. 176, 177, 128 N.E.2d 110 (1955) ("[i]t is the duty of the clerk of this court, *in the absence of instructions from the court to the contrary*, to accept for filing any paper presented to him, provided such paper is not scurrilous or obscene, is properly prepared and is accompanied by the requisite filing fee. The power to make any decision as to the propriety of any paper submitted or as to the right of a person to file such paper is vested in the court, not the clerk" (emphasis added)). The duties of a clerk of court have also been characterized as "ministerial and non-judicial." *State ex rel. Glass v. Chapman*, 67 Ohio St. 1, 65 N.E. 154 (1902) (syllabus). As summarized in *State ex rel. McKean v. Graves*, 91 Ohio St. 23, 24, 109 N.E. 528 (1914), concerning the Clerk of the Ohio Supreme Court:

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<sup>1</sup> *See, e.g.,* R.C. 2303.09 (duty to "file together and carefully preserve in his office all papers delivered to him for that purpose in every action or proceeding"); R.C. 2303.12 (stating, in part, "[t]he clerk of the court of common pleas shall keep at least four books. They shall be called the appearance docket, trial docket and printed duplicates of the trial docket for the use of the court and the officers thereof, journal, and execution docket"); R.C. 2303.14 (duty to "keep the journals, records, books, and papers appertaining to the court and record its proceedings").

[The clerk of court] is vested with no discretion in any respect. He is only an *arm of the court* for issuing its process, *entering its judgments* and performing like duties which the court itself might perform. His services are employed only for the more convenient performance of those functions of the court which are clerical in their nature. (Emphasis added.)

The duty of a clerk of court to act under the direction of the court with respect to the court's records was addressed in 2003 Op. Att'y Gen. No. 2003-030, which concerned the duty of a clerk of court to comply with an order of the court that certain records not be made available through the Internet. In concluding that the clerk of court had a duty to obey that order, 2003 Op. Att'y Gen. No. 2003-030 explained at 2-256:

The conclusion that the clerk of courts has a duty to comply with the order of the domestic relations division's judges regarding the records of that division is consistent with the principle that, "[a] court of record has general custody of and authority over its own records and files." *Ex parte Thayer*, 114 Ohio St. 194, 150 N.E. 735 (1926) (syllabus, paragraph one). As explained by the *Thayer* court, the authority of a court over its records and files "extends to the files of all cases which have ever been instituted therein, whether dismissed, disposed of, or pending. This power of the court is inherent and takes precedence even of the statutory power of a clerk over court records and files." *Id.*, 114 Ohio St. at 201 (citation omitted).

The 2003 opinion thus found that a court of common pleas possesses inherent authority over its records and files, and may direct the clerk of court in the manner in which public access to such records will be afforded.

Your questions concern the authority of a court of common pleas to require its clerk to journalize a judgment entry within a period shorter than thirty days of the date on which such entry is filed with the clerk. As noted in your opinion request, Ohio Sup. R. 7(A) states that, "[t]he judgment entry specified in Civil Rule 58<sup>2</sup> and in Criminal Rule 32<sup>3</sup> shall be filed and journalized within thirty days of the verdict, decree, or decision. If the entry is not prepared and presented by counsel, it shall be prepared and filed by the court." (Footnotes and emphasis added.) Thus, Ohio Sup.

<sup>2</sup> Ohio R. Civ. P. 58 states, in pertinent part:

(A) Preparation; entry; effect. Subject to the provisions of Rule 54(B), upon a general verdict of a jury, upon a decision announced, or upon the determination of a periodic payment plan, the court shall promptly cause the judgment to be prepared and, the court having signed it, *the clerk shall thereupon enter it upon the journal*. A judgment is effective only when entered by the clerk upon the journal. (Emphasis added.)

<sup>3</sup> Ohio R. Crim. P. 32 states, in pertinent part:

R. 7(A) establishes thirty days from a verdict, decree, or decision as the period within which a judgment entry must be both filed and journalized. Ohio Sup. R. 7(A) does not, therefore, limit the time within which a clerk of court must journalize a judgment entry after it is filed with the clerk, other than to require that both the filing and journalization of a judgment entry occur “within thirty days of the verdict, decree, or decision.” For example, if a judgment entry were filed on the first day after the verdict, decree, or decision, the clerk would be in compliance with the requirements of Ohio Sup. R. 7(A) by journalizing the entry at a time within the next twenty-nine days; if, on the other hand, a judgment entry were filed with the clerk of court on the twenty-ninth day after the verdict, decree, or decision, Ohio Sup. R. 7(A) would require the clerk to journalize such entry within one day. It is not clear, therefore, that a court’s requirement that its clerk journalize a judgment entry within three days of its filing with the clerk will ensure that both filing and journalization of a judgment entry will occur within the time required by Ohio Sup. R. 7(A).<sup>4</sup>

(C) Judgment. A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and *the clerk shall enter it on the journal*. A judgment is effective only when entered on the journal by the clerk. (Emphasis added.)

<sup>4</sup> In *City of Cleveland v. Trzebuckowski*, 85 Ohio St. 3d 524, 527, 709 N.E.2d 1148 (1999), the court emphasized the significance of prompt journalization in accordance with Ohio Sup. R. 7, as follows: “[I]t is incumbent upon the part of the judiciary to comply with the mandate of Ohio Sup. R. 7. Without official journalization within thirty days, nothing that the trial court did in the case was final and all orders could potentially be reversed at any time.” The *Trzebuckowski* court further characterized the duty of prompt journalization as a responsibility of the court, even though it is the clerk of court who actually performs the act of journalization under Ohio R. Civ. P. 58 and Ohio R. Crim. P. 32. *City of Cleveland v. Trzebuckowski*, 85 Ohio St. 3d at 527 (“[t]he Cleveland Municipal Court must see to it that all entries of the court are journalized in an expeditious manner”). See *Hocking Valley Railway Co. v. Cluster Coal & Feed Co.*, 97 Ohio St. 140, 143, 119 N.E. 207 (1918) (“where the statute has cast upon the clerk the duty of entering a judgment for a fixed, ascertained amount, it is a purely ministerial function, and the entry of the judgment in contemplation of law is presumed to be the act of the court and performed in its presence”); *Kennedy v. City of Cleveland*, 16 Ohio App. 3d 399, 401-02, 476 N.E.2d 683 (Cuyahoga County 1984) (analyzing former Ohio C.P. Sup. R. 13, analogous to Ohio Sup. R. 7(A), and stating, “[t]his rule establishes that the trial court has the primary duty to journalize its decision within thirty days after rendering the same . . . . Either party is always free to request the court, by way of motion or otherwise, to enter its judgment. If the trial court refuses upon request or motion to journalize its decision, either party may compel the court to act by filing a writ of mandamus or a writ of procedendo”).

We note that the Erie County Court of Common Pleas has established a procedure for the preparation, court approval, and journalization of judgment entries in Rule 9 of the Rules of Local Practice of the Erie County Court of Common Pleas,<sup>5</sup> which states:

9.01 Counsel for the party in whose favor an order, decree or judgment is rendered shall prepare a judgment entry expressive of such order, decree or judgment and submit such entry to the counsel of the adverse party within ten (10) days after receipt of notice by counsel of such order, decree or judgment, unless further time for the preparation of said entry and submission of same to the adverse party be granted by the Court. Counsel for such adverse party shall approve or reject the same within three (3) days after its receipt.

9.02 If within the time limits herein prescribed counsel are unable to agree upon a satisfactory entry, such fact shall be made known to the Court immediately, and each counsel shall submit to the Court a proposed entry. The Court may schedule a hearing thereon or prepare [its] own entry forthwith.

9.03 Upon the approval of the entry within the time limits hereinbefore prescribed, counsel for the prevailing party will cause such approved entry to be delivered to the Court. *Said entry shall forthwith be entered in the Clerk's Journal* upon the approval and signature of the Court.

9.04 In the event of non-compliance with this rule, the Court may make such order and further orders in the case as may appear proper. (Emphasis added.)

Thus, within its local rules of court, the Erie County Court of Common Pleas has addressed the duty of the clerk of court to journalize a judgment entry upon the approval and signature of the court, *i.e.*, the clerk shall enter the judgment in the court's journal "forthwith." As defined in *Merriam-Webster's Collegiate Dictionary* 493 (11th ed. 2005), the word "forthwith" means "immediately." The plain language of the rule, therefore, requires the clerk to journalize an entry immediately.

In addition, because local rules of practice may not conflict with rules

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<sup>5</sup> Ohio Const. art. IV, § 5(B), in part, authorizes courts to adopt "rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court." See Ohio Sup. R. 5(A)(1) ("[n]othing in these rules prevents the adoption of any local rule of practice that promotes the use of any device or procedure to facilitate the expeditious disposition of cases. Local rules of practice shall not be inconsistent with rules promulgated by the Supreme Court"). See generally 2005 Op. Att'y Gen. No. 2005-034 at 2-356 ("[l]ocal rules of a court of common pleas are limited to procedural matters, and may not affect substantive rights. Also, when there is a conflict between a statute and local court rule, the statute prevails over the local rule" (various citations omitted)).

adopted by the Ohio Supreme Court, Ohio Const. art. IV, § 5(B), including Ohio R. Sup. 7(A),<sup>6</sup> we read Rule 9 of the Rules of Local Practice of the Erie County Court of Common Pleas as requiring that journalization of a judgment entry occur immediately, but no more than thirty days after a verdict, decree, or decision.<sup>7</sup> Because the Erie County Court of Common Pleas has addressed in its local rules the duties of its clerk of court regarding the journalization of judgment entries, it would ap-

<sup>6</sup> The Ohio Supreme Court has adopted the Rules of Superintendence for the Courts of Ohio pursuant to its authority under Ohio Const. art. IV, § 5(A)(1). Ohio Sup. R. 1(B). See generally *State v. Mahoney*, 34 Ohio App. 3d 114, 517 N.E.2d 957 (Hamilton County 1986) (syllabus, paragraph 1) (characterizing Rules of Superintendence as “administrative directives”); *Krupansky v. Pascual*, 27 Ohio App. 3d 90, 92, 499 N.E.2d 899 (Lorain County 1985) (“[t]he Superintendence Rules are applicable only so long as they are not in conflict with statute or other governing Supreme Court rules” (citation omitted)); *State v. Gettys*, 49 Ohio App. 2d 241, 243, 360 N.E.2d 735 (Seneca County 1976) (characterizing Rules of Superintendence as “internal housekeeping rules”).

<sup>7</sup> In *Higgins v. McDonnell*, 105 Ohio App. 3d 199, 663 N.E.2d 970 (Cuyahoga County 1995), the court compared the provisions of Ohio R. Civ. P. 56(C) with a local rule of court to determine whether the rules conflicted concerning the time within which a motion for summary judgment and a reply to such motion may be filed. As provided, in pertinent part by Ohio R. Civ. P. 56(C): “The motion shall be served at least fourteen days before the time fixed for hearing. The adverse party prior to the day of hearing may serve and file opposing affidavits.” The local rule of court, however, provided that, “[u]nless otherwise ordered by the Court, motions for summary judgment shall be heard on briefs and other materials authorized by Civil Rule 56(C) without oral arguments. The adverse party may file a brief in opposition with accompanying materials, within thirty (30) days after service of the motion.” 105 Ohio App. 3d at 202. Concerning the requirements of Ohio R. Civ. P. 56(C), the *Higgins* court stated: “The Supreme Court has set a *minimum time limitation* by which courts and counsel alike must abide, but does not preclude a court from exercising discretion and allowing the litigants additional time.” *Id.* (emphasis added). With respect to the local rule, the *Higgins* court stated: “Loc.R. 11(I) of the Court of Common Pleas of Cuyahoga County, General Division, allows an adverse party thirty days after the service of the motion in which to file a brief in opposition.” *Id.* Accordingly, the *Higgins* court concluded that, “[s]ince the local rule does not shorten the time set by the Supreme Court, there is no inconsistency which would require the invalidation of the local rule.” *Id.*

Analogously, Ohio R. Sup. 7(A) establishes a maximum time limitation of thirty days within which a judgment entry must be filed and journalized. A local rule of court that establishes a lesser number of days for the filing and journalization of a judgment entry would not, therefore, be in conflict with the requirements of Ohio R. Sup. 7(A), so long as the local rule allows no more than the maximum of thirty days specified by Ohio R. Sup. 7(A) for the filing and journalization of such entry.

pear that the court may amend that rule to replace the word “forthwith,” as used in Local Rule 9.03, with a specific number of days, so long as the stated number of days does not conflict with the time requirements of Ohio Sup. R. 7(A) or a statute or any other rule adopted by the Supreme Court of Ohio.

Part of your concern is whether the court may accomplish the proposed time limitation on the clerk’s journalization of a judgment entry filed with the clerk “by directive or order in a judgment entry,” or whether such limitation may be imposed only through adoption of a local rule of court. Because Rule 9 of the Rules of Local Practice of the Erie County Court of Common Pleas addresses the time within which its clerk must journalize judgment entries, it would appear that, in order to avoid confusion, any change in such requirement would best be addressed through amendment of the court’s local rules. See *State v. Holcomb*, 2003-Ohio-7167, 2003 Ohio App. Lexis 6615, at ¶ 6 (Summit County 2003) (“[w]hile it is preferable for a court to follow its own local rules, or to amend rather than ignore them, there is no error where a court, in its sound discretion, decides that it should deviate from its own rule in a particular case”); *Shore v. Chester*, 40 Ohio App. 2d 412, 414, 321 N.E.2d 614 (Franklin County 1974) (“[i]f a court feels its rules do not reflect the proper course of action, it should amend them, not ignore them”).

As a general matter, however, the manner in which a court of common pleas may control the keeping of the court’s journal is not addressed either by statute or by Ohio Supreme Court rule. Rather, as concluded in the fifth paragraph of the syllabus of *Foglio v. Alvis*, 75 Ohio Law Abs. 228, 143 N.E.2d 641 (C.P. Franklin County 1957):

The clerk of a court of common pleas not only has the statutory authority but the duty of entering on the journal the orders and judgments of the court and since the statutes do not define the procedure by which the clerk will ascertain the fact that such orders or judgments were made by the court, providing only that he act under the direction of the court, it is discretionary with the court as to the procedure chosen to insure the accuracy of the entries into the journal by the clerk.

Although the *Foglio* decision was rendered before the enactment of the various rules adopted by the Ohio Supreme Court under Ohio Const. art. IV, § 5,<sup>8</sup> in the absence of a rule governing the manner in which a court is to exercise its authority over the keeping of its journal, the court may exercise that power in any reasonable manner. See *State ex rel. Hawke v. LeBlond*, 108 Ohio St. 126, 135, 140 N.E. 510 (1923) (“courts have the inherent right to formulate rules for their government, so long as such rules are reasonable and not in conflict with general laws. The right to make rules must be held to come within the implied powers of courts of justice. The Legislature has never prescribed in minute detail all of the procedure necessary in conducting courts of justice in an orderly manner, and many things must necessarily

<sup>8</sup> See generally *State v. Smith*, 47 Ohio App. 2d 317, 354 N.E.2d 699 (Cuyahoga County 1976) (discussing the Ohio Supreme Court’s rule-making authority under Ohio Const. art. IV, § 5).

be left to the sound discretion of the court, and it is, of course, desirable that as far as possible those details be carried out in an orderly manner and according to a published rule”). *See generally Shober v. State*, 11 Ohio App. 37, 41, 1919 Ohio App. Lexis 254 (Hamilton County 1919) (“[t]he power of the court over its own journals is inherent”).

Based upon the foregoing, it is my opinion, and you are hereby advised that, because Rule 9 of the Rules of Local Practice of the Erie County Court of Common Pleas requires the clerk of court to journalize a judgment “forthwith,” should the court of common pleas wish to change that requirement to require journalization within a specific number of days following filing, it may amend its rule to replace the word “forthwith,” as used in Local Rule 9.03, with a specific number of days, so long as the stated number of days does not conflict with the time requirements of Ohio Sup. R. 7(A) or a statute or any other rule adopted by the Ohio Supreme Court.