

**AMENDMENTS TO THE
OHIO RULES OF APPELLATE PROCEDURE, THE OHIO RULES OF
CIVIL PROCEDURE, THE OHIO RULES OF CRIMINAL PROCEDURE,
THE OHIO RULES OF JUVENILE PROCEDURE,
AND THE OHIO RULES OF EVIDENCE**

The Supreme Court of Ohio has adopted the following amendments to the Ohio Rules of Appellate Procedure (4, 10, 13, 14, 16, 21, 26, and 43), the Ohio Rules of Civil Procedure (4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 5, 6, 11, 26, 30, 33, 36, 45, 47, 58, 65.1, 73, and 86), the Ohio Rules of Criminal Procedure (5, 15, and 59), the Ohio Rules of Juvenile Procedure (3, 5, 22, and 47), and the Ohio Rules of Evidence (404, 613, 1001, and 1102).

Authority: The amendments are adopted by the Supreme Court pursuant to Article IV, Section 5(B) of the Ohio Constitution, and were proposed by the Commission on the Rules of Practice and Procedure in Ohio Courts pursuant to the document styled “Process for Amending the Rules of Practice and Procedure in Ohio Courts” as set forth on the following page.

Staff Notes: A Staff Note follows each amendment. Staff Notes are prepared by the Commission on the Rules of Practice and Procedure. Although the Supreme Court uses the Staff Notes during its consideration of proposed amendments, the Staff Notes are not adopted by the Supreme Court and are not a part of the rule. As such, the Staff Notes represent the views of the Commission on the Rules of Practice and Procedure and not necessarily those of the Supreme Court. The Staff Notes are not filed with the General Assembly, but are included when the proposed amendments are published for public comment and are made available to the appropriate committees of the General Assembly.

PROCESS ON AMENDING THE RULES OF PRACTICE AND PROCEDURE IN OHIO COURTS

In 1968 the citizens of Ohio approved proposed amendments to Article IV of the Ohio Constitution granting the Supreme Court, among other duties, rule-making authority for the judicial branch of Ohio government. These amendments are otherwise known as the Modern Courts Amendment.

Pursuant to this rule-making authority, the Supreme Court has created the Commission on the Rules of Practice and Procedure (“Commission”). The Commission consists of nineteen members, including judges as nominated by the six judges’ associations, and members of the practicing bar appointed by the Supreme Court. The Commission reviews and recommends amendments to the Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Appellate Procedure, Rules of Juvenile Procedure, and Rules of Evidence.

In the fall of each year, the Commission submits to the Supreme Court proposed amendments to the rules of practice and procedure that it recommend take effect the following July 1. The Supreme Court then authorizes the publication of the rules for public comment. *The authorization by the Court of the publication of the proposed amendments is neither an endorsement of nor a declaration of intent to approve the proposed amendments. It is an invitation to the judiciary, the practicing bar, and the public at large to provide thoughtful and meaningful feedback on the legal and practical effect of the proposed amendments.* The public comments are reviewed by the Commission which may withdraw, amend, or resubmit all or any provision of the proposed amendments to the Supreme Court. Pursuant to Article IV, Section 5(B), if the proposed amendments are to take effect by July 1 the Supreme Court is required to file the proposed amendments with the General Assembly by January 15.

Once the proposed amendments are filed with the General Assembly they are published by the Supreme Court for a second round of public comment. *The authorization by the Court of a second round of publication for public comment is neither an endorsement of nor a declaration of intent to approve the proposed amendments. As with the first round of publication, it is an approval inviting the judiciary, the practicing bar, and the public at large to provide thoughtful and meaningful feedback on the legal and practical effects of the proposed amendments as revised.* Once the second round of public comments is ended, the comments are reviewed by the Commission which may withdraw, amend, or resubmit all or any provision of the proposed amendments to the Supreme Court for final consideration.

Pursuant to Article IV, Section 5(B), the Supreme Court has until April 30 of each year to accept all or any provision of the proposed amendments, and file with the General Assembly the amendments which the Court approves. The General Assembly has until June 30 to enact a concurrent resolution of disapproval for all or any portion of a

proposed amendment the Supreme Court has proposed. If a concurrent resolution of disapproval is not enacted by that date, the proposed amendments become effective July.

The following is a summary of the amendments. In addition to the substantive amendments, nonsubstantive grammar and gender-neutral language changes are made throughout any rule that is proposed for amendment.

Local Rules of Practice and Procedure

The Commission on the Rules of Practice and Procedure had proposed amendments to App.R. 41, Civ.R. 83, Crim.R. 57, and Juv.R. 45 regarding local rules of practice and the Court published the proposed amendments for comment. The Court did not receive any comments on the proposed amendments; however, after further consideration, Court staff requested that the Commission withdraw the proposed amendments. Article IV, Section 5(B) allows local courts to “adopt additional rules concerning local practice” so long as those rules are consistent with rules promulgated by the Supreme Court. The proposed amendments adopted this language by specifying that courts may adopt local rules of practice. In addition, the proposed amendments required the local rules of practice be submitted to the Office of the Administrative Director as opposed to the Clerk of the Supreme Court. Submission to the Office of the Administrative Director was intended to allow for review of local rules to ensure they are consistent with statewide rules.

Amendment of the rules as originally proposed would create a conflict with Rule 5 of the Rules of Superintendence for Ohio Courts. That rule also allows courts to adopt local rules of practice and directs they be filed with the Supreme Court Clerk’s office. The Supreme Court believes it would be beneficial to engage in discussions with judges, clerks of court, and court administrators to determine what they believe is meant by a “local rule of practice” and to get input on how to structure the local rule provisions both in the practice and procedure rules and in the superintendence rules. Therefore, the Court has withdrawn these amendments and they were not filed with the General Assembly on April 30, 2012.

Rules of Appellate Procedure

The Court has adopted several amendments to the Rules of Appellate Procedure. The Court did not receive any comments on the proposed amendments during the second comment period and no revisions to the amendments as published for comment in February were made.

App.R. 4

The amendment to App.R. 4 adds a reference to objections to a magistrate’s decision under Crim.R. 19 identical to provisions in App.R. 4(B)(2) for civil cases and juvenile cases. Additional time for the notice of appeal, where objections to a magistrate’s decision are pending, should be uniform for all appeals.

App.R. 10

Amendments to App.R. 10(B) clarify language to distinguish between the time when the record is complete and the time when the record is transmitted. The amendments also provide that the record is not complete, even after the time for preparing the record has expired if there is a pending motion to extend that time.

App.R. 13 and 14

The amendments to App.R.13 and App.R. 14 promote consistency with the 2012 amendments to the Ohio Rules of Civil Procedure. The amendments will allow service by electronic means and use of commercial carrier services. The amendments also extend the “three-day rule” to other service methods, e.g., commercial carrier services that do not provide same-day delivery to the recipient.

App.R. 16

The amendment to App.R. 16 revises division (E) of the rule to require attachment of only those authorities that are not available electronically. The materials in question are usually available electronically, and courts and most practitioners have easy access to the electronic versions. The unnecessary attachments are burdensome on both counsel and the court.

App.R. 21

The Commission on the Rules of Superintendence has requested that the Commission on the Rules of Practice and Procedure consider moving several rules currently in the Rules of Superintendence to the Rules of Practice and Procedure. This request comes as a product of an ongoing process of reorganizing the Rules of Superintendence. The amendment to App.R. 21 moves the requirement of identifying oral argument panels two weeks in advance currently in Sup.R. 36.1 to the Ohio Rules of Appellate Procedure.

App.R. 26

The amendment to App.R. 26 deletes language regarding sua sponte en banc consideration. The previous rule required the order designating the case for en banc consideration to vacate the original panel decision in order to stop the running of the time to appeal to the Supreme Court. The Court, however, amended S.Ct.Prac.R. 2.2 to toll the time for appeal to this Court during the pendency of a sua sponte en banc consideration. Therefore, the language in App.R. 26 is no longer necessary.

Ohio Rules of Civil Procedure

Civ.R. 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 30, and 73

The Court has adopted amendments to the rules listed above to expand the methods of service of process available to litigants and courts.

Under the current procedure for service of process by mail, the Clerk must mail the summons with complaint attached to each defendant by U.S. certified or express mail. If the mailed envelope is returned showing failure of delivery, the Clerk must notify the plaintiff of the failure, and thereafter follow any written instructions to reissue service of process at some other place or by some other method, including service by U.S. ordinary mail when the U.S. certified/express mail envelope is returned with the notation “Refused” or “Unclaimed” (Rules 4.6(C) and 4.6(D)).

The amendments permit clerks of courts to make service of process using commercial carrier services as an alternative to service of process by United States certified or express mail. Concurrent amendments to other rules were also proposed for purposes of consistency.

Civ.R. 5, 6, 11, 33, and 36

The amendments address service of documents after the filing of the original complaint by electronic means, and related issues. As with the existing rule, electronic service does not apply to service of process.

Civ.R. 5(B) is entirely replaced by a structure and language modeled on current Fed. R. Civ. P. 5(b), incorporating the December 1, 2007 federal “stylistic” changes. A provision is added at Civ.R. 5(B)(2)(d) for service by a commercial carrier. The language is a combination of language borrowed from other states.

Former Civ.R. 6(C) has been eliminated and the remaining divisions of the rule have been re-lettered. The proposed Staff Notes explain that Civ.R. 6(C) was adopted in 1970 and made reference to the continuing jurisdiction of a court after expiration of a “term of court.” The provision was significant at the time for clarifying a court’s jurisdiction to vacate its final judgments despite prior procedural statutes which limited a court’s jurisdiction to do so “after term of court.” Those procedural statutes were repealed or amended with the adoption of the Ohio Rules of Civil Procedure in 1970. However, for organizational and other purposes, R.C. 2301.05 continues to provide for one year “terms” for common pleas courts, and some non-procedural statutes refer to “term of court.” Rule 6(C) does not appear to have any continuing significance for Ohio procedure. Former Civ.R. 6(E), now Civ.R. 6(D), is amended to make clear that the “three day” rule applies only when service has been made by mail or commercial carrier under Civ.R. 5(B)(2)(c) or (d).

An attorney is required by existing Civ.R. 11 to provide a facsimile number and business e-mail address at the time of signature. The Rule 5 amendments require that service by electronic means be made to that designated number or address. The proposals also provide a pro se party with the option of providing a facsimile number or e-mail address for purposes of electronic service.

Civ.R. 5(A) requires that copies of all documents in an action be “served” on the parties. When the requirement for an electronic copy of interrogatories and requests for admission was established by the 2004 amendments to Rules 33 and 36, there was no civil rules’ provision for “service” by electronic means and it was deemed impractical to require that an electronic copy be “served” by mailing a computer disk or otherwise delivering a disk by one of the other methods permitted under the existing Civ.R. 5(B). Thus the 2004 amendments provided that a printed copy must be “served” (by one of the methods listed under Civ.R. 5(B)), and that an electronic copy also must be “provided” on computer disk, by electronic mail, or by other means agreed to by the parties.” As explained in the proposed Staff Notes for the 2012 amendments, that requirement was problematic not only because of the required dual format but also in determining a party’s recourse when a paper copy was served but an electronic copy was not provided—a problem addressed by the 2009 amendments to Civ.R. 33 and Civ.R. 36. The 2012 amendments eliminate the difficulties by taking advantage of the 2012 amendment to Civ.R. 5(B) which permits service of documents by electronic means. The amendments simply require that an electronic copy be served. Service can be accomplished electronically or by any other method provided under Civ.R. 5(B). Although service of a paper copy is no longer necessary, it is not prohibited and would be appropriate, for example, when a party who is unable to provide an electronic copy is relieved of that requirement by the court.

Civ.R. 26

The amendments align the scope of expert witness discovery in Ohio with expert witness discovery in Federal courts. The Federal rule was amended in 2010 to provide work product protection to expert witness draft reports and to provide limited exceptions to work-product protection for communications between an attorney and the expert witness. Under the Federal rule amendments, communications between an attorney and the expert witness are protected work product except for communications that relate to the expert’s compensation, identify facts or data that the attorney provided to the expert and the expert considered in forming the opinions, or identify assumptions the attorney provided and the expert relied on in forming the opinions.

Civ.R. 45

Amendments to Civ.R. 45 state a deponent may no longer be compelled by subpoena to appear for a deposition anywhere in the state, but only in the county where the deponent resides or is employed or transacts business in person, or at such other convenient place as ordered by the court. A subpoena may still compel a witness to appear for trial or hearing at any place within the state.

Civ.R. 47

The amendments to Civ.R. 47 allow a court to retain alternate jurors after the jury retires to deliberate. The amendments make the civil rule identical to Crim.R. 24.

Civ.R. 53

No revision is made to Civ.R. 53; however, because the newly proposed Civ.R. 65.1 regarding civil protection orders will have a significant impact upon magistrates the Commission believed it would be wise to add a staff note to Civ.R. 53 regarding the newly adopted rule. Because the Court does not adopt the Commission's staff notes nor are the staff notes filed with the General Assembly, these new Staff Notes are presented for informational purposes only.

Civ.R. 58

In contemplating a reorganization of the Rules of Superintendence, the Commission on the Rules of Superintendence proposed that the entirety of Sup.R. 7 regarding judgment entries be moved to Civ.R. 58 and Crim.R. 32. The Commission on the Rules of Practice and Procedure did not recommend that Sup.R. 7(A) be incorporated into the Rules of Civil Procedure. Sup.R. 7(A) places a duty on the court to prepare, file, and journalize a judgment entry within thirty days of verdict or decision. It is a rule governing the administration of the court and its inclusion among the Rules of Civil Procedure could raise issues as to the jurisdiction of the court to file and journalize a judgment entry after expiration of the thirty-day period and as to the validity of judgment entries entered after the time period.

The Commission agreed, however, that Sup.R. 7(B), which makes clear that the approval of a judgment entry by counsel or a party does not waive rights of appeal, is appropriate for inclusion within Civ.R. 58. Therefore, the amendment to Civ.R. 58 includes the language from Sup.R. 7(B).

Civ.R. 65.1

The Court has adopted a new rule regarding civil protection orders. Sections 3113.31 and 2903.214 of the Ohio Revised Code establish special statutory proceedings for obtaining domestic violence, stalking, and sexually oriented offense civil protection orders. Both statutes state that the proceedings “shall be conducted in accordance with the Rules of Civil Procedure.” However, the civil rules governing magistrates, discovery, and other procedures applicable to civil actions in general interfere with the process and requirements set out in the statutes. It is difficult, if not impossible, to apply the existing civil rules in these protection order proceedings and still comply with the requirements and purposes of the statutes.

The legislature has also adopted R.C. 2151.34, a statute dealing with civil protection orders against a minor. This statute must also be addressed in drafting a new rule because, like the other two statutes, it states that the proceedings “shall be conducted in accordance with the Rules of Civil Procedure.”

The procedures for obtaining the protection orders provided by these three statutes are designed for the benefit of *pro se* parties and the orders are generally sought *pro se*—a significant consideration in drafting the proposed rule.

In response to comments received during the second comment period, the Court removed division (H) from the proposed rule. This division allowed for the return of

weapons after the expiration of a protection order. Many comments received opined that once the protection order expired so does the court's jurisdiction to order or prohibit the return of a weapon. In addition, the Commission made additions to the staff notes accompanying Civ.R. 65.1 to clarify that a Respondent must have actual notice of the protection order in order for it to be enforced and to clarify that a continuance of the full hearing may be necessary to complete discovery under the rule.

Ohio Rules of Criminal Procedure

The Court has adopted amendments to Crim.R. 5 regarding jurisdiction over a post-bindover defendant. The current rule is unclear as to which court, the municipal or county court or the court of common pleas, has jurisdiction over a criminal defendant after the defendant has been bound over and before the bind over entries are filed with the common pleas clerk of courts. The amendment to Crim.R. 5 allows the municipal or county judge to retain jurisdiction for that interim period of time.

The Court has also adopted amendments to Crim.R. 15(F) regarding the use of depositions at trial. The current rule purports to authorize the use of depositions in some instances in which the use violates the Confrontation Clause of the Sixth Amendment. The amendment ensures that a deposition under Crim.R. 15(F) may only be used when a witness is "unavailable" as that term is defined in Rule 804(A) of the Ohio Rules of Evidence.

Ohio Rules of Juvenile Procedure

The Court has adopted amendments to Juv.R. 3 regarding waiver of counsel in juvenile court. The Court has revised the amendments significantly from the version that was published from comment in February 2012. First, the revised amendments limit the in-person consultation prior to waiver of counsel in only those cases where the child is charged with a felony offense. Anecdotal evidence indicates that the vast majority of judges are currently not allowing waiver of counsel in these circumstances. Secondly, the revised amendments protect the parent-child relationship by specifying that the court shall ensure that a child has consulted with a parent or guardian prior to the waiver. These revisions meet the expressed concerns of the judiciary by placing limits upon the in person consultation and by clearly specifying what factors should be considered prior to allowing a waiver of counsel.

The Court has adopted a new Juv.R. 5 regarding the use of a juvenile's initials, as opposed to their full name, in court decisions and press releases. The rule allows juvenile courts to enact local rules regarding the use of initials in documents filed with the juvenile court; however, the default will be to use the juvenile's full name in these filings.

In addition, the Court has adopted a clean-up amendment to Juv.R. 22. The current rule requires the filing of a motion for discovery within ten days of appearance of counsel which leaves little time for the juvenile's defense to file a request for discovery, for the prosecutor's office to comply, and a subsequent motion for discovery to be filed. Although the rule allows for the court to extend time for making prehearing motions in the interest of justice, if the rule is strictly adhered to, the defense maybe out of time to file a motion

legitimately certifying that the request was refused. The amendment will provide more workable timelines and consistency of notice in these circumstances.

Ohio Rules of Evidence

The Court has adopted an amendment to Evid.R. 404(B) to include a notice provision similar to the provision included in the Federal Rules of Evidence.

The Court also adopted amendments to Evid.R. 613 to remove a reference to Evid.R. 706 which was repealed effective July 1, 2006, in light of the adoption of Evidence Rule 803(18). The amendment simply removes the reference to Evid.R. 706.

Finally, the Court adopted amendments to Evid.R. 1001 to comport with the public access rules contained within the Rules of Superintendence. The amendment defines a document redacted to omit personal identifiers as a “duplicate” which permits the introduction of such redacted documents into evidence in most instances. Applying this definition, together with Rule 45(F) of the Rule of Superintendence, allows for the situation in which the personal identifier itself is material evidence.

AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE
FILED BY THE SUPREME COURT OF OHIO
PURSUANT TO ARTICLE IV, SECTION 5 OF THE OHIO CONSTITUTION

OHIO RULES OF APPELLATE PROCEDURE

RULE 4. Appeal as of Right--When Taken

(B) Exceptions

The following are exceptions to the appeal time period in division (A) of this rule:

(1) Multiple or cross appeals

If a notice of appeal is timely filed by a party, another party may file a notice of appeal within the appeal time period otherwise prescribed by this rule or within ten days of the filing of the first notice of appeal.

(2) Civil or juvenile post-judgment motion

In a civil case or juvenile proceeding, if a party files any of the following, if timely and appropriate:

- (a) a motion for judgment under Civ.R. 50(B),
- (b) a motion for a new trial under Civ.R. 59,
- (c) objections to a magistrate's decision under Civ.R. 53(D)(3)(b) or Juv.R. 40(D)(3)(b),
- (d) a request for findings of fact and conclusions of law under Civ.R. 52,
- (e) a motion for attorneys' fees under R.C. 2323.42,

then the time for filing a notice of appeal from the judgment or final order in question begins to run as to all parties when the trial court enters an order resolving the last of these post-judgment filings.

If a party files a notice of appeal from an otherwise final judgment but before the trial court has resolved one or more of the filings listed in this division, then the court of appeals, upon suggestion of any of the parties, shall remand the matter to the trial court to

resolve the post-judgment filings in question and shall stay appellate proceedings until the trial court has done so. After the trial court has ruled on the post-judgment filing on remand, any party who wishes to appeal from the trial court's orders or judgments on remand shall do so in the following manner: (i) by moving to amend a previously filed notice of appeal or cross-appeal under App.R. 3(F), for which leave shall be granted if sought within thirty days of the entry of the last of the trial court's judgments or orders on remand and if sought after thirty days of the entry, the motion may be granted at the discretion of the appellate court; or (ii) by filing a new notice of appeal in the trial court in accordance with App.R. 3 and 4(A). In the latter case, any new appeal shall be consolidated with the original appeal under App.R. 3(B).

(3) Criminal and traffic post-judgment ~~motion~~ motions

In a criminal or traffic case, if a party ~~timely~~ files any of the following, if timely and appropriate:

(a) a motion for arrest of judgment under Crim.R. 34;

(b) ~~or for~~ a motion for a new trial under Crim.R. 33 for a reason other than newly discovered evidence; or

(c) objections to a magistrate's decision under Crim.R. 19(D)(3)(b) or Traf.R. 14,

then the time for filing a notice of appeal from the judgment or final order in question begins to run as to all parties when the trial court enters an order ~~denying the motion is entered~~ resolving the last of these post-judgment filings. A motion for a new trial under Crim.R. 33 on the ground of newly discovered evidence made within the time for filing a motion for a new trial on other grounds extends the time for filing a notice of appeal from a judgment of conviction in the same manner as a motion on other grounds; If but if made after the expiration of the time for filing a motion on other grounds, the motion on the ground of newly discovered evidence does not extend the time for filing a notice of appeal.

If a party files a notice of appeal from an otherwise final judgment but before the trial court has resolved a timely filed motion as described one or more of the filings listed in (a), (b), or (c) of this division, then the court of appeals, upon suggestion of any of the parties, shall remand the matter to the trial court to resolve the motion in question and shall stay appellate proceedings until the trial court has done so.

After the trial court has ruled on the post-judgment filings on remand, any party who wishes to appeal from the trial court's orders or judgments on remand shall do so in the following manner: (i) by moving to amend a previously filed notice of appeal or cross-appeal under App.R. 3(F), for which leave shall be granted if sought within thirty days of the entry of the last of the trial court's judgments or orders on remand and if sought after thirty days of the entry, the motion may be granted in the discretion of the appellate court; or (ii) by filing a new notice of appeal in the trial court in accordance with App.R. 3 and 4(A). In the latter case, any new appeal shall be consolidated with the original appeal under App.R. 3(B).

Staff Notes (July 1, 2012 Amendments)

The amendment to App.R. 4(B)(3) now provides that the pendency of timely objections to a magistrate's decision in a criminal or traffic case suspends the running of the time to appeal, just as they do in civil and juvenile cases under App.R. 4(B)(2). Note that in both cases the suspension matters only if the trial court has entered judgment before the objections to the magistrate's decision are filed; if the trial court has not yet entered judgment, then the 30-day period to appeal from that judgment obviously does not start to run in the first instance.

RULE 10. Transmission of the Record

(B) Duty of clerk to transmit the record. The clerk of the trial court shall prepare the certified copy of the docket and journal entries, assemble the original papers, (or in the instance of an agreed statement of the case pursuant to ~~Rule~~ App.R. 9(D), the agreed statement of the case), and transmit the record upon appeal to the clerk of the court of appeals within the time stated in ~~Subdivision~~ division (A) of this rule. The clerk of the trial court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless ~~he~~ the clerk is directed to do so by a party or by the clerk of the court of appeals. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the clerk of the court of appeals. The clerk of the trial court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the court of appeals and shall note the transmission on the appearance docket.

The record shall be deemed to be complete for the purposes of appeal, and thus ready for transmission to the clerk of the court of appeals, under any of the following circumstances:

(1) When the transcript of proceedings is filed with the clerk of the trial court if the appellant has ordered one.

(2) When a statement of the evidence or proceedings, pursuant to ~~Rule~~ App.R. 9(C), is settled and approved by the trial court, and filed with the clerk of the trial court.

(3) When an agreed statement in lieu of the record, pursuant to Rule 9(D), is approved by the trial court, and filed with the clerk of the trial court.

(4) Where appellant, pursuant to ~~Rule App.R. 9(B)(5)(a)~~, designates that no part of the transcript of proceedings is to be included in the record or that no transcript is necessary for appeal, after the expiration of ten days following service of such designation upon appellee, unless appellee has within such time filed a designation of additional parts of the transcript to be included in the record.

(5) When forty days have elapsed after filing of the last notice of appeal, and there is no extension of time for transmission of the record or a pending motion requesting the same in either the trial or the appellate court.

(6) When twenty days have elapsed after filing of the last notice of appeal in an accelerated calendar case, and there is no extension of time for transmission of the record or a pending motion requesting the same in either the trial or the appellate court.

(7) Where the appellant fails to file either the docketing statement or the statement required by App.R. 9(B)(5), within ten days ~~after~~ of filing the notice of appeal.

Staff Notes (July 1, 2012 Amendments)

The amendments to App.R. 10(B) are largely stylistic, designed to clarify the prior rule language. Note that the additions to App.R. 10(B)(5) and 10(B)(6) now provide that the record is not complete, even after the standard time for preparing the record has expired, if there is a pending motion to extend that time.

RULE 13. Filing and Service

* * *

(B) Service of all documents required. Copies of all documents filed by any party and not required by these rules to be served by the clerk shall, ~~at~~ on or before the ~~time~~ day of filing, be served by a party or person acting for the party on all other parties to the appeal as provided in division (C) of this rule, except that in expedited appeals under App.R. 11.1 and in original actions involving election issues, service of all documents (except the complaint filed to institute an original action) shall be in accordance with division (C)(1), (2), (5), or (6) at or before the time of filing. Service on a party represented by counsel shall be made on counsel.

(C) Manner of service. ~~Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.~~ A document is served under this rule by:

- (1) handing it to the person;
- (2) leaving it:
 - (a) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or
 - (b) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
- (3) mailing it to the person's last known address by United States mail, in which event service is complete upon mailing;
- (4) delivering it to a commercial carrier service for delivery to the person's last known address within three calendar days, in which event service is complete upon delivery to the carrier;
- (5) leaving it with the clerk of court if the person has no known address; or
- (6) sending it by electronic means to the most recent facsimile number or e-mail address listed by the intended recipient on a prior court filing (including a filing in the lower court) in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.

Staff Notes (July 1, 2012 Amendments)

The amendment to App.R. 13(C) clarifies the various available methods of service and adds service by electronic means a permissible method. The language of the amendment largely tracks the language of the 2012 amendment to Civ.R. 5(B), so the rules are now linguistically consistent. App.R. 13(B) now also requires parties in expedited cases or original actions involving elections to use a method of service that ensures actual receipt of the filing on the day it is served.

RULE 14. Computation and Extension of Time

* * *

(C) Additional time after service by mail or commercial carrier service. Whenever a party has the right or is required or permitted to do an some act or take some proceedings within a prescribed period after service of a paper notice or other document upon the that party and the notice or paper is served upon the party by mail or commercial carrier service under App.R. 13(C)(4), three days shall be added to the prescribed period. This division does not apply to responses to service of summons in original actions.

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Staff Notes (July 1, 2012 amendment)

The amendment to App.R. 14(C) now extends the “three-day rule” - traditionally available after service of a document by regular mail - to other service methods that do not provide same-day delivery to the recipient. The language of the amendment largely tracks the language of the 2012 amendment to Civ.R. 6(D).

RULE 16. Briefs

(E) Unnecessary attachments of legal authorities disfavored ~~Reproduction of statutes, rules, regulations.~~

Notwithstanding anything to the contrary in Rule 7(C) of the Supreme Court Rules for the Reporting of Opinions, parties are discouraged from attaching to briefs any legal authority generally accessible through online legal research databases. If determination of the assignments of error presented requires the consideration of provisions of legal authority not generally accessible through online legal research databases but available through another online resource, the citation in the brief to the authority should include the internet URL address where the authority is accessible. If determination of the assignments of error presented requires the consideration of legal authority not accessible through any online resource ~~constitutions, statutes, ordinances, rules, or regulations,~~ the relevant parts shall be reproduced in the brief or in an addendum at the end or may be supplied to the court in pamphlet form.

RULE 21. Oral Argument

(A) Notice of Scheduling and requesting oral argument.

The court shall schedule oral argument in all cases, whether or not requested by a party, unless the court has adopted a local rule requiring a party to request oral argument. In the

event of such a local rule, the court shall schedule oral argument at the request of any of the parties. Such a request shall be in the form of the words “ORAL ARGUMENT REQUESTED” displayed prominently on the cover page of the appellant’s opening brief or the appellee’s brief; no separate motion or other filing is necessary to secure oral argument. Notwithstanding any of the foregoing, the court is not required to schedule oral argument, even if requested, if any of the parties is both incarcerated and proceeding pro se.

(B) Notice of oral argument and of appellate panel.

(1) The court shall advise all parties of the time and place at which oral argument will be heard.

(2) No later than fourteen days prior to the date on which oral argument will be heard, the court of appeals shall make available to the parties the names of the judges assigned to the three-judge panel that will hear the case. If the case is submitted on briefs without oral argument, the court of appeals shall make available to the parties the names of the judges assigned to the three-judge panel that will hear the case no later than fourteen days prior to the date on which the case is submitted to the panel. If the membership of the panel changes after the names of the judges are made available to the parties pursuant to this rule, the court of appeals shall immediately make the new membership of the panel available to the parties.

(B)(C) Time allowed for argument.

Unless otherwise ordered, each side will be allowed thirty minutes for argument. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(C)(D) Order and content of argument.

The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

(D)(E) Cross and separate appeals.

A cross-appeal or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If separate appellants support the same argument, they shall share the thirty minutes allowed to their side for argument unless pursuant to timely request the court grants additional time.

(E)(F) Nonappearance of parties.

If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

~~(F)~~(G) Submission on briefs.

By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

~~(G)~~(H) Motions.

Oral argument will not be heard upon motions unless ordered by the court.

~~(H)~~(I) Authorities in briefs.

If counsel on oral argument intends to present authorities not cited in ~~his~~ counsel's brief, ~~he~~ counsel shall, prior to oral argument, present in writing such authorities to the court and to opposing counsel.

RULE 26. Application for reconsideration; Application for en banc consideration; Application for reopening

(A) Application for reconsideration and en banc consideration.

* * *

(2) En banc consideration

* * *

(c) The rules applicable to applications for reconsideration set forth in division (A)(1) of this rule, including the timing requirements, govern applications for en banc consideration. Any sua sponte order designating a case for en banc consideration must be entered no later than ten days after the clerk has both mailed the judgment or order in question and made a note on the docket of the mailing as required by App.R. 30(A). In addition, a party may file an application for en banc consideration, or the court may order it sua sponte, within ten days of the date the clerk has both mailed to the parties the judgment or order of the court ruling on a timely filed application for reconsideration under division (A)(1) of this rule if an intra-district conflict first arises as a result of that judgment or order and made a note on the docket of the mailing, as required by App.R. 30(A). ~~In the case of any sua sponte designation of a case for en banc consideration, the order designating the case for en banc consideration shall also vacate the original panel decision in the case and, if applicable, any decision on an application for reconsideration.~~ A party filing both an application for reconsideration and an application for en banc consideration simultaneously shall do so in a single document.

* * *

Staff Notes (July 1, 2012 amendment)

The amendment to App.R. 26(A)(2)(c) removes language added in 2011 that required a court of appeals to vacate a panel decision in the event of a *sua sponte* decision to consider a case en banc. That language was added to ensure that a party's time to appeal to the Supreme Court would not begin to run while en banc consideration was pending. But the language is no longer necessary in light of a 2011 amendment to S.Ct.Prac.R. 2.2.

RULE 43. Effective Date

(Y) The amendments to Rules 4, 10, 13, 14, 16, 21, 26, and 43 filed by the Supreme Court with the General Assembly on January 13, 2012 and revised and refiled on April 30, 2012 shall take effect on July 1, 2012. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

OHIO RULES OF CIVIL PROCEDURE

RULE 4.1 Process: Methods of Service

All methods of service within this state, except service by publication as provided in Civ.R. 4.4(A), are described in this rule. Methods of out-of-state service and for service in a foreign country are described in Civ.R. 4.3 and 4.5.

(A) Service by clerk.

(1) Methods of service.

(a) Service by United States certified or express mail. Evidenced by return receipt signed by any person, service of any process shall be by United States certified or express mail unless otherwise permitted by these rules. The clerk shall ~~place~~ deliver a copy of the process and complaint or other document to be served ~~in an envelope to the United States Postal Service for mailing~~ The clerk shall address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk with instructions to forward. ~~The clerk shall affix adequate postage and place the sealed envelope in the United States mail as certified or express mail return receipt requested,~~ with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

(b) Service by commercial carrier service. As an alternative to service under Civ.R. 4.1(A)(1)(a), the clerk may make service of any process by a commercial carrier service utilizing any form of delivery requiring a signed receipt. The clerk shall deliver a copy of the process and complaint or other document to be served to a commercial carrier service for delivery at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk, with instructions to the carrier to return a signed receipt showing to who delivered, date of delivery, and address where delivered.

(2) Docket entries; Return. The clerk shall forthwith enter ~~the fact of mailing~~ on the appearance docket the fact of delivery to the United States Postal Service for mailing or the fact of delivery to a specified commercial carrier service for delivery, and make a similar entry when the return receipt is received. ~~If the envelope is returned with an endorsement showing return shows~~ failure of delivery, the clerk shall forthwith notify,

~~by mail~~, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued and enter the fact and method of notification on the appearance docket. The clerk shall file the return receipt or returned envelope in the records of the action.

(3) Costs. All postage and commercial carrier service fees shall be charged to costs. If the parties to be served ~~by certified or express mail~~ are numerous and the clerk determines there is insufficient security for costs, the clerk may require the party requesting service to advance an amount estimated by the clerk to be sufficient to pay the ~~postage~~ costs of delivery.

(B) Personal service. When the plaintiff files a written request with the clerk for personal service, service of process shall be made by that method.

When process issued from the Supreme Court, a court of appeals, a court of common pleas, or a county court is to be served personally under this division, the clerk of the court shall deliver the process and sufficient copies of the process and complaint, or other document to be served, to the sheriff of the county in which the party to be served resides or may be found. When process issues from the municipal court, delivery shall be to the bailiff of the court for service on all defendants who reside or may be found within the county or counties in which that court has territorial jurisdiction and to the sheriff of any other county in this state for service upon a defendant who resides in or may be found in that other county. In the alternative, process issuing from any of these courts may be delivered by the clerk to any person not less than eighteen years of age, who is not a party and who has been designated by order of the court to make personal service of process under this division. The person serving process shall locate the person to be served and shall tender a copy of the process and accompanying documents to the person to be served. When the copy of the process has been served, the person serving process shall endorse that fact on the process and return it to the clerk, who shall make the appropriate entry on the appearance docket.

When the person serving process is unable to serve a copy of the process within twenty-eight days, the person shall endorse that fact and the reasons therefor on the process and return the process and copies to the clerk who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in division (A)(2) of this rule. Failure to make service within the twenty-eight day period and failure to make proof of service do not affect the validity of the service.

(C) Residence service. When the plaintiff files a written request with the clerk for residence service, service of process shall be made by that method.

~~When process is to be served under this division, Residence service shall be effected by leaving a copy of the process and the complaint, or other document to be served, at the usual place of residence of the person to be served with some person of suitable age and discretion then residing therein. The the clerk of the court shall issue~~

the process, and the process server shall return it, in the same manner as prescribed in division (B) of this rule deliver the process and sufficient copies of the process and complaint, or other document to be served, to the sheriff of the county in which the party to be served resides or may be found. When process issues from the municipal court, delivery shall be to the bailiff of the court for service on all defendants who reside or may be found within the county or counties in which that court has territorial jurisdiction and to the sheriff of any other county in this state for service upon a defendant who resides in or may be found in that county. In the alternative, process may be delivered by the clerk to any person not less than eighteen years of age, who is not a party and who has been designated by order of the court to make residence service of process under this division. The person serving process shall effect service by leaving a copy of the process and the complaint, or other document to be served, at the usual place of residence of the person to be served with some person of suitable age and discretion then residing therein. When the copy of the process has been served, the person serving process shall endorse that fact on the process and return it to the clerk, who shall make the appropriate entry on the appearance docket.

When the person serving process is unable to serve a copy of the process within twenty-eight days, the person shall endorse that fact and the reasons therefor on the process, and return the process and copies to the clerk, who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in division (A)(2) of this rule. Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service.

Staff Notes (July 1, 2012 Amendments)

Rule 4.1(A) is subdivided and amended to permit the clerk to make service of process using a commercial carrier service to make delivery by any method requiring a signed receipt. A "signed receipt" includes the return and filing of an electronic image of the signature. The amendment also removes the "by mail" limitation to the clerk's method of notifying plaintiff or plaintiff's attorney of a failure of delivery.

Divisions (B) and (C) are amended to make clear that the methods of service of process permitted to be made by a person designated by the court are limited to personal service and residence service.

Rule 4.1(C), which describes residence service, is also amended to track and incorporate where applicable the language of Civ.R. 4.1(B) which describes personal service, clarifying which portions of the two methods are the same and which portions are different.

RULE 4.2 Process: Who May be Served

Service of process pursuant to Civ.R. 4 through Civ.R. 4.6, except service by publication as provided in Civ.R. 4.4(A), ~~pursuant to Civ. R. 4 through 4.6~~ shall be made as follows:

(F) Upon a corporation either domestic or foreign: by serving the agent authorized by appointment or by law to receive service of process; or by serving the corporation ~~by certified or express mail~~ at any of its usual places of business by a method authorized under Civ.R. 4.1(A)(1); or by serving an officer or a managing or general agent of the corporation;

(G) Upon a limited liability company by serving the agent authorized by appointment or by law to receive service of process; or by serving the limited liability company ~~by certified or express mail~~ at any of its usual places of business by a method authorized under Civ.R. 4.1(A)(1); or by serving a manager or member;

(H) Upon a partnership, a limited partnership, or a limited partnership association by serving the entity ~~by certified or express mail~~ at any of its usual places of business by a method authorized under Civ.R. 4.1(A)(1) or by serving a partner, limited partner, manager, or member;

(I) Upon an unincorporated association by serving it in its entity name ~~by certified or express mail~~ at any of its usual places of business by a method authorized under Civ.R. 4.1(A)(1); or by serving an officer of the unincorporated association;

(J) Upon a professional association by serving the association in its corporate name ~~by certified or express mail~~ at the place where the corporate offices are maintained by a method authorized under Civ.R. 4.1(A)(1); or by serving a shareholder;

Staff Notes (July 1, 2012 Amendment)

Divisions (F) through (J) are amended to permit service of process to be made at a place of business not only by United States certified or express mail as previously authorized, but also by a commercial carrier service under the 2012 amendments to Civ.R. 4.1(A)(1).

RULE 4.3 Process: Out-of-State Service

(B) Methods of service.

(1) Service by ~~certified or express mail~~ clerk. ~~Evidenced by return receipt signed by any person, service of any process shall be by certified or express mail unless otherwise permitted by these rules. The clerk shall place a copy of the process and complaint or other document to be served in an envelope. The clerk shall address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk with instructions to forward. The clerk shall affix adequate postage and place the sealed envelope in the United States mail as certified or express mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.~~

~~The clerk shall forthwith enter the fact of mailing on the appearance docket and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued and enter the fact of notification on the appearance docket. The clerk shall file the return receipt or returned envelope in the records of the action. If the envelope is returned with an endorsement showing failure of delivery, service is complete when the attorney or serving party, after notification by the clerk, files with the clerk an affidavit setting forth facts indicating the reasonable diligence utilized to ascertain the whereabouts of the party to be served.~~

~~All postage shall be charged to costs. If the parties to be served by certified or express mail are numerous and the clerk determines there is insufficient security for costs, the clerk may require the party requesting service to advance an amount estimated by the clerk to be sufficient to pay the postage. The clerk may make service of process or other documents to be served outside the state in the same manner as provided in Civ.R. 4.1(A)(1) through Civ.R. 4.1(A)(3).~~

(2) Personal service. When ordered by the court, a "person" as defined in division (A) of this rule may be personally served with a copy of the process and complaint or other document to be served. Service under this division may be made by any person not less than eighteen years of age who is not a party and who has been designated by order of the court to make personal service of process. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person who will make the service.

Proof of service may be made as prescribed by Civ.R. 4.1 (B) or by order of the court.

Staff Notes (July 1, 2012 Amendments)

Rule 4.3(B) is amended to incorporate, rather than restate, the provisions of amended Civ.R. 4.1(A)(1) through Civ.R. 4.1(A)(3) for service by the clerk. The substantive changes (1) permit the clerk to make service of process outside the state using a commercial carrier service to make delivery by any method requiring a signed receipt and (2) make clear that the method of service of process permitted to be made by a person designated by the court is limited to personal service.

Also eliminated is a prior provision permitting service outside the state to be completed by the filing of an affidavit when service by certified or express mail is returned showing failure of delivery. Rules 4.6(C) and (D) address returns of service showing "refused" and "unclaimed" when service is attempted by U.S. mail under Civ.R. 4.1(A)(1)(a), and those provisions apply to service attempted outside the state by that method.

RULE 4.4 Process: Service by Publication

(A) Residence unknown.

(2) In a divorce, annulment, or legal separation action, if the plaintiff is proceeding in forma pauperis and if the residence of the defendant is unknown, service by publication shall be made by posting and mail. Before service by posting and mail can be made, an affidavit of a party or the party's counsel shall be filed with the court. The affidavit shall contain the same averments required by division (A)(1) of this rule and, in addition, shall set forth the defendant's last known address.

Upon the filing of the affidavit, the clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse or courthouses in which the general and domestic relations divisions of the court of common pleas for the county are located and in two additional public places in the county that have been designated by local rule for the posting of notices pursuant to this rule. The notice shall contain the same information required by division (A)(1) of this rule to be contained in a newspaper publication. The notice shall be posted in the required locations for six successive weeks.

The clerk shall also cause the complaint and summons to be mailed by United States ordinary mail, address correction requested, to the defendant's last known address. The clerk shall obtain a certificate of mailing from the United States Postal Service. If the clerk is notified of a corrected or forwarding address of the defendant within the six-week period that notice is posted pursuant to division (A)(2) of this rule, the clerk shall cause the complaint and summons to be mailed to the corrected or forwarding address. The clerk shall note the name, address, and date of each mailing ~~in~~ on the docket.

After the last week of posting, the clerk shall note on the docket where and when notice was posted. Service shall be complete upon the entry of posting.

RULE 4.5 Process: Alternative Provisions for Service in a Foreign Country

~~(A)~~ **Manner.** When Civ.R. 4.3 or Civ.R. 4.4 or both allow service upon a person outside this state and service is to be effected in a foreign country, service of the summons and complaint ~~may also~~ shall be made as provided in this rule.

(A) Hague Convention Signatory. If the foreign country is a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, service shall be pursuant to a method allowed by the Articles of that Convention, including any method allowed by Article 8 or Article 10 to which the foreign country has not objected in accordance with Article 21.

(B) Other cases. In all cases to which division (A) does not apply, service may be made in a manner provided by Civ.R. 4.3(B)(1) or, if applicable, Civ.R. 4.4, and may also be made:

(1) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction when service is calculated to give actual notice;

(2) As directed by the foreign authority in response to a letter rogatory when service is calculated to give actual notice;

(3) Upon an individual by delivery to him or her personally;

(4) Upon a corporation or partnership or association by delivery to an officer, a managing or general agent;

(5) By any form of ~~mail~~ delivery requiring a signed receipt, when the clerk of the court addresses ~~and dispatches this mail~~ the delivery to the party to be served and delivers the summons to the person who will make the service;

(6) As directed by order of the court.

Service under division ~~(A)(3)~~ (B)(3) or ~~(A)(6)~~ (B)(6) of this rule may be made by any person not less than eighteen years of age who is not a party and who has been designated by order of the court, or by the foreign court. On request the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

~~(B)(C)~~ **Return.** Proof of service may be made as prescribed by Civ.R. 4.1(B), or by the law of the foreign country, or by order of the court. When ~~mail service~~ delivery is made pursuant to division ~~(A)(5)~~ (B)(5) of this rule, proof of service shall include a

receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

Staff Notes (July 1, 2012 Amendments)

Rule 4.5 is amended to provide that when service is to be made in a foreign country that is a signatory to the Hague Convention, the provisions of that Convention supersede the other methods for service in a foreign country that are described in the rule. Pursuant to the 2012 amendments to Civ.R. 4.1(A) and Civ.R. 4.3(B)(1), delivery by commercial carrier service, requiring a signed receipt, is also authorized when the Hague Convention does not apply.

RULE 4.6 Process: Limits; Amendment; Service Refused; Service Unclaimed

(C) Service United States certified or express mail or commercial carrier service refused. If attempted service of process by United States certified or express mail or by commercial carrier service within or outside the state is refused, and the certified or express mail envelope or return of the commercial carrier shows ~~is returned with an endorsement showing~~ such refusal, or the return of the person serving process states by personal service within or outside the state or by residence service within the state specifies that service of process has been refused, the clerk shall forthwith notify, ~~by mail,~~ the attorney of record or, if there is no attorney of record, the party at whose instance process was issued and enter the fact and method of notification on the appearance docket. If the attorney, or serving party, after notification by the clerk, files with the clerk a written request for ordinary mail service, the clerk shall send by United States ordinary mail a copy of the summons and complaint or other document to be served to the defendant at the address set forth in the caption, or at the address set forth in written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which shall be completed and filed by the clerk. Answer day shall be twenty-eight days after the date of mailing as evidenced by the certificate of mailing. The clerk shall endorse this answer date upon the summons which is sent by ordinary mail. Service shall be deemed complete when the fact of mailing is entered of record. Failure to claim United States certified or express mail or commercial carrier service is not refusal of service within the meaning of this division (C) of this rule. This division shall not apply if any reason for failure of delivery other than "Refused" is also shown on the United States certified or express mail envelope.

(D) Service United States certified or express mail service unclaimed. If a United States certified or express mail envelope attempting service within or outside the state is returned with an endorsement ~~showing~~ stating that the envelope was unclaimed, the clerk shall forthwith notify, ~~by mail,~~ the attorney of record or, if there is no attorney of record, the party at whose instance process was issued and enter the fact and method of notification on the appearance docket. If the attorney, or serving party, after notification

by the clerk, files with the clerk a written request for ordinary mail service, the clerk shall send by United States ordinary mail a copy of the summons and complaint or other document to be served to the defendant at the address set forth in the caption, or at the address set forth in written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which shall be completed and filed by the clerk. Answer day shall be twenty-eight days after the date of mailing as evidenced by the certificate of mailing. The clerk shall endorse this answer date upon the summons which is sent by ordinary mail. Service shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery. If the ordinary mail envelope is returned undelivered, the clerk shall forthwith notify the attorney, or serving party, ~~by mail.~~

Staff Notes (July 1, 2012 Amendments)

Divisions (C) and (D) are amended (1) to specify that their provisions for service by United States ordinary mail apply to service by commercial carrier that is returned showing "Refused" but do not apply to service by commercial carrier that is returned showing "Unclaimed" and (2) to make clear that these divisions are applicable to U.S. mail service attempted both within and outside the state.

Division (C) relating to service "Refused" is also amended to specify that its provisions do not apply to ambiguous returns of U.S. certified or express mail stating other reasons for failure of delivery that suggest lack of actual notice to the defendant, such as "unable to forward". Division (D) relating to service "Unclaimed" is not similarly amended with respect to returns stating both "Unclaimed" and other reasons for failure of delivery; however, division (D) continues to apply only to U.S. Postal Service returns showing that the addressee was notified of, and failed to claim, the certified or express mail envelope.

RULE 5. Service and Filing of Pleadings and Other Papers Subsequent to the Original Complaint

(B) Service: how made. ~~Whenever under these rules service is required or permitted to be made upon a party who is represented by an attorney of record in the proceedings, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or party shall be made by delivering a copy to the person to be served, transmitting it to the office of the person to be served by facsimile transmission, mailing it to the last known address of the person to be served or, if no address is known, leaving it with the clerk of the court. The served copy shall be accompanied by a completed copy of the proof of service required by division (D) of this rule. "Delivering a copy" within this rule means: handing it to the attorney or party; leaving it at the office of the person to be served with a clerk or other person in charge; if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office~~

~~is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of the person to be served with some person of suitable age and discretion then residing in the dwelling house or usual place of abode. Service by mail is complete upon mailing. Service by facsimile transmission is complete upon transmission.~~

(1) **Serving an attorney.** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) **Service in general.** A document is served under this rule by:

(a) handing it to the person;

(b) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(c) mailing it to the person's last known address by United States mail, in which event service is complete upon mailing;

(d) delivering it to a commercial carrier service for delivery to the person's last known address within three calendar days, in which event service is complete upon delivery to the carrier;

(e) leaving it with the clerk of court if the person has no known address; or

(f) sending it by electronic means to a facsimile number or e-mail address provided in accordance with Civ.R. 11 by the attorney or party to be served, in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.

(3) **Proof of service.** The served document shall be accompanied by a completed proof of service which shall state the date and manner of service, specifically identify the division of Civ.R. 5(B)(2) by which the service was made, and be signed in accordance with Civ.R. 11. Documents filed with the court shall not be considered until proof of service is endorsed thereon or separately filed.

(D) Filing. All ~~papers~~ documents, after the original complaint, required to be served upon a party shall be filed with the court within three days after service, but depositions upon oral examination, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless on order of the court or for use as evidence or for consideration of a motion in the proceeding. ~~Papers filed with the court shall not be considered until proof of service is endorsed thereon or separately filed. The proof of service shall state the date and manner of service and shall be signed in accordance with Civ. R. 11.~~

Staff Notes (July 1, 2012 Amendments)

Rule 5(B)

Rule 5(B) is amended (1) to permit service of documents after the original complaint to be made by electronic means and by commercial carrier service and (2) to conform the format and language of the rule to the December 1, 2007 amendments to Fed. R. Civ. P. 5(b).

Rule 5(B)(2)(d) permits service of a document by delivering it to a commercial carrier service for delivery within three calendar days. Rule 5(B)(2)(f) adopts the language of Fed. R. Civ. P. 5(b) stating that service by electronic means is not effective if the serving party learns that the document did not reach the person to be served. Rule 5(B)(3) emphasizes a party's duty to provide a proof of service that states the date and specific manner by which the service was made, specifically identifying the division of Civ.R. 5(B)(2) by which service was made.

Rule 5(D)

The provisions of Civ.R. 5(D) relating to the duty to provide a proof of service have been moved to Civ.R. 5(B)(3) and amended to require that a serving party specifically identify the division of Civ.R. 5(B)(2) by which the service was made. Additional changes are made to substitute "document" for "paper" for consistency with other Rules of Civil Procedure.

RULE 6. Time

(B) Time: extension. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under ~~Rule~~ Civ.R. 50(B), ~~Rule~~ Civ.R. 59(B), ~~Rule~~ Civ.R. 59(D), and ~~Rule~~ Civ.R. 60(B), except to the extent and under the conditions stated in them.

~~(C)~~ **Time: unaffected by expiration of term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action consistent with these rules.

~~(D)~~**(C) Time: motions.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than seven days before the time fixed for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule Civ.R. 59(C), opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

~~(E)~~**(D) Time: additional time after service by mail or commercial carrier service.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other ~~paper document~~ upon ~~him~~ that party and the notice or paper is served upon ~~him~~ that party by mail or commercial carrier service under Civ.R. 5(B)(2)(c) or (d), three days shall be added to the prescribed period. This ~~subdivision~~ division does not apply to responses to service of summons under Rule Civ.R. 4 through Rule Civ.R. 4.6.

Staff Notes (July 1, 2012 Amendments)

Former Civ.R. 6(C) has been eliminated and the remaining divisions of the rule have been re-lettered. Former division (C) was adopted in 1970 and made reference to the continuing jurisdiction of a court after expiration of a "term of court." The provision was significant at the time for clarifying a court's jurisdiction to vacate its final judgments despite prior statutes which limited a court's jurisdiction to do so "after term of court." Those procedural statutes were repealed or amended with the adoption of the Ohio Rules of Civil Procedure in 1970. However, for organizational and other purposes, R.C. 2301.05 continues to provide for one year "terms" for common pleas courts, and some non-procedural statutes refer to "term of court." Rule 6(C) does not appear to have any continuing significance for Ohio procedure. The provision is not included in Fed. R. Civ. P. 6 and its elimination makes the lettering of Civ.R. 6 consistent with that of the federal rule.

Former Civ.R. 6(E), now Civ.R. 6(D), is amended to make clear that this "three day" rule applies only when service has been made by mail or commercial carrier service under Civ.R. 5(B)(2)(c) or (d). As with the prior rule, it does not apply to responding to service of process made under Civ.R. 4 through Civ.R. 4.6, nor does it apply to responding to documents served under any other divisions of Civ.R. 5.

RULE 11. Signing of Pleadings, Motions, or Other Documents

Every pleading, motion, or other document of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose

address, attorney registration number, telephone number, ~~telefax~~ facsimile number, if any, and business e-mail address, if any, shall be stated. A party who is not represented by an attorney shall sign the pleading, motion, or other document and state the party's address. A party who is not represented by an attorney may further state a facsimile number or e-mail address for service by electronic means under Civ.R. 5(B)(2)(f). Except when otherwise specifically provided by these rules, pleadings, as defined by Civ.R. 7(A), need not be verified or accompanied by affidavit. The signature of an attorney or *pro se* party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or *pro se* party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule. Similar action may be taken if scandalous or indecent matter is inserted.

Staff Notes (July 1, 2012 Amendments)

Rule 11 has been amended to permit a party who is not represented by an attorney to designate a facsimile number or e-mail address for purposes of service by electronic means.

The amendment also highlights that the term "pleading" as used in the Ohio Rules of Civil Procedure refers to the six specific documents listed in Civ.R. 7(A), and does not refer to other documents filed or served in the action.

RULE 26. General Provisions Governing Discovery

(B) Scope of discovery. Unless otherwise ordered by the court in accordance with these rules, the scope of discovery is as follows:

- (5) Trial preparation: experts.

(a) Subject to the provisions of ~~subdivision~~ division (B)(5)(b) of this rule and ~~Rule~~ Civ.R. 35(B), a party may discover facts known or opinions held by an expert retained or specially employed by another party in anticipation of litigation or preparation for trial only upon a showing that the party seeking discovery is unable without undue hardship to obtain facts and opinions on the same subject by other means or upon a showing of other exceptional circumstances indicating that denial of discovery would cause manifest injustice.

(b) As an alternative or in addition to obtaining discovery under ~~subdivision~~ division (B)(5)(a) of this rule, a party by means of interrogatories may require any other party (i) to identify each person whom the other party expects to call as an expert witness at trial, and (ii) to state the subject matter on which the expert is expected to testify. Thereafter, any party may discover from the expert or the other party facts known or opinions held by the expert which are relevant to the stated subject matter. Discovery of the expert's opinions and the grounds therefor is restricted to those previously given to the other party or those to be given on direct examination at trial.

(c) Drafts of any report provided by any expert, regardless of the form in which the draft is recorded, are protected by division (B)(3) of this rule.

(d) Communications between a party's attorney and any witness identified as an expert witness under division (B)(5)(b) of this rule regardless of the form of the communications, are protected by division (B)(3) of this rule except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(e) The court may require that the party seeking discovery under ~~subdivision~~ division (B)(5)(b) of this rule pay the expert a reasonable fee for time spent in responding to discovery, and, with respect to discovery permitted under ~~subdivision~~ division (B)(5)(a) of this rule, may require a party to pay another party a fair portion of the fees and expenses incurred by the latter party in obtaining facts and opinions from the expert.

Staff Notes (July 1, 2012 Amendments)

Civ.R. 26(B)(5) is amended to clarify the scope of expert discovery and align Ohio practice with the 2010 amendments to the Federal Rules of Civil Procedure relating to a party's ability to obtain discovery from expert witnesses who are expected to be called at trial. The amendment provides work product protection for draft reports and communications between attorneys and testifying experts, except for three categories of communications: communications

that relate to compensation for the expert's study or testimony; communications containing facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; and communications containing any assumptions that the party's attorney provided and that the expert relied upon in forming the opinions to be expressed.

RULE 30. Depositions upon oral examination

(F) Certification and filing by officer; exhibits; copies; notice of filing.

(1)(a) Upon request of any party or order of the court, the officer shall transcribe the deposition. Provided the officer has retained an archival-quality copy of the officer's notes, the officer shall have no duty to retain paper notes of the deposition testimony. The officer shall certify on the transcribed deposition that the witness was fully sworn or affirmed by the officer and that the transcribed deposition is a true record of the testimony given by the witness. If any of the parties request or the court orders, the officer shall seal the transcribed deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and, upon payment of the officer's fees, promptly shall file it with the court in which the action is pending or send it by United States certified or express mail or commercial carrier service to the clerk of the court for filing.

(b) Unless objection is made to their production for inspection during the examination of the witness, documents and things shall be marked for identification and annexed to and returned with the deposition. The materials may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals. If the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition.

(2) Upon payment, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party requesting the filing of the deposition shall forthwith give notice of its filing to all other parties.

(4) As used in division (F) of this rule, "archival-quality copy" means any format of a permanent or enduring nature, including digital, magnetic, optical, or other medium, that allows an officer to transcribe the deposition.

RULE 33. Interrogatories to Parties

(A) Availability; procedures for use. Any party, without leave of court, may serve upon any other party up to forty written interrogatories to be answered by the party served. A party serving interrogatories shall ~~provide the party served with both a printed and~~ serve the party with an electronic copy of the interrogatories. The electronic copy shall be reasonably useable for word processing and provided on computer disk, by electronic mail, or by other means agreed to by the parties. A party who is unable to provide an electronic copy of the interrogatories may seek leave of court to be relieved of this requirement. A party shall not propound more than forty interrogatories to any other party without leave of court. Upon motion, and for good cause shown, the court may extend the number of interrogatories that a party may serve upon another party. For purposes of this rule, any subpart propounded under an interrogatory shall be considered a separate interrogatory.

(1) If the party served is a public or private corporation or a partnership or association, the organization shall choose one or more of its proper employees, officers, or agents to answer the interrogatories, and the employee, officer, or agent shall furnish information as is known or available to the organization.

(2) Interrogatories, without leave of court, may be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon the party.

(3) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The party upon whom the interrogatories have been served shall quote each interrogatory immediately preceding the corresponding answer or objection. When the number of interrogatories exceeds forty without leave of court, the party upon whom the interrogatories have been served need only answer or object to the first forty interrogatories. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections within a period designated by the party submitting the interrogatories, not less than twenty-eight days after the service ~~of a printed copy~~ of the interrogatories or within such shorter or longer time as the court may allow. ~~Failure to provide an electronic copy does not alter the designated period for response, but shall constitute good cause for the court to order the period enlarged if request therefor is made pursuant to Rule 6(B) before the expiration of the designated period. If so ordered, the court may require that the party submitting the interrogatories provide an electronic copy as required by this rule unless relieved from this obligation.~~

Staff Notes (July 1, 2012 Amendments)

The introductory paragraph of Civ.R. 33(A) and the provisions of Civ.R. 33(A)(3) are amended to eliminate difficulties raised by the 2004 amendment to Civ.R. 33(A) that requires a

party serving interrogatories to “provide” an electronic copy to the served party. This amendment is enabled by the 2012 amendment to Civ.R. 5(B) which permits documents after the original complaint to be served by electronic means.

Civ.R. 5(A) requires that copies of all documents in an action be “served” on the parties. When the Civ.R. 33 requirement for an electronic copy was established in 2004, there was not provision for “service” by electronic means and it was deemed impractical to require that an electronic copy be “served” by mailing a computer disk or otherwise delivering it by one of the other methods permitted under the existing Civ.R. 5(B). Thus the 2004 amendment to Civ.R. 33 provided that a printed copy must be “served” (by one of the methods listed under Civ.R. 5(B)), and that an electronic copy also must be “provided’ on computer disk, by electronic mail, or by other means agreed to by the parties.” That requirement was problematic not only because of the required dual format but also in determining a party’s recourse when a paper copy was served but an electronic copy was not provided – a problem addressed by the 2009 amendment to Civ.R. 33.

The 2012 amendment simply requires that an electronic copy be served, which can be accomplished electronically under the 2012 amendment to Civ.R. 5(B), or by any other method provided under Civ.R. 5(B). Although service of a paper copy is no longer necessary, it is not prohibited and would be appropriate, for example, when a party who is unable to provide an electronic copy is relieved of that requirement by the court.

Similar amendments have been made to Civ.R. 36 relating to requests for admission.

RULE 36. Requests for Admission

(A) Availability; procedures for use. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Civ.R. 26(B) set forth in the request, that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. A party serving a request for admission shall ~~provide the party served with both a printed and~~ serve the party with an electronic copy of the request for admission. The electronic copy shall be reasonably useable for word processing and provided on computer disk, by electronic mail, or by other means agreed to by the parties. A party who is unable to provide an electronic copy of a request for admission may seek leave of court to be relieved of this requirement.

(1) Each matter of which an admission is requested shall be separately set forth. The party to whom the requests for admissions have been directed shall quote each request for admission immediately preceding the corresponding answer or objection. The matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service of a printed copy of the request or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party’s attorney. ~~Failure to provide an electronic copy does not alter the designated period for response, but shall constitute good cause for the court to order the period enlarged if request therefor is made pursuant to Rule 6(B) before the expiration of the designated period. If so ordered, the court may require that the party~~

~~requesting the admission provide an electronic copy as required by this rule unless relieved from this obligation.~~

(2) If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer, or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Civ.R. 37(C), deny the matter or set forth reasons why the party cannot admit or deny it.

(3) The party who has requested the admissions may move for an order with respect to the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Civ.R. 37(A)(4) apply to the award of expenses incurred in relation to the motion.

Staff Notes (July 1, 2012 Amendments)

The introductory paragraph of Civ.R. 36(A) and the provisions of Civ.R. 36(A)(1) are amended to eliminate difficulties raised by the 2004 amendment to Civ.R. 36(A) that requires a party serving requests for admission to “provide” an electronic copy to the served party. This amendment is enabled by the 2012 amendment to Civ.R. 5(B) which permits documents after the original complaint to be served by electronic means.

Civ.R. 5(A) requires that copies of all documents in an action be “served” on the parties. When the Civ.R. 36 requirement for an electronic copy was established in 2004, there was no provision for “service” by electronic means and it was deemed impractical to require that an electronic copy be “served” by mailing a computer disk or otherwise delivering it by one of the other methods permitted under the existing Civ.R. 5(B). Thus the 2004 amendment to Civ.R. 36 provided that a printed copy must be “served” (by one of the methods listed under Civ.R. 5(B)), and that an electronic copy also must be “provided” on computer disk, by electronic mail, or by other means agreed to by the parties.” That requirement was problematic not only because of the required dual format but also in determining a party’s recourse when a paper copy was served but an electronic copy was not provided – a problem addressed by the 2009 amendment to Civ.R. 36.

The 2012 amendment simply requires that an electronic copy be served, which can be accomplished electronically under the 2012 amendments to Civ.R. 5(B), or by any other method provided under Civ.R. 5(B). Although service of a paper copy is no longer necessary, it is not prohibited and would be appropriate, for example, when a party who is unable to provide an electronic copy is relieved of that requirement by the court.

Similar amendments have been made to Civ.R. 33 relating to interrogatories.

RULE 45. Subpoena

(A) Form; Issuance; Notice.

(1) Every subpoena shall do all of the following:

(a) state the name of the court from which it is issued, the title of the action, and the case number;

(b) command each person to whom it is directed, at a time and place specified in the subpoena, to:

(i) attend and give testimony at a trial, ~~or hearing, or deposition~~ at any place within this state;

(ii) attend and give testimony at a deposition in the county where the deponent resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of court;

~~(ii)~~ (iii) produce documents, electronically stored information, or tangible things at a trial, hearing, or deposition;

~~(iii)~~ (iv) produce and permit inspection and copying of any designated documents or electronically stored information that are in the possession, custody, or control of the person;

~~(iv)~~ (v) produce and permit inspection and copying, testing, or sampling of any tangible things that are in the possession, custody, or control of the person; or

~~(v)~~ (vi) permit entry upon designated land or other property that is in the possession or control of the person for the purposes described in Civ.R. 34(A)(3).

(c) set forth the text of divisions (C) and (D) of this rule.

A command to produce and permit inspection may be joined with a command to attend and give testimony, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced, but may not require the production of the same information in more than one form.

A subpoena may not be used to obtain the attendance of a party or the production of documents by a party in discovery. Rather, a party's attendance at a deposition may be

obtained only by notice under Civ.R. 30, and documents or electronically stored information may be obtained from a party in discovery only pursuant to Civ.R. 34.

(2) The clerk shall issue a subpoena, signed, but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney who has filed an appearance on behalf of a party in an action may also sign and issue a subpoena on behalf of the court in which the action is pending.

(3) A party on whose behalf a subpoena is issued under division (A)(1)(b)(ii), (iii), (iv), ~~or (v)~~, or (vi) of this rule shall serve prompt written notice, including a copy of the subpoena, on all other parties as provided in Civ.R. 5. If the issuing attorney modifies a subpoena issued under division (A)(1)(b)(ii), (iii), (iv), ~~or (v)~~, or (vi) of this rule in any way, the issuing attorney shall give prompt written notice of the modification, including a copy of the subpoena as modified, to all other parties.

(B) Service

A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, or a deputy of any, by an attorney at law, or by any other person designated by order of court who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena to the person, by reading it to him or her in person, by leaving it at the person's usual place of residence, or by placing a sealed envelope containing the subpoena in the United States mail as certified or express mail return receipt requested with instructions to the delivering postal authority to show to whom delivered, date of delivery and address where delivered, and by tendering to the person upon demand the fees for one day's attendance and the mileage allowed by law. The person responsible for serving the subpoena shall file a return of the subpoena with the clerk. When the subpoena is served by mail delivery, the person filing the return shall attach the signed receipt to the return. If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand. The return may be forwarded through the postal service or otherwise.

(C) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b)(~~ii~~), (iii), (iv), ~~or (v)~~, or (vi) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(~~ii~~), (iii), (iv), ~~or (v)~~, or (vi) of this rule may, within fourteen days after

service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

- (a) Fails to allow reasonable time to comply;
- (b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
- (c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
- (d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

Staff Notes (July 1, 2012 Amendments)

Rule 45 is amended to return language from Civ.R. 45 (D)(2) before the 1993 amendments. Under the 2012 amendment a deponent no longer may be compelled by subpoena to appear for a deposition anywhere in the state, but only in the county where the deponent resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of court. A person may still be compelled to appear for trial or hearing at any place within the state.

RULE 47. Jurors

(D) Alternate jurors. The court may direct that no more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. ~~An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict.~~ The court may retain alternate jurors after the jury retires. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. Each party is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, and two peremptory challenges if three or four alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed shall not be used against an alternate juror.

Staff Notes (July 1, 2012 Amendments)

Civ.R. 47(D) is amended to parallel Crim.R. 24 (C) (1), the alternate juror rule for non-capital cases. The difference between the two rules is that six alternates are permitted under the criminal rule.

RULE 53. Magistrates

Staff Notes (July 1, 2012 Adoption of Civ.R. 65.1(F))

Rule 65.1(F), effective July 1, 2012, relates to the reference to a magistrate of civil protection order proceedings under R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214. Rule 65.1(A) states that the provisions of the rule shall be interpreted and applied in a manner consistent with the intent and purposes of the protection order statutes, and supersede and make inapplicable in those proceedings the provisions of any other rules to the extent that their application is inconsistent with Civ.R. 65.1. Provisions of Civ.R. 65.1(F) which affect Civ.R. 53 include:

Civ.R. 65.1(F)(2)(b)(ii): A magistrate's denial or granting of an ex parte protection order without judicial approval does not constitute a magistrate's order or a magistrate's decision under Civ.R. 53(D)(2) or (3) and is not subject to the requirements of those rules.

Civ.R. 65.1(F)(2)(b)(iii): The court's approval and signing of a magistrate's denial or granting of an ex parte protection order does not constitute a judgment or interim order under Civ.R. 53(D)(4)(e) and is not subject to the requirements of that rule;

Civ.R. 65.1(F)(3)(b): A magistrate's denial or granting of a protection order after a full hearing does not constitute a magistrate's order or a magistrate's decision under Civ.R. 53(D)(2) or (3) and is not subject to the requirements of those rules;

Civ.R. 65.1(F)(3)(c)(iv): A court's adoption, modification, or rejection of a magistrate's denial or granting of a protection order after a full hearing does not constitute a judgment or interim order under Civ.R. 53(D)(4)(e) and is not subject to the requirements of that rule.

The adoption of Civ.R. 65.1(F) also nullifies comments in the 2006 Staff Note to Civ.R. 53(D)(2)(a)(i) relating to the entry of temporary protection orders under R.C. 3113.31.

The listing above is not exclusive or comprehensive. Additional provisions of Civ.R. 53 relating to such matters as the authority and responsibilities of a magistrate are also affected by Civ.R. 65.1(F). As indicated in the Staff Notes to Rule 65.1, the rule was adopted to provide a set of provisions uniquely applicable to civil protection order proceedings and to provide the court with the discretion to suspend the application in such proceedings of any other rules to the extent that their application interferes with the statutory process or are inconsistent with its purposes.

RULE 58. Entry of Judgment

(A) Preparation; entry; effect; approval.

(1) 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.

(2) Approval of a judgment entry by counsel or a party indicates that the entry correctly sets forth the verdict, decision, or determination of the court and does not waive any objection or assignment of error for appeal.

Staff Notes (July 1, 2012 Amendments)

Division (A) has been subdivided in order to add Civ.R. 58(A)(2) which is a restatement of Rule 7(B) of the Rules of Superintendence for the Courts of Ohio. The provision is more appropriately included within the civil rules governing the conduct of actions.

The July 1, 1997 Commentary to Sup. R. 7 stated in pertinent part:

[T]he rule was added in 1995 and is intended to address the decision of the Eighth District Court of Appeals in *Paletta v. Paletta* (1990), 68 Ohio App.3d 507. In *Paletta*, the court of appeals held that the appellant waived any objection to the judgment of the trial court when his attorney signed a proposed judgment entry and failed to file objections as required by local rule of court, notwithstanding the attorney's assertion that he did not intend to approve the entry but only to acknowledge its receipt. The 1995 amendment indicates that a party's approval of a proposed judgment entry only reflects agreement that the entry correctly sets forth the decision of the court and does not constitute a waiver of any error or objection for purposes of appeal.

RULE 65.1. Civil Protection Orders

(A) Applicability; construction; other rules. The provisions of this rule apply to special statutory proceedings under R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214 providing for domestic violence, stalking, and sexually oriented offense civil protection orders, shall be interpreted and applied in a manner consistent with the intent and purposes of those protection order statutes, and supersede and make inapplicable in such proceedings the provisions of any other rules of civil procedure to the extent that such application is inconsistent with the provisions of this rule.

(B) Definitions. Any terms used in this rule which are also specifically defined in R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214 shall have the same definition in applying the provisions of this rule in those special statutory proceedings.

(C) Service.

(1) Service by clerk. The clerk shall cause service to be made of a copy of the petition, and all other documents required by the applicable protection order statute to be served on the Respondent and, if applicable, on the parent, guardian, or legal custodian of the Respondent.

(2) Initial service. Initial service, and service of any ex parte protection order that is entered, shall be made in accordance with the provisions for personal service of process within the state under Civ.R. 4.1(B) or outside the state under Civ.R. 4.3(B)(2). Upon failure of such personal service, or in addition to such personal service, service may be made in accordance with any applicable provision of Civ.R. 4 through Civ.R 4.6.

(3) Subsequent service. After service has been made in accordance with division (C)(2) of this rule, any additional service required to be made during the course of the proceedings on Respondent and, if applicable, on the parent, guardian, or legal custodian of Respondent, shall be made in accordance with the provisions of Civ.R. 5(B).

(4) Confidentiality. Upon request of the Petitioner, any method of service provided by Civ.R. 4 through 4.6 or by Civ.R. 5(B) may be limited or modified by the court to protect the confidentiality of the Petitioner's address in making service under this division.

(D) Discovery.

(1) Time. Discovery under this rule shall be completed prior to the time set for the full hearing.

(2) Discovery Order. Discovery may be had only upon the entry of an order containing all of the following to the extent applicable:

(a) The time and place of the discovery;

(b) The identities of the persons permitted to be present, which shall include any victim advocate; and

(c) Such terms and conditions deemed by the court to be necessary to assure the safety of the Petitioner, including if applicable, maintaining the confidentiality of the Petitioner's address.

(E) Appointed counsel for minor at full hearing. In a special statutory proceeding under R.C. 2151.34, the court, in its discretion, may determine if the Respondent is entitled to court-appointed counsel at the full hearing.

(F) Proceedings in matters referred to magistrates.

(1) Reference by court. A court may refer the proceedings under these special statutory proceedings to a magistrate.

(2) Ex parte proceedings. The following shall apply when these special statutory proceedings are referred to a magistrate for determination of a petitioner's request for an ex parte protection order:

(a) Authority. The magistrate shall conduct the ex parte hearing and, upon conclusion of the hearing, deny or grant an ex parte protection order.

(b) Nature of order.

(i) A magistrate's denial or granting of an ex parte protection order does not require judicial approval, shall otherwise comply with the statutory requirements relating to an ex parte protection order, shall be effective when signed by the magistrate and filed with the clerk, and shall have the same effect as an ex parte protection order entered by the court without reference to a magistrate.

(ii) A magistrate's denial or granting of an ex parte protection order without judicial approval under this division does not constitute a magistrate's order or a magistrate's decision under Civ.R. 53(D)(2) or (3) and is not subject to the requirements of those rules.

(iii) The court's approval and signing of a magistrate's denial or granting of an ex parte protection order entered under this division does not constitute a judgment or interim order under Civ.R. 53(D)(4)(e) and is not subject to the requirements of that rule.

(3) Full hearing proceedings. The following shall apply when these special statutory proceedings are referred to a magistrate for full hearing and determination:

(a) Authority. The magistrate shall conduct the full hearing and, upon conclusion of the hearing, deny or grant a protection order.

(b) Nature of order. A magistrate's denial or granting of a protection order after full hearing under this division does not constitute a magistrate's order or a magistrate's decision under Civ.R. 53(D)(2) or (3) and is not subject to the requirements of those rules.

(c) Court adoption; modification; rejection.

(i) A magistrate's denial or granting of a protection order after a full hearing shall comply with the statutory requirements relating to such orders and is not effective unless adopted by the court.

(ii) When a magistrate has denied or granted a protection order after a full hearing, the court may adopt the magistrate's denial or granting of the protection order upon review of the order and a determination that there is no error of law or other defect evident on the face of the order.

(iii) Upon review of a magistrate's denial or granting of a protection order after a full hearing, the court may modify or reject the magistrate's order.

(iv) A court's adoption, modification, or rejection of a magistrate's denial or granting of a protection order after a full hearing under this division does not constitute a judgment or interim order under Civ.R. 53(D)(4)(e) and is not subject to the requirements of that rule.

(v) A court's adoption, modification, or rejection of a magistrate's denial or granting of a protection order after a full hearing shall be effective when signed by the court and filed with the clerk.

(d) Objections.

(i) A party may file written objections to a court's adoption, modification, or rejection of a magistrate's denial or granting of a protection order after a full hearing, or any terms of such an order, within fourteen days of the court's filing of the order. If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed.

(ii) The timely filing of objections under this division shall not stay the execution of the order.

(iii) A party filing objections under this division has the burden of showing that an error of law or other defect is evident on the face of the order, or that the credible evidence of record is insufficient to support the granting or denial of the protection order, or that the magistrate abused the magistrate's discretion in including or failing to include specific terms in the protection order.

(iv) Objections based upon evidence of record shall be supported by a transcript of all the evidence submitted to the magistrate or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

(G) Final order; stay of appeal. Notwithstanding the provisions of any other rule, an order entered by the court under division (F)(3)(c) of this rule, with or without the subsequent filing of objections, is a final, appealable order that can be appealed upon issuance of the order. The timely filing of objections under division (F)(3)(d) of this rule shall stay the running of the time for appeal until the filing of the court's ruling on the objections.

Staff Notes (July 1, 2012 Amendments)

The special statutory proceedings established by R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214 provide regulations and requirements for the entry of civil protection orders against

adults and juveniles for the protection of victims of domestic violence, stalking, and sexually oriented offenses. Each of those statutes provides that the proceedings, which customarily proceed pro se, “shall be conducted in accordance with the Rules of Civil Procedure.” Rule 65.1 is adopted to provide a set of provisions uniquely applicable to those statutory proceedings because application of the existing rules, particularly with respect to service, discovery, and reference to magistrates, interferes with the statutory process and is inconsistent with its purposes.

Division (A): Applicability; construction; other rules

Division (A) provides that the rule applies to protection order proceedings under the three specified statutes, and specifies that the provisions of the rule are to be interpreted and applied consistently with the intent and purpose of those statutes and supersede any inconsistent Rules of Civil Procedure.

Division (B): Definitions

The statutes contain defined terms. Division (B) incorporates those definitions in construing any of the same terms included in the rule.

Division (C): Service

The statutes each provide for obtaining an ex parte protection order, followed by service on the Respondent of the petition, any ex parte order that has been entered, and notice of the date scheduled for the full hearing.

Division (C) provides that it is the responsibility of the clerk to cause service to be made of all documents required to be served on the Respondent. Initial service, and service of any ex parte order that is entered, is to be made in the same manner as personal service of process. In addition to personal service, or upon failure of that service, service may be made by other methods of service of process. The relevant statutes require that a Respondent be served with a protection order on the same day the order is entered, and therefore, an initial attempt by personal service is necessary. Although other methods of service are permitted in the event of failure of personal service, until the Respondent has actual notice of a protection order, the order could not be enforced against that Respondent, nor could the Respondent be prosecuted for violations occurring prior to such actual notice.

Once initial service has been made, further service during the course of the proceedings is to be made in accordance with Civ.R. 5(B).

Division (D): Discovery

The statutes do not address discovery. Division (D) provides for discovery only upon a court order containing accommodations and protections deemed necessary for the protection of the Petitioner.

Division (D)(1) states that discovery shall be completed prior to the date set for the full hearing. Since the statutes provide for a relatively short period of time between the entry of an ex parte order and the date of the full hearing, there may not be sufficient time for meaningful discovery in such cases, and a statutory request for a continuance of the full hearing would be appropriate.

Division (E): Appointed counsel for minor at full hearing

The entry of a protection order against a minor is addressed by R.C. 2151.34. That statute provides that “the court, in its discretion, may determine if the respondent is entitled to court-appointed counsel at the full hearing.” Division (E) restates that provision.

Division (F): Proceedings in matters referred to magistrates

The statutes provide expedited processes for obtaining an ex parte protection order and for obtaining a protection order after a full hearing. When the proceedings are referred to a magistrate, several of the provisions of Civ.R. 53 are incompatible with those processes, particularly with respect to temporary magistrate “orders” to regulate the proceedings, independent review by the court of magistrate “decisions” rendered after hearing, and the filing and consideration of objections to those magistrate “decisions”

Divisions (F)(2)(b)(ii) and (F)(3)(b) exempt these protection order proceedings from the Civ.R. 53 requirements for magistrate temporary “orders” to regulate the proceedings and magistrate “decisions” rendered after hearing. Divisions (F)(2)(b)(iii) and (F)(3)(c)(iv) exempt the proceedings from the requirements applicable to orders entered by the court after referral to magistrates.

Division (F)(2)(b)(1) provides that a magistrate may enter an ex parte protection order without judicial approval, and that the ex parte order is effective when signed by the magistrate and filed with the clerk.

Division (F)(3)(c) provides that a magistrate’s ruling after a full hearing is not effective until adopted by the court, permits adoption upon a determination that “there is no error of law or other defect evident on the face of the order,” and also permits the court to modify or reject the magistrate’s ruling. Adoption, modification, or rejection is effective when signed by the court and filed with the clerk.

Division (F)(3)(d)(i) is intended to encourage the parties, as an alternative to immediate appeal, to allow the trial court to review a court’s adoption, modification, or rejection of a magistrate’s protection order ruling based on the record, by filing objections in the trial court. Pursuant to division (F)(3)(d)(ii) the filing of objections does not stay execution of the protection order (but pursuant to division (G) the filing of objections does stay the time for appeal). Division (F)(3)(d)(iii) provides that the objecting party has the burden of showing either “that an error of law or other defect is evident on the face of the order, or that the credible evidence of record is insufficient to support the granting or denial of the protection order or that the magistrate abused the magistrate’s discretion in including or failing to include specific terms in the protection order.

Division G: Final order; stay of appeal

Each statute provides that the granting or denial of a protection order, other than an ex parte order, is a final appealable order. Consistent with that provision, division (G) states that such rulings are final and appealable, notwithstanding the provisions of any other rule, such as Civ.R. 60(B). However, division (G) also provides that the timely filing of objections to the court’s adoption or modification of a magistrate’s protection order ruling stays the running of the time for appeal until the filing of the court’s ruling on the objections.

RULE 73. Probate Division of the Court of Common Pleas

(E) Service of notice. In any proceeding where any type of notice other than service of summons is required by law or deemed necessary by the court, and the statute providing for notice neither directs nor authorizes the court to direct the manner of its service, notice shall be given in writing and may be served by or on behalf of any interested party without court intervention by one of the following methods:

- (1) By delivering a copy to the person to be served;

(2) By leaving a copy at the usual place of residence of the person to be served;

(3) By United States certified or express mail return receipt requested, or by a commercial carrier service utilizing any form of delivery requiring a signed receipt, addressed to the person to be served at the person's usual place of residence ~~with instructions to forward, return receipt requested~~, with instructions to the delivering postal employee or to the carrier to show to whom delivered, date of delivery, and address where delivered, provided that the certified or express mail envelope or return of the commercial carrier is not returned ~~with an endorsement~~ showing failure of delivery;

(4) By United States ordinary mail after a returned United States certified or express mail envelope or return of the commercial carrier ~~showing~~ shows that it was refused;

(5) By United States ordinary mail after a United States certified or express mail envelope is returned with an endorsement ~~showing~~ stating that it was unclaimed, provided that the United States ordinary mail envelope is not returned by the postal authorities ~~with an endorsement~~ showing failure of delivery;

(6) By publication once each week for three consecutive weeks in some newspaper of general circulation in the county when the name, usual place of residence, or existence of the person to be served is unknown and cannot with reasonable diligence be ascertained; provided that before publication may be utilized, the person giving notice shall file an affidavit which states that the name, usual place of residence, or existence of the person to be served is unknown and cannot with reasonable diligence be ascertained;

(7) By other method as the court may direct.

Civ.R. 4.2 shall apply in determining who may be served and how particular persons or entities must be served.

(F) Proof of service of notice; when service of notice complete. When service is made through the court, proof of service of notice shall be in the same manner as proof of service of summons.

When service is made without court intervention, proof of service of notice shall be made by affidavit. When service is made by United States certified or express mail or by commercial carrier service, the ~~certified or express mail~~ return receipt which shows delivery shall be attached to the affidavit. When service is made by United States ordinary mail, the prior returned certified or express mail envelope which shows that the mail was refused or unclaimed shall be attached to the affidavit.

Service of notice by United States ordinary mail shall be complete when the fact of mailing is entered of record except as stated in division (E)(5) of this rule. Service by publication shall be complete at the date of the last publication.

Staff Notes (July 1, 2012 Amendments)

Divisions (E) and (F) are amended so that they are consistent with the 2012 amendments to Civ.R. 4.1 relating to service of process by commercial carrier service and Civ.R. 4.6 relating to returns of service showing “refused” or “unclaimed” when service of process is attempted by U.S. certified or express mail or by commercial carrier service.

RULE 86. Effective Date

(II) The amendments to Civil Rules 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 5, 6, 11, 26, 30, 33, 36, 45, 47, 58, 65.1, 73, and 86 filed by the Supreme Court with the General Assembly on January 13, 2012 and revised and refiled on April 30, 2012 shall take effect on July 1, 2012. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

OHIO RULES OF CRIMINAL PROCEDURE

RULE 5. Initial Appearance, Preliminary Hearing

(B) Preliminary hearing in felony cases; procedure.

(1) In felony cases a defendant is entitled to a preliminary hearing unless waived in writing. If the defendant waives preliminary hearing, the judge or magistrate shall forthwith order the defendant bound over to the court of common pleas. If the defendant does not waive the preliminary hearing, the judge or magistrate shall schedule a preliminary hearing within a reasonable time, but in any event no later than ten consecutive days following arrest or service of summons if the defendant is in custody and not later than fifteen consecutive days following arrest or service of summons if ~~he~~ the defendant is not in custody. The preliminary hearing shall not be held, however, if the defendant is indicted. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this division may be extended. In the absence of such consent by the defendant, time limits may be extended only as required by law, or upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

(2) At the preliminary hearing the prosecuting attorney may state orally the case for the state, and shall then proceed to examine witnesses and introduce exhibits for the state. The defendant and the judge or magistrate have full right of cross-examination, and the defendant has the right of inspection of exhibits prior to their introduction. The hearing shall be conducted under the rules of evidence prevailing in criminal trials generally.

(3) At the conclusion of the presentation of the state's case, defendant may move for discharge for failure of proof, and may offer evidence on ~~his~~ the defendant's own behalf. If the defendant is not represented by counsel, the court shall advise ~~him~~ the defendant, prior to the offering of evidence on behalf of the defendant:

(a) That any such evidence, if unfavorable to ~~him~~ the defendant in any particular, may be used against ~~him~~ the defendant at later trial.

(b) That ~~he~~ the defendant may make a statement, not under oath, regarding the charge, for the purpose of explaining the facts in evidence.

(c) That ~~he~~ the defendant may refuse to make any statement, and such refusal may not be used against ~~him~~ the defendant at trial.

(d) That any statement ~~he~~ the defendant makes may be used against ~~him~~ the defendant at trial.

(4) Upon conclusion of all the evidence and the statement, if any, of the accused, the court shall do one of the following:

(a) Find that there is probable cause to believe the crime alleged or another felony has been committed and that the defendant committed it, and bind the defendant over to the court of common pleas of the county or any other county in which venue appears.

(b) Find that there is probable cause to believe that a misdemeanor was committed and that the defendant committed it, and retain the case for trial or order the defendant to appear for trial before an appropriate court.

(c) Order the accused discharged.

(5) Any finding requiring the accused to stand trial on any charge shall be based solely on the presence of substantial credible evidence thereof. No appeal shall lie from such decision and the discharge of defendant shall not be a bar to further prosecution.

(6) In any case in which the defendant is ordered to appear for trial for any offense other than the one charged the court shall cause a complaint charging such offense to be filed.

(7) Upon the conclusion of the hearing and finding, the court or the clerk of such court, shall, within seven days, complete all notations of appearance, motions, pleas, and findings on the criminal docket of the court, and shall transmit a transcript of the appearance docket entries, together with a copy of the original complaint and affidavits, if any, filed with the complaint, the journal or docket entry of reason for changes in the charge, if any, together with the order setting bail and the bail including any bail deposit, if any, filed, to the clerk of the court in which defendant is to appear. Such transcript shall contain an itemized account of the costs accrued.

(8) A municipal or county court retains jurisdiction on a felony case following the preliminary hearing, or a waiver thereof, until such time as a transcript of the appearance, docket entries, and other matters required for transmittal are filed with the clerk of the court in which the defendant is to appear.

RULE 15. Deposition

(F) **Use.** At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used ~~if it appears: that the witness is dead; or, that the witness is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena~~ if the witness is unavailable, as defined in Rule 804(A) of the Ohio Rules of Evidence. Any deposition may also be used by any party for the purpose of refreshing the recollection, or contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, any party may offer other parts.

Staff Notes (July 1, 2012 Amendments)

Prior to amendment, Crim.R. 15(F) authorized the use of a deposition at trial in specified circumstances. In some cases, Crim.R. 15(F) purported to authorize uses that violated the confrontation clause of the Sixth Amendment to the U.S. Constitution. See, e.g., *Earhart v. Konteh* (6th Cir. 2001), 269 F.3d 629. The amendment seeks to eliminate that problem by permitting the use of a deposition only when the witness is unavailable as defined in Evid.R. 804(A).

RULE 59. Effective Date

(AA) The amendments to Criminal Rule 5, 15, and 59 filed by the Supreme Court with the General Assembly on January 13, 2012 and revised and refiled on April 30, 2012 shall take effect on July 1, 2012. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

OHIO RULES OF EVIDENCE

RULE 404. Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes

(B) Other crimes, wrongs or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. In criminal cases, the proponent of evidence to be offered under this rule shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Staff Notes (July 1, 2012 Amendments)

The original Ohio Rule did not adopt the notice requirement included in the federal version of the rule. The rule, as amended, adds mutuality to the federal version of the rule so as to also provide the prosecution with notice of the defendant's intention to offer evidence under this rule. The purpose of adding the notice requirement is to provide the prosecution and the defense with the opportunity to prepare their case. Notice provided pursuant to this rule does not constitute a "demand of the defendant" under Crim.R. 16, and does not, in and of itself, constitute the initiation of discovery under Crim.R. 16. The rule should not be construed to exclude otherwise relevant and admissible evidence solely because of a lack of notice, absent a showing of bad faith.

RULE 613. Impeachment by self-contradiction

(A) Examining witness concerning prior statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(B) Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is admissible if both of the following apply:

(1) If the statement is offered solely for the purpose of impeaching the witness, the witness is afforded a prior opportunity to explain or deny the statement and

the opposite party is afforded an opportunity to interrogate the witness on the statement or the interests of justice otherwise require;

(2) The subject matter of the statement is one of the following:

(a) A fact that is of consequence to the determination of the action other than the credibility of a witness;

(b) A fact that may be shown by extrinsic evidence under Evid.R. 608(A), 609, 616(A), or 616(B) ~~or 706~~;

(c) A fact that may be shown by extrinsic evidence under the common law of impeachment if not in conflict with the Rules of Evidence.

(C) Prior inconsistent conduct. During examination of a witness, conduct of the witness inconsistent with the witness's testimony may be shown to impeach. If offered for the sole purpose of impeaching the witness's testimony, extrinsic evidence of the prior inconsistent conduct is admissible under the same circumstances as provided for prior inconsistent statements by Evid.R. 613(B)(2).

RULE 1001. Definitions

For purposes of this article the following definitions are applicable:

(1) Writings and recordings. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other forms of data compilation.

(2) Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(3) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(4) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original. A "duplicate" includes a counterpart from which personal identifiers have been omitted pursuant to Rule 45 of the Rules of Superintendence for the Courts of Ohio, and which otherwise accurately reproduces the original.

RULE 1102. Effective Date

(Q) Effective date of amendments. The amendments to the Rules of Evidence filed by the Supreme Court with the General Assembly on January 13, 2012 and refiled on April 30, 2012 shall take effect on July 1, 2012. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

OHIO RULES OF JUVENILE PROCEDURE

RULE 3. Waiver of Rights

(A) A child's right to be represented by counsel may not be waived in the following circumstances:

(1) at a hearing conducted pursuant to Juv.R. 30; ~~may not be waived.~~

(2) when a serious youthful offender dispositional sentence has been requested; or

(3) when there is a conflict or disagreement between the child and the parent, guardian, or custodian; or if the parent, guardian, or custodian requests that the child be removed from the home.

(B) If a child is facing the potential loss of liberty, the child shall be informed on the record of the child's right to counsel and the disadvantages of self-representation.

(C) If a child is charged with a felony offense, the court shall not allow any waiver of counsel unless the child has met privately with an attorney to discuss the child's right to counsel and the disadvantages of self-representation.

(D) Any waiver of the right to counsel shall be made in open court, recorded, and in writing. In determining whether a child has knowingly, intelligently, and voluntarily waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child's age; intelligence; education; background and experience generally and in the court system specifically; the child's emotional stability; and the complexity of the proceedings. The Court shall ensure that a child consults with a parent, custodian, guardian, or guardian ad litem, before any waiver of counsel. However, no parent, guardian, custodian, or other person may waive the child's right to counsel.

(E) Other rights of a child may be waived with permission of the court.

Staff Notes (July 1, 2012 Amendments)

Ohio Revised Code §2151.352 establishes that juveniles have a right to counsel.

The amended rule is intended to implement a process for the mandates of the United States Supreme Court's decision *In re Gault* (1967), 387 U.S. 1 and the Supreme Court of Ohio's decision *In re C.S.* (2007), 115 Ohio St.3d 267, 2007-Ohio-4919, to ensure children have meaningful access to counsel and are able to make informed decisions about their legal representation.

Under Juv.R. 3 as it existed prior to amendment, a child facing a mandatory or discretionary bindover to adult court could not waive counsel. The amended rule adds to this prohibition on waiver of counsel by including a child charged as a serious youthful offender pursuant to ORC §2152.13 as required by ORC §2152.13(C)(2).

Division (A)(3) of the amendment differentiates between a conflict between the child and parent, custodian or guardian and a disagreement. If the interests of child parent, custodian, or guardian are adverse in the proceeding, a conflict exists and the child should be appointed counsel. If the parent, custodian, or guardian and the child disagree on the question of whether counsel is necessary for the child or if the right to counsel should be waived, counsel should be appointed.

RULE 5. Use of juvenile's initials.

(A) In a juvenile court decision submitted for publication, the names of all juveniles shall be replaced with initials in the caption and body of the published decision. In any press release or other public presentation of information from a juvenile court, the names of any juvenile shall be replaced with initials.

(B) Juvenile courts may enact local rules for the use of juveniles' initials in juvenile court documents. In the absence of a local rule, all juvenile court pleadings and other documents filed in any juvenile court shall use the full names of juveniles rather than their initials.

RULE 22. Pleadings and Motions; Defenses and Objections

(E) Motion time. Except for motions filed under division (D)(5) of this rule, all prehearing motions shall be filed by the ~~earlier~~ later of:

- (1) seven days prior to the hearing, or
- (2) ten days after the appearance of counsel.

Rule 22(D)(5) motions shall be filed by the later of:

- (1) twenty days after the date of the child's initial appearance in juvenile court; or
- (2) twenty days after denial of a motion to transfer.

The filing of the Rule 22(D)(5) motion shall constitute notice of intent to pursue a serious youthful offender disposition.

The court in the interest of justice may extend the time for making prehearing motions.

The court for good cause shown may permit a motion to suppress evidence under division (D)(3) of this rule to be made at the time the evidence is offered.

RULE 47. Effective Date

(U) The amendments to Juvenile Rules 3, 5, 22, and 47 filed by the Supreme Court with the General Assembly on January 13, 2012 and revised and refiled on April 30, 2012 shall take effect on July 1, 2012. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.
