

AMENDMENTS TO THE OHIO RULES OF PRACTICE AND PROCEDURE

The following amendments to the Ohio Rules of Civil Procedure (1, 1.1, 4.7, 5, 11, 16, 26, 28, 30, 31, 39, and 43), the Ohio Rules of Criminal Procedure (1, 2, 3, 4, 10, 12.1, 12.2, 29, 33, 40, and 43), the Ohio Rules of Evidence (101, 404, 502, 606, 801, and 803), the Ohio Rules of Juvenile Procedure (1, 2, 7, 16, 20, 24, 25, 27, 29, 34, and 41), and the Ohio Traffic Rules (1, 2, 8, and 11). The history of these amendments is as follows:

September 20, 2021	First publication for public comment (ENDED Nov. 4, 2021)
January 7, 2022	Second publication for public comment (ENDING Feb. 21, 2022)

Key to Adopted Amendments:

1. Unaltered language appears in regular type. Example: text
2. Language that has been deleted appears in strikethrough. Example: ~~text~~
3. New language that has been added appears in underline. Example: text

PROPOSED AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE IN OHIO COURTS

Comments requested: The Supreme Court of Ohio will accept public comments until February 21, 2022 on the following proposed amendments to the Ohio Rules of Civil Procedure (1, 1.1, 4.7, 5, 11, 16, 26, 28, 30, 31, 39, and 43), the Ohio Rules of Criminal Procedure (1, 2, 3, 4, 10, 12.1, 12.2, 29, 33, 40, and 43), the Ohio Rules of Evidence (101, 404, 502, 606, 801, and 803), the Ohio Rules of Juvenile Procedure (1, 2, 7, 16, 20, 24, 25, 27, 29, 34, and 41), and the Ohio Traffic Rules (1, 2, 8, and 11).

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

Purpose of Publication: The Supreme Court has authorized the publication of the proposed amendments for public comment. The authorization for publication by the Court is neither an endorsement of, nor a declaration of intent to approve the proposed amendments. The purpose of the publication is to invite 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.

Comment Contact: Comments on the proposed amendments must be submitted in writing to Michel Jendretzky, Legal Counsel, Supreme Court of Ohio, 65 South Front Street, 7th Floor, Columbus, Ohio 43215-3431 or ruleamendments@sc.ohio.gov and received no later than February 21, 2022. Please include your full name and regular mailing address in any comment submitted by e-mail. Copies of all comments submitted will be provided to each member of the Commission on the Rules of Practice and Procedure and each Justice of the Supreme Court.

Comment Deadline: Comments must be submitted no later than February 21, 2022.

Staff Notes: A Staff Note may follow a proposed 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 FOR 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 widely 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 twenty 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 recommends 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) of the Ohio Constitution, 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.

In addition to filing the proposed amendments with the General Assembly, the Supreme Court publishes the proposed amendments for a second round of public comment. The Court’s authorization 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. 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) of the Ohio Constitution, 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 that the Court approves. The General Assembly has until June 30 to issue 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 issued by that date, the proposed amendments become effective July 1.

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

Summary

*(Changes since initial public comment are in **RED**.)*

1. OHIO RULES OF CIVIL PROCEDURE

- iCourt Task Force Proposals

(Civ.R. 1, 1.1, 5, 11, 16, 26, 28, 30, 31, 39, and 43)

The Commission recommends these proposed amendments from the iCourt Task Force, which are focused on making the use of technology in Courts more prevalent and effective.

These proposals include things like allowing parties under Civ.R. 5 to serve other parties on mutually agreeable electronic platforms other than e-mail; requiring courts to provide for the filing of documents by electronic means; clarifying that electronic signature is acceptable under Civ.R. 11; and, clearly allowing for depositions and witness testimony to occur via remote technology. **The proposal previously approved by this Court for public comment provided that for such testimony, one is deemed to have submitted to the jurisdiction of the Ohio court for purposes of enforcing the oath or affirmation. The Commission now recommends, instead, language in Civ.R. 43 requiring the witness to affirm on the record that they have submitted to the jurisdiction of the Ohio court.**

Relatedly, and based on public comment seeking clarification as to whether court reporters can administer oaths to people testifying remotely from outside this state, the Commission recommends an amendment to Civ.R. 28 specifically authorizing such oaths.

The proposal to amend Civ.R. 39 would allow for a jury trial to be conducted remotely. This proposal would first require the Court to approve of a remote trial, but a court would *not* be permitted to hold a trial without the jury in the courtroom – unless *all* parties agreed to this.

Based on public comment seeking clarification as to whether the remote technology provisions apply to pretrial procedures, the Commission recommends a staff note to Civ.R. 16, which specifically governs pretrial procedure. The Commission recommends a staff note to Civ.R. 39, also, given public comments seeking clarification on remote testimony procedures.

The Commission did add one proposal of its own in Civ.R. 1, which specifies that the *option* to use remote appearance technology does not mean the judge cannot order a party, attorney, or witness to *physically* appear at the proceeding.

- Removing Domestic Relations Cases from Waiver of Service
(Civ.R. 4.7)

The Commission recommends this amendment in response to a request from Ohio domestic relations judges. In 2019, Civ.R. 4.7 created a new waiver of service provision modeled after the Federal rule. Under the rule, if a defendant agrees to waive service, they receive an extended time to file an answer. Domestic relations judges have indicated this creates problems in family law cases where temporary orders are common and waiting for a responsive pleading can be problematic.

- Depositions of Corporate Entities
(Civ.R. 30)

The Commission recommends other changes to Civ.R. 30 that would create more clarity in how non-party corporate entities or public agencies are to handle being deposed.

2. OHIO RULES OF CRIMINAL PROCEDURE AND OHIO TRAFFIC RULES

- iCourt Task Force Proposals
(Crim.R. 1, 2, 10, 40, and 43; Traf.R. 1, 2, and 8)

The Commission puts forth these proposed amendments from the iCourt Task Force, which are focused on making the use of technology in Courts more prevalent and effective.

These proposals include things like clarifying that arraignments can be conducted remotely; that testimony can be taken remotely; and that a defendant can waive their right to be physically present at arraignment, trial, sentencing, or other substantive proceeding, if appearing remotely instead. The proposal regarding Traf.R. 8 also allows a defendant to enter a not guilty plea by electronic transmission as approved by the court, rather than just in person or by mail. That change also extends the time for such action from 4 days to 10 days after receipt of the ticket.

The criminal rules proposals *do not* contain a proposal to allow for remote jury trials. The Commission felt that the constitutional implications in a criminal trial were too important to permit a fully remote jury trial, without further review and consideration. **Further related to constitutional concerns, and in response to public comment regarding same, the Commission recommends a staff note to Crim.R. 43, reminding judges to consider the effect the confrontation clause will have on allowing remote testimony of any witnesses during a criminal proceeding.**

Just like in the civil rules, the Commission did add one proposal of its own in Crim.R. 1, which specifies that the *option* to use remote appearance technology does not mean the judge cannot order a party, attorney, or witness to *physically* appear at the proceeding.

- Transferring OVI charges to Common Pleas Court
(Crim.R. 3; Traf.R. 2)

The Commission proposes these amendments on the suggestion of the Ohio Judicial Conference. The scenario this is meant to address is one where a criminal defendant is charged with felonies along with an OVI charge. While the felonies can be easily bound over to common pleas court, some courts have expressed concern that the Multi-Count Uniform Traffic Ticket (“MUTT”) does not meet the definition of “complaint” under Crim.R. 3.

Accordingly, this amendment is intended to make it clear that a charge filed using the MUTT can be accepted by the Common Pleas court should it be bound over. This would eliminate the need to create a separate charging document for the OVI.

- E-Citation for Misdemeanor Cases
(Crim.R. 4)

The Commission proposes this amendment to allow for the creation and filing of criminal complaints and summonses that are electronically produced. This suggestion came from the Commission’s prosecutor and law director representative, who indicates it is a request from local law enforcement in his jurisdiction.

The rule, modeled after a similar rule that allows for electronic traffic citations, would allow for “e-citations” to be used in criminal cases. The law enforcement officer would be required to give the defendant a paper copy of the citation, if issued at the time of the incident. Also, the law enforcement officer that files the complaint would be required to have their signature attested to by an appropriate individual, so as to verify the complaint.

Following public comment the Commission recommends removing language that references requiring a defendant’s signature on a criminal complaint. While similar language appears in the rule allowing electronic traffic tickets, criminal complaints are not typically signed by the defendant.

- Motion for New Trial
(Crim.R. 29 and 33)

The Commission proposes amendments to Crim.R. 29 and 33, as a follow up to recent amendments to Crim.R. 33.

In 2020, Crim.R. 33 was amended in response to the Supreme Court of Ohio’s decision in *State v. Ramirez*, 2020-Ohio-602. In *Ramirez*, the Court held that while Crim.R. 33 implies the defendant would receive a new trial, a finding of insufficient evidence for a conviction would mean double jeopardy should attach and bar any new trial. As such, the Commission has proposed removing the option to grant a new trial if the evidence is not sufficient to sustain a conviction. The defendant could still raise that same argument by way of Crim.R. 29 (per a motion for acquittal), and Crim.R. 33 would then be in compliance with current case law.

This amendment would go further by moving certain remaining language in Crim.R. 33 which references insufficient evidence to a more appropriate place in Crim.R. 29.

- Notice of Alibi and Self-Defense
(Crim.R. 12.1 and 12.2)

The Commission proposes new rule Crim.R. 12.2 in response to recent statutory changes, which place the burden of disproving self-defense on the prosecution. Previously in Ohio, self-defense was an affirmative defense. The General Assembly recently placed the burden on the state to show any criminal act was not made in self-defense, if the defendant offered some evidence of such.

This has led to the prosecution being surprised by evidence of self-defense just before trial and having to prepare at the last minute to meet its burden of proof. **The Commission previously recommended for the new rule to require a defendant to provide notice of any intent to put forth evidence of self-defense at least 14 days before trial. Based on public comment, the Commission now recommends that that notice be given 30 days before trial in felony cases, and 14 days before trial in misdemeanor cases.**

The Commission now also recommends the same notice requirement in Crim.R. 12.1, which requires the defendant to provide notice of alibi.

- Pre-Trial Defenses in Traffic Cases
(Traf.R. 11)

The Commission proposes this amendment to Traf.R. 11 which would extend the time during which defendants may raise certain defenses. The current rule requires certain types of defenses to be made at the arraignment or earlier. In practice, many attorneys in traffic cases are not able to investigate a client's case before the arraignment. The extension of this time frame would allow sufficient time to determine if any of the listed defenses are appropriate.

3. OHIO RULES OF EVIDENCE

- iCourt Task Force Recommendations
(Evid.R. 101)

This amendment, suggested by the iCourt Task Force, would add definitions relating to remote appearances. As was done in other rules, the Commission recommends language that makes clear a Court can ultimately determine whether remote appearance is appropriate, however.

- Prior Bad Acts Evidence
(Evid.R. 404)

This amendment would closely mirror changes made to Fed.Evid.R. 404 in 2008. Specifically, it would require that the proponent provide reasonable, written notice of any prior

bad acts evidence. This notice must also articulate the permitted purpose for which the proponent intends to use this evidence. The current rule does not require this notice be in writing.

- Waiver of Privilege
(Evid.R. 502)

This new rule is based upon current Fed.Evid.R. 502, which was enacted in 2008. It provides clarity as to when and how waiver of privilege for certain communications would occur. The new rules do nothing to change what materials are privileged, but do seek to provide uniformity on how waiver is handled, particularly in cases where it is done inadvertently.

- Testimony of Jurors
(Evid.R. 606)

This amendment comes at the request of the Office of the Ohio Attorney General. The current rule allows for jurors to testify about information improperly brought to the jury's attention or improper outside influence on the jury – but only if “outside evidence” of that issue is presented. The Attorney General's office indicates the requirement of “outside evidence” has faced several constitutional challenges, and that this amendment would help remedy those challenges. The amendment closely mirrors existing Fed.Evid.R. 606.

- Definition of Hearsay
(Evid.R. 801)

This amendment clarifies that hearsay must be a statement offered to prove the truth of the matter asserted “in the statement.” The current version of the rule does not include the words “in the statement.” Inclusion of this phrase more closely aligns with existing Fed.Evid.R. 801.

- Statements in Ancient Documents
(Evid.R. 803)

Current Evid.R. 803(16) exempts from hearsay “statements in a document in existence twenty years or more the authenticity of which is established.” The corresponding federal rule used to have the same language, but was changed in 2017 to allow only documents made before “January 1, 1998.” This federal amendment was made to protect against the admittance of written statements from unreliably stored electronic documents, which would become more and more common with the passage of time.

The Commission's proposal would also require any ancient document be prepared before January 1, 1998.

4. OHIO RULES OF JUVENILE PROCEDURE

- iCourt Task Force Proposals
(Juv.R. 1, 2, 24, 25, 27, 29, and 41)

The Commission recommends this series of amendments which would make many of the same changes found in the civil rules from the iCourt Task Force report. The juvenile rules proposals also contain the option for a remote trial, as is found in the civil rules proposals.

Following public comment, the Commission recommends removing the Juv.R. 2 definition of “in person,” as that is already defined earlier in the rule. The Commission also recommends aligning provisions of Juv.R. 16, 20, and 24 to match similar changes to the civil rules in regards to service. Finally, the Commission recommends clarifying language in Juv.R. 27 to make clear that a juvenile or parents’ attendance may be excused when it would be unnecessary.

- Serious Youthful Offender and Dispositional Hearings
(Juv.R. 7 and 34.)

The Commission recommends a change to Juv.R. 34 that matches recently passed legislation regarding the timing of dispositional hearings in juvenile cases. The Commission also recommends amendments to Juv.R. 7 that specifies that the release of a juvenile adjudicated as a serious youthful offender shall be considered under Crim.R. 46.

OHIO RULES OF CIVIL PROCEDURE

RULE 1. Scope of Rules: Applicability; Construction; Exceptions

[Existing language unaffected by the amendments is omitted to conserve space]

(D) As used in these rules, any option to use live two-way video or audio technology shall not be construed to limit the power of a judge or magistrate to order that a party, attorney, or witness physically appear at a proceeding without the use of live two-way video or audio technology.

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11 **RULE 1.1. Definitions**

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13 As used in these rules:

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15 (A) “Appear,” “appearance,” or “in person” mean the physical or remote presence of an
16 individual.

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18 (B) “Attendance” means the physical or remote presence of an individual.

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20 (C) “Open court” includes a court proceeding open to the public in person or by remote
21 access to the live proceeding.

22

23 (D) “Personally” means the physical or remote presence of an individual except as
24 provided by Civ.R. 4.1 through 4.5 and Civ.R. 45.

25

26 (E) “Remote presence” means the presence of a person who is using live two-way video
27 and/or audio technology.

28 **RULE 4.7 Process: Waiving Service**

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[Existing language unaffected by the amendments is omitted to conserve space]

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32 (B) **Limited to Courts of Common Pleas.** The waiver of service provisions in this
33 rule are limited to civil actions filed in the courts of common pleas ~~and does but they do~~ not apply
34 to civil protection orders pursuant to Civ.R. 65.1 or to domestic relations matters as defined in
35 R.C. 3105.011.

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[Existing language unaffected by the amendments is omitted to conserve space]

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Proposed Staff Note (July 1, 2022)

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42 Division (B) is amended to eliminate this method of service for domestic relations cases as well as
43 civil protection order cases. The additional time required to obtain a waiver, and the automatic extension
44 of Answer Day interject too much delay in these categories of cases.

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

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48 [Existing language unaffected by the amendments is omitted to conserve space]

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50 **(B) Service: how made.**

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52 **(1) Serving a party; serving an attorney.** Whenever a party is not represented by an
53 attorney, service under this rule shall be made upon the party. If a party is represented by an
54 attorney, service under this rule shall be made on the attorney unless the court orders service on
55 the party. Whenever an attorney has filed a notice of limited appearance pursuant to Civ.R. 3(B),
56 service shall be made upon both that attorney and the party in connection with the proceedings for
57 which the attorney has filed a notice of limited appearance.

58
59 **(2) Service in general.** A document is served under this rule by:

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61 (a) handing it to the person;

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63 (b) leaving it:

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

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

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

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

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

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81 (f) sending it by electronic means to a facsimile number or e-mail address provided
82 in accordance with Civ.R. 11 by the attorney or party to be served, or, if mutually
83 agreed in writing by all counsel and unrepresented parties, any other electronic
84 media platform(s), in which event service is complete upon transmission, but is not
85 effective if the serving party learns that it did not reach the person served.

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87 **(3) Using court facilities.** If a local rule so authorizes, a party may use the court's
88 transmission facilities to make service under Civ.R. 5(B)(2)(f).
89

90 (4) **Proof of service.** The served document shall be accompanied by a completed proof of
91 service which shall state the date and manner of service, specifically identify the division of Civ.R.
92 5(B)(2) by which the service was made, and be signed in accordance with Civ.R. 11. Documents
93 filed with the court shall not be considered until proof of service is endorsed thereon or separately
94 filed.

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96 **[Existing language unaffected by the amendments is omitted to conserve space]**
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98 (E) **Filing with the court defined.** The filing of documents with the court, as required
99 by these rules, shall be made by filing them with the clerk of court, except that the judge may
100 permit the documents to be filed with the judge, in which event the judge shall note the filing date
101 on the documents and transmit them to the clerk. A court ~~may~~ shall provide, by court order or
102 local ~~rule rules~~ adopted pursuant to the Rules of Superintendence, for the filing of documents by
103 electronic means. ~~If the court adopts such~~ The court order or local rules, the rule shall include all
104 of the following:

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106 (1) Any signature on electronically transmitted documents shall be considered that of
107 the attorney or party it purports to be for all purposes. If it is established that the documents were
108 transmitted without authority, the court shall order the filing stricken.
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110 (2) A provision shall specify the days and hours during which electronically
111 transmitted documents will be received by the court, and a provision shall specify when documents
112 received electronically will be considered to have been filed.
113

114 (3) Any document filed electronically that requires a filing fee may be rejected by the
115 clerk of court unless the filer has complied with the mechanism established by the court for the
116 payment of filing fees.
117

118 Proposed Staff Note (July 1, 2022)
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120 Although no firm deadline is stated in the rule by which all courts must complete arrangements for
121 filing documents by electronic means, this should be a priority for all courts. Receiving and filing facsimile
122 or electronic mail documents is readily and economically done, and avoids difficulty with delay in United
123 States Postal Service mail delivery.

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 electronic signature or by hand, by at least one attorney of record in the attorney's individual name, whose address, attorney registration number, telephone number, 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, by electronic signature or by hand, 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 telephone number, facsimile number or, if any, and personal e-mail address, if any, 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.

144 **RULE 16. Pretrial Procedure**

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146 **[Existing language unaffected by the amendments is omitted to conserve space]**

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148 Proposed Staff Note (July 1, 2022)

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150 Conferences pursuant to this rule may be held by physical or remote presence, in the discretion
151 of the presiding judicial officer.

RULE 26. General Provisions Governing Discovery

[Existing language unaffected by the amendments is omitted to conserve space]

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

[Existing language unaffected by the amendments is omitted to conserve space]

(3) Initial Disclosure by a Party

(a) Without awaiting a discovery request, a party must provide to the other parties, except as exempted by Civ.R. 26(B)(3)(b) or as otherwise stipulated, or ordered by the court:

(i) the name and, if known, the address~~and~~, telephone number, and e-mail address of each individual likely to have discoverable information - along with the subjects of that information - that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy - or a description by category and location - of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party - who must also make available for inspection and copying as under Civ.R. 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Civ. R. 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(b) The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

197 (iii) an action to enforce or quash an administrative summons or
198 subpoena;

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200 (iv) a proceeding ancillary to a proceeding in another court; and

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202 (v) an action to enforce an arbitration award.

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204 (c) A party must make the initial disclosures no later than the parties' first pre-
205 trial or case management conference, unless a different time is set by stipulation or court
206 order, or unless a party objects. In ruling on the objection, the court must determine what
207 disclosures, if any, are to be made and must set the time for disclosure.

208
209 (d) A party that is first served or otherwise joined after the first pre-trial or case
210 management conference must make the initial disclosures within 30 days after being served
211 or joined, unless a different time is set by stipulation or court order.

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213 (e) A party must make its initial disclosures based on the information then
214 reasonably available to it. A party is not excused from making its disclosures because it
215 has not fully investigated the case or because it challenges the sufficiency of another party's
216 disclosures or because another party has not made its disclosures.

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218 **[Existing language unaffected by the amendments is omitted to conserve space]**

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RULE 28. Persons Before Whom Depositions May be Taken

[Existing language unaffected by the amendments is omitted to conserve space]

(B) Depositions outside state. Depositions may be taken outside this state before: a person authorized to administer oaths in the place where the deposition is taken, a person appointed by the court in which the action is pending, a person agreed upon by written stipulation of all the parties, or, in any foreign country, by any consular officer of the United States within ~~his~~ the consular district. Depositions may also be taken of witnesses located outside this state via remote means before a person authorized to administer any oath by the laws of Ohio.

[Existing language unaffected by the amendments is omitted to conserve space]

RULE 30. Depositions ~~upon oral examination~~ Upon Oral Examination

[Existing language unaffected by the amendments is omitted to conserve space]

(B) Notice of Examination; General Requirements; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone ~~or Other Means~~ Remote Presence.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, a designation of the materials to be produced shall be attached to or included in the notice.

(2) If any party shows that when the party was served with notice the party was unable, through the exercise of diligence, to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(3) If a party taking a deposition wishes to have the testimony recorded by other than stenographic means, the notice shall specify the manner of recording, preserving, and filing the deposition. The court may require stenographic taking or make any other order to ensure that the recorded testimony will be accurate and trustworthy. With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) The notice to a party deponent may be accompanied by a request made in compliance with Civ.R. 34 for the production of documents and tangible things at the taking of the deposition.

(5) ~~A In its notice or subpoena, a party, in the party's notice,~~ may name as the deponent a public or private corporation, a partnership, ~~or~~ an association, a limited liability entity, a governmental agency, or other entity and designate shall describe with reasonable particularity the ~~matters on which~~ for examination is requested. The named organization ~~so named~~ shall ~~choose~~ designate one or more ~~of its proper employees, officers, directors, or managing agents, or designate~~ other persons duly authorized who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization shall confer in good faith about the matters for examination. A subpoena shall advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons ~~so~~ designated shall testify ~~as to~~ matters about information known or reasonably available to the organization. Division (B)(5) does not preclude ~~taking~~ a deposition by any other procedure ~~authorized in~~ allowed by these rules.

(6) The parties may stipulate or the court may upon motion order that a deposition be ~~taken by telephone or other remote means~~ with one or more participants in remote presence. For

278 purposes of this rule, Civ.R. 28, and Civ.R. 45(C), a deposition ~~taken by telephone with participants~~
279 ~~in remote presence is considered to be taken in the county and at the place where the deponent~~
280 ~~answers the questions~~ jurisdiction in which the case is pending.

281

282 **[Existing language unaffected by the amendments is omitted to conserve space]**

283

284 **(E) Submission to witness; changes; signing.** When the testimony is fully transcribed,
285 the deposition shall be submitted to the witness for examination and shall be read to or by the
286 witness, unless examination and reading are waived by the witness and by the parties. Any changes
287 in form or substance that the witness desires to make shall be entered upon the deposition by the
288 officer with a statement of the reasons given by the witness for making them. The deposition shall
289 then be signed by the witness by hand or by electronic signature, unless the parties by stipulation
290 waive the signing or the witness is ill, cannot be found, or refuses to sign. The witness shall have
291 thirty days from submission of the deposition to the witness to review and sign the deposition. If
292 the deposition is taken within thirty days of a trial or hearing, the witness shall have seven days
293 from submission of the deposition to the witness to review and sign the deposition. If the trial or
294 hearing is scheduled to commence less than seven days before the deposition is submitted to the
295 witness, the court may establish a deadline for the witness to review and sign the deposition. If
296 the deposition is not signed by the witness during the period prescribed in this division, the officer
297 shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness
298 or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition
299 may then be used as fully as though signed, unless on a motion to suppress the court holds that the
300 reasons given for the refusal to sign require rejection of the deposition in whole or in part.

301

302 **[Existing language unaffected by the amendments is omitted to conserve space]**

303

304

305 Proposed Staff Note (July 1, 2022)

306

307 Division (B)(5) is amended to reflect the 2020 update to Fed.R.Civ.P. 30(b)(6).

308

309 Division (B)(6) is amended to allow depositions where one or more participants are in “remote
310 presence” as defined in new Civ.R. 1.1(E). It clarifies that for witnesses in Ohio being deposed for an Ohio
311 case the deposition is considered taken in the jurisdiction in which the case is pending, so that any motion
312 for a protective order, or otherwise arising from the deposition is addressed by the Ohio judge hearing the
313 underlying case. If an out-of-state court has been used to subpoena an out-of-state witness, or an Ohio
314 witness is subpoenaed in Ohio for an out-of-state case, the Uniform Interstate Depositions and Discovery
315 Act (R.C. 2319.09) must be consulted.

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RULE 31. Depositions of Witnesses Upon Written Questions

[Existing language unaffected by the amendments is omitted to conserve space]

(B) Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(C), (E), and (F), to take the testimony of the witness in response to the questions and to prepare, certify, and file—~~or~~₂ mail, or deliver the deposition by electronic means, attaching thereto the copy of the notice and the questions received by ~~him~~ the officer.

[Existing language unaffected by the amendments is omitted to conserve space]

328 **RULE 39. Trial by Jury or by the Court**

329 [Existing language unaffected by the amendments is omitted to conserve space]

331 **(C) Remote trial.**

332 (1) No later than the deadline set in a case scheduling order or ~~twenty-one~~ **thirty** days
333 prior to a scheduled trial a party may request trial be conducted remotely, in whole or in part, using
334 live two-way video and audio conference technology. A party making such a request shall indicate
335 in the request whether any special accommodations are anticipated or required.

336 (2) The court, in its discretion, shall determine the manner in which the trial will be
337 conducted including whether it will be conducted remotely, in whole or in part. Unless there is
338 unanimous agreement by all parties, the court may not require that a trial by jury be conducted
339 without the jury physically present in the courtroom.

340 **(D) Advisory jury and trial by consent.** In all actions not triable of right by a jury (1)
341 the court upon motion or on its own initiative may try any issue with an advisory jury or (2) the
342 court, with the consent of both parties, may order a trial of any issue with a jury, whose verdict has
343 the same effect as if trial by jury had been a matter of right.

344 Proposed Staff Note (July 1, 2022)

345 Regarding the new division (C), the court retains discretion to determine the manner in which a trial
346 will be conducted, except that no court may require a jury trial be conducted with jurors not present in the
347 courtroom. Otherwise, there is limited ability to monitor individual juror conduct – in some remote trials
348 jurors have reportedly been observed looking at their cell phone during testimony – or to assure that jurors
349 are not exposed to extraneous prejudicial information or other outside influences during the trial.

350 A nonexclusive list of factors that courts and litigants may consider in regard to remote trials or
351 hearings includes (1) the age and any disabilities or special needs of a witness that may affect the taking
352 of testimony; (2) whether language translation will be required; (3) procedures available for handling exhibits
353 or demonstrations; (4) arrangements for making and ruling on objections or for sidebar conferences within
354 or outside the hearing of a witness appearing by remote presence; (5) limitations upon persons who may
355 be present in the location where the witness testifies, assuring identification of all such persons prior to the
356 testimony; and (6) whether any technological issues involving the video display or recording of the trial or
357 hearing via remote presence may affect the ability to create a clear record of all testimony.

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OHIO RULES OF CRIMINAL PROCEDURE

RULE 1. Scope of Rules: Applicability; Construction; Exceptions

[Existing language unaffected by the amendments is omitted to conserve space]

(D) As used in these rules, any option to use live two-way video or audio technology shall not be construed to limit the power of a judge or magistrate to order that a party, attorney, or witness physically appear at a proceeding without the use of live two-way video or audio technology.

413 **RULE 2. Definitions**

414

415 As used in these rules:

416

417 **[Existing language unaffected by the amendments is omitted to conserve space]**

418

419 (K) “Appear,” “appearance,” or “in person” mean the physical or remote presence of an
420 individual.

421

422 (L) “In person” means the physical or remote presence of an individual except as
423 provided by Crim.R. 17(D).

424

425 (M) “Open court” includes a court proceeding open to the public in person or by remote
426 access to the live proceeding.

427

428 (N) “Personally” means the physical or remote presence of an individual except as
429 provided by Crim.R. 4(D)(3) and (4).

430

431 (O) “Presence” includes the physical or remote presence of an individual.

432

433 (P) “Remote presence” means the presence of a person who is using live two-way video
434 and/or audio technology.

435 **RULE 3. Complaint**

436

437 (A) The complaint is a written statement of the essential facts constituting the offense
438 charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall
439 be made upon oath before any person authorized by law to administer oaths.

440

441 (B) In addition, a traffic ticket that complies with Traf.R. 2 shall constitute a complaint
442 for an alleged violation of a law, ordinance, or regulation governing the operation and use of
443 vehicles, conduct of pedestrians in relation to vehicles, or weight, dimension, loads or equipment,
444 or vehicles drawn or moved on highways and bridges, except for alleged violations of Title 29 of
445 the Revised Code.

446 **RULE 4. Warrant or Summons; Arrest**

447 [Existing language unaffected by the amendments is omitted to conserve space]

448
449 **(G) Use of Electronically Produced Criminal Complaint and Summons.**

450
451
452 (1) Local rules adopted by a court pursuant to the ~~Supreme Court~~ Rules of
453 Superintendence for the Courts of Ohio may provide for the use of a criminal complaint and
454 summons that is produced by computer or other electronic means. ~~A criminal complaint and~~
455 ~~summons produced by computer or other electronic means need not require the signature of the~~
456 ~~defendant.~~ A criminal complaint and summons produced by computer or other electronic means
457 shall conform in all substantive respects to the "Ohio Rules of Criminal Procedure" set forth in the
458 Appendix of Forms. The complaint and summons paper shall be of sufficient quality to allow the
459 court record copy to remain unchanged for the period of the retention schedule for the various
460 criminal offenses as prescribed by Rule 26.05 of the Rules of Superintendence for the Courts of
461 Ohio. The court record for the complaint and summons shall be filed with the court or may be filed
462 electronically as authorized by local rule and division (G)(2) of this rule.

463
464 (2) Local rules adopted by a court pursuant to the ~~Supreme Court~~ Rules of
465 Superintendence for the Courts of Ohio may also provide for the filing of the criminal complaint
466 and summons by electronic means. If a criminal complaint and summons is issued at the scene of
467 an alleged offense, the local rule shall require that the issuing officer serve the defendant with the
468 defendant's paper copy of the criminal complaint and summons as required by division (D) of this
469 rule. A law enforcement officer who files a criminal complaint and summons pursuant to divisions
470 (G)(1) or (G)(2) of this rule and electronically affixes the officer's signature thereto, shall also have
471 his/her signature attested to by either a "peace officer," "judge," "clerk," or "deputy clerk" after
472 which the complaint and summons shall be considered to have been certified and shall have the
473 same rights, responsibilities, and liabilities as with all other criminal complaints and summons
474 issued pursuant to these rules.

475 **RULE 10. Arraignment**

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[Existing language unaffected by the amendments is omitted to conserve space]

477

478

(B) Presence of defendant.

479

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484

(1) The defendant must be present, except that the court, ~~with the written consent of the defendant and the approval of the prosecuting attorney,~~ may permit arraignment without the presence of the defendant, if a plea of not guilty is entered.

485

486

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488

489

(2) In a felony or misdemeanor arraignment or a felony initial appearance, a court may permit the remote presence and participation of a defendant ~~by remote contemporaneous video~~ provided the ~~use of video~~ appearance complies with the requirements set out in Rule 43(A)(2) of these rules. ~~This division shall not apply to any other felony proceeding.~~

490

[Existing language unaffected by the amendments is omitted to conserve space]

491 **RULE 12.1 Notice of Alibi**

492

493 Whenever a defendant in a criminal case proposes to offer testimony to establish an alibi
494 on his behalf, ~~he~~ the defendant shall, not less than ~~seven~~ thirty days before trial in a felony case
495 and fourteen days before trial in a misdemeanor case, file and serve upon the prosecuting attorney
496 a notice in writing of ~~he~~ the defendant's intention to claim alibi. The notice shall include specific
497 information as to the place at which the defendant claims to have been at the time of the alleged
498 offense. If the defendant fails to file such written notice, the court may exclude evidence offered
499 by the defendant for the purpose of proving such alibi, unless the court determines that in the
500 interest of justice such evidence should be admitted.

RULE 12.2. Notice of Self-Defense

501
502
503 Whenever a defendant in a criminal case proposes to offer evidence or argue self-defense,
504 defense of another, or defense of that person's residence, the defendant shall, not less than **thirty**
505 **days before trial in a felony case and** fourteen days before trial **in a misdemeanor case,** give
506 notice in writing of such intent. The notice shall include specific information as to any prior
507 incidents or circumstances upon which defendant intends to offer evidence related to conduct of
508 the alleged victim, and the names and addresses of any witnesses defendant may call at trial to
509 offer testimony related to the defense. If the defendant fails to file such written notice, the court
510 may exclude evidence offered by the defendant related to the defense, unless the court
511 determines that in the interest of justice such evidence should be admitted.

512
513
514 Proposed Staff Note (July 1, 2022)

515
516 In 2019, the General Assembly amended R.C. 2901.05(B)(1) to shift the burden of proof in a self-
517 defense case from the defendant to the prosecution. If there is evidence presented by the defense that
518 tends to support that the defendant acted in self-defense, defense of another, or defense of the person's
519 residence, the prosecution must prove beyond a reasonable doubt that the defendant did not act in self-
520 defense. This rule was added in response to that change in the law.

521 **RULE 29. Motion for Acquittal**

522

523 **[Existing language unaffected by the amendments is omitted to conserve space]**

524

525 **(C) Motion after verdict or discharge of jury.** If a jury returns a verdict of guilty or
526 is discharged without having returned a verdict, a motion for judgment of acquittal may be made
527 or renewed within fourteen days after the jury is discharged or within such further time as the court
528 may fix during the fourteen day period. If a verdict of guilty is returned, the court may on such
529 motion set aside the verdict and enter judgment of acquittal. If the evidence shows the defendant
530 is not guilty of the degree of crime for which the defendant was convicted, but guilty of a lesser
531 degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding
532 accordingly and shall pass sentence on such verdict or finding as modified. If no verdict is
533 returned, the court may enter judgment of acquittal. It shall not be a prerequisite to the making of
534 such motion that a similar motion has been made prior to the submission of the case to the jury.

535 **RULE 33. New Trial**

536

537 **(A) Grounds.** A new trial may be granted on motion of the defendant for any of the
538 following causes affecting materially ~~his~~ the defendant's substantial rights:

539

540 (1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of
541 discretion by the court, because of which the defendant was prevented from having a fair trial;

542

543 (2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;

544

545 (3) Accident or surprise which ordinary prudence could not have guarded against;

546

547 (4) That the verdict is contrary to law. ~~If the evidence shows the defendant is not guilty
548 of the degree of crime for which he was convicted, but guilty of a lesser degree thereof, or of a
549 lesser crime included therein, the court may modify the verdict or finding accordingly, without
550 granting or ordering a new trial, and shall pass sentence on such verdict or finding as modified;~~

551

552 (5) Error of law occurring at the trial;

553

554 (6) When new evidence material to the defense is discovered which the defendant
555 could not with reasonable diligence have discovered and produced at the trial. When a motion for
556 a new trial is made upon the ground of newly discovered evidence, the defendant must produce at
557 the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such
558 evidence is expected to be given, and if time is required by the defendant to procure such affidavits,
559 the court may postpone the hearing of the motion for such length of time as is reasonable under all
560 the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence
561 to impeach the affidavits of such witnesses.

562

563 **[Existing language unaffected by the amendments is omitted to conserve space]**

564 **RULE 40. Taking Testimony**

565

566 (A) In open court. Except as provided in division (B) of this rule, at trial or hearing,
567 the witnesses' testimony shall be taken in open court.

568

569 (B) Remote testimony.

570

571 (1) The court may permit the remote presence and participation of a witness, including
572 that of a defendant, for any proceeding if all of the following apply:

573

574 ~~(1)(a)~~ The court gives appropriate notice to all the parties;

575

576 ~~(2)(b)~~ The court finds that the remote appearance of the witness is based on important
577 state interests, public policies, or necessities of the case.

578

579 ~~(3)(c)~~ The witness is administered the oath or affirmation using live two-way video and
580 audio conference technology that allows the person authorized to administer the oath to verify the
581 identity of the witness at the time the oath is administered.

582

583 ~~(4)(d)~~ The witness is subject to full cross examination.

584

585 ~~(5)(e)~~ The video arrangements allow the witness to speak, and to be seen and heard by the
586 court, all parties, and the jury if applicable.

587

588 (2) Every witness testifying remotely, including those outside this state, in a trial or
589 other proceeding in open court in Ohio must affirm on the record that they have submitted to the
590 jurisdiction of the Ohio court for the purpose of enforcement of their oath or affirmation, including
591 any consideration of perjury charges arising from such testimony.

592

593

594 Proposed Staff Note (July 1, 2022)

595

596 The addition of (B)(2) to this rule was promulgated to ensure that Ohio has jurisdiction over those
597 who are testifying remotely during a criminal trial. Trial judges should consider the effect the
598 Confrontation Clause will have on a decision to allow remote testimony of an individual.

599 **RULE 43. Presence of the defendant**

600

601 **(A) Defendant's presence.**

602

603 (1) Except as provided in Rule 10 of these rules and ~~division~~ divisions (A)(2) and
604 (A)(3) of this rule, the defendant must be physically present at every stage of the criminal
605 proceeding and trial, including the impaneling of the jury, the return of the verdict, and the
606 imposition of sentence, except as otherwise provided by these rules. In all prosecutions, the
607 defendant's voluntary absence after the trial has been commenced in the defendant's presence shall
608 not prevent continuing the trial to and including the verdict. A corporation may appear by counsel
609 for all purposes.

610

611 (2) Notwithstanding the provisions of division (A)(1) of this rule, ~~in misdemeanor~~
612 ~~cases or in felony cases where a waiver has been obtained in accordance with division (A)(3) of~~
613 ~~this rule,~~ the court may permit the remote presence and participation of a defendant ~~by remote~~
614 ~~contemporaneous video for any proceeding~~ if all of the following apply:

615

(a) The court gives appropriate notice to all the parties;

617

(b) The video arrangements allow the defendant to hear and see the
618 proceeding;

619

(c) The video arrangements allow the defendant to speak, and to be seen and heard
620 by the court and all parties;

621

(d) The court makes provision to allow for private communication between the
622 defendant and counsel. The court shall inform the defendant on the record how to, at any
623 time, communicate privately with counsel. Counsel shall be afforded the opportunity to
624 speak to defendant privately ~~and in person~~. Counsel shall be permitted to appear with
625 defendant at the remote location if requested.

626

(e) The proceeding may involve sworn testimony that is subject to cross
627 examination, if counsel is present, participates and consents.

628

629 (3) ~~The~~ A court may conduct a trial by jury, a trial to the court, a sentencing proceeding
630 or other substantive proceeding with a defendant may waive, appearing remotely if the defendant
631 has waived in writing or orally on the record, the defendant's right to be physically present under
632 these rules with leave of and agreed to appear by remote presence in accordance with division
633 (A)(2) of this rule subject to the approval of the court.

634

635 **[Existing language unaffected by the amendments is omitted to conserve space]**

636

637

638 Proposed Staff Note (July 1, 2022)

639

640 Trial judges are encouraged to consider the effect the Confrontation Clause will have on allowing
641 remote testimony of any witness during a criminal proceeding.

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OHIO TRAFFIC RULES

RULE 1. Scope of Rules; Applicability; Authority and Construction

[Existing language unaffected by the amendments is omitted to conserve space]

(C) As used in these rules, any option to use live two-way video or audio technology shall not be construed to limit the power of a judge or magistrate to order that a party, attorney, or witness physically appear at a proceeding without the use of live two-way video or audio technology.

656 **RULE 2. Definitions**

657

658 As used in these rules:

659

660 (A) “Traffic case” means any proceeding, other than a proceeding ~~resulting from a~~
661 ~~felony indictment~~ that includes an alleged violation of Title 29 of the Revised Code, that involves
662 one or more alleged violations of a law, ordinance, or regulation governing the operation and use
663 of vehicles, conduct of pedestrians in relation to vehicles, or weight, dimension, loads or
664 equipment, or vehicles drawn or moved on highways and bridges. ~~“Traffic case” does not include~~
665 ~~any proceeding that results in a felony indictment.~~

666

667 **[Existing language unaffected by the amendments is omitted to conserve space]**

668

669 (K) “Appear,” “appearance,” or “in person” mean the physical or remote presence of
670 an individual.

671

672 (L) “Attendance” means the physical or remote presence of an individual.

673

674 (M) “Open court” includes a court proceeding open to the public in person or by
675 remote access to the live proceeding.

676

677 (N) “Personal” or “Personally” means the physical or remote presence of an
678 individual except as provided by Traf.R. 3(E)(1).

679

680 (O) “Present” means the physical or remote presence of an individual.

681

682 (P) “Remote presence” means the presence of a person who is using live two-way
683 video and/or audio technology.

684 **RULE 8. Arraignment**

685
686 **(A) Arraignment time.** Where practicable, every defendant shall be arraigned before
687 contested matters are taken up. Trial may be conducted immediately following arraignment.
688

689 **(B) Arraignment procedure.** Arraignment shall be conducted in open court and shall
690 consist of reading the complaint to the defendant, or stating to ~~him~~ the defendant the substance of
691 the charge, and calling on ~~him~~ the defendant to plead thereto. The defendant shall be given a copy
692 of the complaint, or shall acknowledge receipt thereof, before being called upon to plead and may
693 in open court waive the reading of the complaint.
694

695 **(C) Presence of defendant.** The defendant must be present at the arraignment, but the
696 court may allow the defendant to enter a not guilty plea at the clerk's office in person, or by
697 electronic transmission as approved by the court, by ~~his~~ the defendant's attorney in person, or by
698 ~~his~~ by the defendant's attorney by mail, within ~~four~~ ten days after receipt of the ticket by the
699 defendant.
700

701 **(D) Explanation of rights.** Before calling upon a defendant to plead at arraignment
702 the judge shall cause ~~him~~ the defendant to be informed and shall determine that the defendant
703 knows and understands:
704

705 (1) That ~~he~~ the defendant has a right to counsel and the right to a reasonable continuance
706 in the proceedings to secure counsel, and, pursuant to ~~Criminal Rule~~ Crim.R. 44, the right to have
707 counsel assigned without cost to ~~himself~~ defendant if ~~he~~ defendant is unable to employ counsel;
708

709 (2) That ~~he~~ defendant has a right to bail as provided in Rule 4;
710

711 (3) That ~~he~~ defendant need make no statement at any point in the proceeding; but any
712 statement made may be used against ~~him~~ the defendant;
713

714 (4) That ~~he~~ defendant has, where such right exists, a right to jury trial and that ~~he~~ the
715 defendant must, in petty offense cases, make a demand for a jury pursuant to ~~Criminal Rule~~
716 Crim.R 23;
717

718 (5) That if ~~he~~ defendant is convicted a record of the conviction will be sent to the
719 Bureau of Motor Vehicles and become part of ~~his~~ defendant's driving record.
720

721 **(E) Joint arraignment.** If there are multiple defendants to be arraigned, the judge may
722 advise, or cause them to be advised, of their rights by general announcement.

723 **RULE 11. Pleadings and Motions before Plea and Trial: Defenses and**
724 **Objections**

725
726 **[Existing language unaffected by the amendments is omitted to conserve space]**
727

728 **(B) Motions before plea and trial.** Any defense, objection, or request which is capable
729 of determination without the trial of the general issue may be raised before plea or trial by
730 motion.

731
732 (1) The following defenses and objections ~~must~~ may be raised before plea, but not later
733 than trial:

734 (a) Defenses and objections based on defects in the institution of the prosecution;

735
736 (b) Defenses and objections based on defects in the complaint other than failure to show
737 jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at
738 any time during the pendency of the proceeding.

739
740 (2) The following motions and requests must be made before trial:

741 (a) Motions to suppress evidence, including but not limited to identification testimony, on
742 the ground that it was illegally obtained;

743 (b) Requests and motions for discovery under Criminal Rule 16;

744 (c) Motions for severance of charges or defendants under Criminal Rule 14.

745
746 **(C) Motion date.** Pre-plea motions ~~shall~~ may be made before or at arraignment.
747 All pretrial motions, except as provided in Criminal Rule 16(M), shall be made within thirty-five
748 days after arraignment or seven days before trial, whichever is earlier. The court, in the interest
749 of justice, may extend the time for making pre-plea or pretrial motions.

750
751 **[Existing language unaffected by the amendments is omitted to conserve space]**
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756 **OHIO RULES OF EVIDENCE**

757 **RULE 101. Scope of Rules: Applicability; Privileges; Exceptions**

758 [Existing language unaffected by the amendments is omitted to conserve space]

760 (C) **Definitions.** As used in these rules,

761 (1) “Present” means the physical or remote presence of an individual.

762 (2) “Remote presence” means the presence of a person who is using live two-way video
763 and/or audio technology.

764 (D) **Exceptions.** These rules (other than with respect to privileges) do not apply in the
765 following situations:

766 (1) **Admissibility determinations.** Determinations prerequisite to rulings on the
767 admissibility of evidence when the issue is to be determined by the court under Evid.R. 104.

768 (2) **Grand jury.** Proceedings before grand juries.

769 (3) **Miscellaneous criminal proceedings.** Proceedings for extradition or rendition of
770 fugitives; sentencing; granting or revoking probation; proceedings with respect to community
771 control sanctions; issuance of warrants for arrest, criminal summonses and search warrants; and
772 proceedings with respect to release on bail or otherwise.

773 (4) **Contempt.** Contempt proceedings in which the court may act summarily.

774 (5) **Arbitration.** Proceedings for those mandatory arbitrations of civil cases
775 authorized by the rules of superintendence and governed by local rules of court.

776 (6) **Other rules.** Proceedings in which other rules prescribed by the Supreme Court
777 govern matters relating to evidence.

778 (7) **Special non-adversary statutory proceedings.** Special statutory proceedings of
779 a non-adversary nature in which these rules would by their nature be clearly inapplicable.

780 (8) **Small claims division.** Proceedings in the small claims division of a county or
781 municipal court.

782 (E) As used in these rules, any option to use live two-way video or audio technology
783 shall not be construed to limit the power of a judge or magistrate to order that a party, attorney, or
784 witness physically appear at a proceeding without the use of live two-way video or audio
785 technology.

800 **RULE 404. Character Evidence not Admissible to Prove Conduct; Exceptions;**
801 **Other Crimes, Wrongs, or Acts**

802
803 **[Existing language unaffected by the amendments is omitted to conserve space]**

804
805 **(B) Other crimes, wrongs or acts.**

806
807 **(1) Prohibited uses.** Evidence of ~~any other crimes~~ crime, wrongs, wrong or acts act is
808 not admissible to prove ~~the character of a person~~ person's character in order to show ~~action~~ that
809 on a particular occasion the person acted in conformity therewith accordance with the character.

810
811 **(2) Permitted uses; notice.** ~~It~~ This evidence may, ~~however,~~ be admissible for ~~other~~
812 purposes another purpose, such as ~~proof of~~ proving motive, opportunity, intent, preparation, plan,
813 knowledge, identity, ~~or~~ absence of mistake, or lack of accident. ~~In criminal cases,~~ The
814 proponent of evidence to be offered under this rule shall:

815
816 (a) provide reasonable notice in advance of trial, or during trial if the court excuses pretrial
817 notice on good cause shown, of the general nature of any such evidence if the proponent intends
818 to introduce at trial so that an opposing party may have a fair opportunity to meet it;

819
820 (b) articulate in the notice the permitted purpose for which the proponent intends to offer
821 the evidence, and the reasoning that supports the purpose; and

822
823 (c) do so in writing in advance of trial, or in any form during trial if the court, for good
824 cause, excuses lack of pretrial notice.

825
826
827 Proposed Staff Note (July 1, 2022)

828
829 Ohio Evid.R. 404(B) is amended to more closely mirror changes made in December 2020 to
830 Fed.R.Evid. 404(b). As amended, Ohio Evid.R.404(B) includes the "written notice" and "permitted
831 purpose" elements of newly amended Fed.R.Evid. 404(b), but unlike Fed.R.Evid. 404(b), applies to both
832 sides and in both criminal and civil actions.

833 **RULE 502. Attorney-Client Privilege and Work Product; Limitations on Waiver**

834 The following provisions apply, in the circumstances set out, to disclosure of a
835 communication or other information covered by the attorney-client privilege or work-product
836 protection.

837
838 **(A) Disclosure made in an Ohio proceeding or to an Ohio office or agency; Scope**
839 **of waiver.** When a disclosure is made in an Ohio proceeding or to an office or agency of an Ohio
840 state, county, or local government that waives the attorney-client privilege or work-product
841 protection, the waiver extends to an undisclosed communication or information in any proceeding
842 only if:

843
844 (1) the waiver is intentional;

845
846 (2) the disclosed and undisclosed communications or information concern the same
847 subject matter; and

848
849 (3) they ought in fairness to be considered together.

850
851 **(B) Inadvertent Disclosure.** When made in an Ohio proceeding or to an office or
852 agency of an Ohio state, county, or local government, the disclosure does not operate as a waiver
853 in any proceeding if:

854
855 (1) the disclosure is inadvertent;

856
857 (2) the holder of the privilege or protection took reasonable steps to prevent disclosure;
858 and

859
860 (3) the holder promptly took reasonable steps to rectify the error, including (if
861 applicable) following Ohio Civ.R. 26(B)(8)(b).

862
863 **(C) Disclosure Made in Another Jurisdiction.** When the disclosure is made in a
864 proceeding in a federal court or the court of another state and is not the subject of a court order
865 concerning waiver, the disclosure does not operate as a waiver in an Ohio proceeding if the
866 disclosure:

867
868 (1) would not be a waiver under this rule if it had been made in an Ohio proceeding; or

869
870 (2) is not a waiver under the law governing the state or federal proceeding where the
871 disclosure occurred.

872
873 **(D) Controlling Effect of a Court Order.** An Ohio court may order that the privilege
874 or protection is not waived by disclosure connected with the litigation pending before the court, in
875 which event the disclosure is also not a waiver in any other proceeding.

876

877 (E) Controlling effect of a party agreement. An agreement on the effect of a
878 disclosure in an Ohio proceeding is binding only on the parties to the agreement, unless it is
879 incorporated into a court order.

880
881 (F) Definitions. In this rule:

882
883 (1) "attorney-client privilege" means the protection that applicable law provides for
884 confidential attorney-client communications; and

885
886 (2) "work-product protection" means the protection that applicable law provides for
887 tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

888
889

890 Proposed Staff Note (July 1, 2022)

891
892 Rule 502 is modeled closely on Fed.R.Evid. 502 adopted by Congress in 2008, and comparable
893 provisions adopted in other states. It seeks to harmonize practice across jurisdictions, particularly in dealing
894 with electronically stored information.

895
896 The rule does not alter state or federal law on whether a communication or information is protected
897 under attorney-client privilege or work-product immunity as an initial matter. Ohio previously adopted a
898 "claw-back" provision in Civ.R. 26(B)(8)(b), but that rule does not control whether disclosure constitutes a
899 waiver in that or another proceeding. This rule fills the gap, providing a predictable and uniform set of
900 standards under which parties can determine the consequences of disclosure.

901 **RULE 606. Competency of Juror as Witness**

902 [Existing language unaffected by the amendments is omitted to conserve space]

903
904
905 **(B) Inquiry into validity of verdict or indictment.**

906
907 **(1) Prohibited Testimony or other Evidence.** Upon an inquiry into the validity of a
908 verdict or indictment, a juror may not testify as to any matter or statement occurring during the
909 course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or
910 emotions as influencing the juror to assent to or dissent from the verdict or indictment or
911 concerning the juror's mental processes in connection therewith. ~~A juror may testify on the~~
912 ~~question whether extraneous prejudicial information was improperly brought to the jury's attention~~
913 ~~or whether any outside influence was improperly brought to bear on any juror, only after some~~
914 ~~outside evidence of that act or event has been presented. However a juror may testify without the~~
915 ~~presentation of any outside evidence concerning any threat, any bribe, any attempted threat or~~
916 ~~bribe, or any improprieties of any officer of the court. A juror's affidavit or evidence of any~~
917 ~~statement by the juror concerning a matter about which the juror would be precluded from~~
918 ~~testifying will not be received by the court for these purposes.~~

919
920 **(2) Exceptions.** A juror may testify about whether:

- 921
922 (a) extraneous prejudicial information was improperly brought to the jury's attention;
923
924 (b) any outside influence was improperly brought to bear on any juror; or,
925
926 (c) any threat, any bribe, any attempted threat or bribe, or any improprieties of any
927 officer of the court occurred.

928
929
930 Proposed Staff Note (July 1, 2022)

931
932 **Evid.R. 606(B)**

933
934 Ohio Evid.R. 606(B) is being amended to more closely mirror Fed.Evid.R. 606(B), and is intended
935 to address constitutional challenges to the former rule as being violative of a criminal defendant's
936 constitutional rights because it infringed upon the defendant's fair trial rights.

937 **RULE 801. Definitions**

938

939 The following definitions apply under this article:

940

941 **[Existing language unaffected by the amendments is omitted to conserve space]**

942

943 **(C) Hearsay.** "Hearsay" is a statement, other than one made by the declarant while
944 testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted in the
945 statement.

946

947 **[Existing language unaffected by the amendments is omitted to conserve space]**

948

949

950 Proposed Staff Note (July 1, 2022)

951

952 **Evid.R. 801(C)**

953

954 For clarity purposes, Ohio Evid.R. 801(C) is being amended with the addition of the words "in the
955 statement" at the end of the standard hearsay definition.

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RULE 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

[Existing language unaffected by the amendments is omitted to conserve space]

(16) Statements in ancient documents. Statements in a document ~~in existence twenty years or more~~ that was prepared before January 1, 1998, and whose authenticity of which is established.

[Existing language unaffected by the amendments is omitted to conserve space]

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OHIO RULES OF JUVENILE PROCEDURE

RULE 1. Scope of Rules: Applicability; Construction; Exceptions

[Existing language unaffected by the amendments is omitted to conserve space]

(D) As used in these rules, any option to use live two-way video or audio technology shall not be construed to limit the power of a judge or magistrate to order that a party, attorney, or witness physically appear at a proceeding without the use of live two-way video or audio technology.

978 **RULE 2. Definitions**

979 As used in these rules:

980 (A) "Abused child" has the same meaning as in section 2151.031 of the Revised Code.

981
982 (B) "Adjudicatory hearing" means a hearing to determine whether a child is a juvenile
983 traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the
984 jurisdiction of the court.
985

986
987 (C) "Agreement for temporary custody" means a voluntary agreement that is authorized
988 by section 5103.15 of the Revised Code and transfers the temporary custody of a child to a public
989 children services agency or a private child placing agency.
990

991 (D) "Appear," "appearance," or "in person" mean the physical or remote presence of
992 an individual.
993

994 (E) "Attendance" means the physical or remote presence of an individual.
995

996 (F) "Child" has the same meaning as in sections 2151.011 and 2152.02 of the Revised
997 Code.
998

999
1000 ~~(E)~~(G) "Chronic truant" has the same meaning as in section 2151.011 of the Revised Code.
1001

1002 ~~(E)~~(H) "Complaint" means the legal document that sets forth the allegations that form the
1003 basis for juvenile court jurisdiction.
1004

1005 ~~(G)~~(I) "Court proceeding" means all action taken by a court from the earlier of (1) the time
1006 a complaint is filed and (2) the time a person first appears before an officer of a juvenile court until
1007 the court relinquishes jurisdiction over such child.
1008

1009 ~~(H)~~(J) "Custodian" means a person who has legal custody of a child or a public children's
1010 services agency or private child-placing agency that has permanent, temporary, or legal custody
1011 of a child.
1012

1013 ~~(I)~~(K) "Delinquent child" has the same meaning as in section 2152.02 of the Revised
1014 Code.
1015

1016 ~~(J)~~(L) "Dependent child" has the same meaning as in section 2151.04 of the Revised Code.
1017

1018 ~~(K)~~(M) "Detention" means the temporary care of children in restricted facilities pending
1019 court adjudication or disposition.
1020

1021 ~~(L)~~(N) "Detention hearing" means a hearing to determine whether a child shall be held in
1022 detention or shelter care prior to or pending execution of a final dispositional order.
1023

1024 ~~(M)~~(O) "Dispositional hearing" means a hearing to determine what action shall be taken
1025 concerning a child who is within the jurisdiction of the court.

1026
1027 ~~(N)~~(P) "Guardian" means a person, association, or corporation that is granted authority by
1028 a probate court pursuant to Chapter 2111 of the Revised Code to exercise parental rights over a
1029 child to the extent provided in the court's order and subject to the residual parental rights of the
1030 child's parents.

1031
1032 ~~(O)~~(Q) "Guardian ad litem" means a person appointed to protect the interests of a party in
1033 a juvenile court proceeding.

1034
1035 ~~(P)~~(R) "Habitual truant" has the same meaning as in section 2151.011 of the Revised Code.

1036
1037 ~~(Q)~~(S) "Hearing" means any portion of a juvenile court proceeding before the court,
1038 whether summary in nature or by examination of witnesses.

1039
1040 ~~(R)~~(T) ~~"In person" means the physical or remote presence of an individual.~~

1041
1042 ~~(U)~~ (U) "Indigent person" means a person who, at the time need is determined, is unable by
1043 reason of lack of property or income to provide for full payment of legal counsel and all other
1044 necessary expenses of representation.

1045
1046 ~~(S)~~(U) "Juvenile court" means a division of the court of common pleas, or a juvenile court
1047 separately and independently created, that has jurisdiction under Chapters 2151 and 2152 of the
1048 Revised Code.

1049
1050 ~~(T)~~(V) "Juvenile judge" means a judge of a court having jurisdiction under Chapters 2151
1051 and 2152 of the Revised Code.

1052
1053 ~~(U)~~(W) "Juvenile traffic offender" has the same meaning as in section 2151.021 of the
1054 Revised Code.

1055
1056 ~~(V)~~(X) "Legal custody" means a legal status that vests in the custodian the right to have
1057 physical care and control of the child and to determine where and with whom the child shall live,
1058 and the right and duty to protect, train, and discipline the child and provide the child with food,
1059 shelter, education, and medical care, all subject to any residual parental rights, privileges, and
1060 responsibilities. An individual granted legal custody shall exercise the rights and responsibilities
1061 personally unless otherwise authorized by any section of the Revised Code or by the court.

1062
1063 ~~(W)~~(Y) "Mental examination" means an examination by a psychiatrist or psychologist.

1064
1065 ~~(X)~~(Z) "Neglected child" has the same meaning as in section 2151.03 of the Revised Code.

1066
1067 ~~(Y)~~(AA) "Open court" includes a court proceeding open to the public in person or by
1068 remote access to the live proceeding.

1069

1070 (BB) "Party" means a child who is the subject of a juvenile court proceeding, the child's
1071 spouse, if any, the child's parent or parents, or if the parent of a child is a child, the parent of that
1072 parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any
1073 other person specifically designated by the court.

1074
1075 ~~(Z)~~(CC) "Permanent custody" means a legal status that vests in a public children's
1076 services agency or a private child-placing agency, all parental rights, duties, and obligations,
1077 including the right to consent to adoption, and divests the natural parents or adoptive parents of
1078 any and all parental rights, privileges, and obligations, including all residual rights and obligations.

1079
1080 ~~(AA)~~(DD) "Permanent surrender" means the act of the parents or, if a child has only
1081 one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the
1082 Revised Code, to transfer the permanent custody of the child to a public children's services agency
1083 or a private child-placing agency.

1084
1085 ~~(BB)~~(EE) "Person" includes an individual, association, corporation, or partnership and
1086 the state or any of its political subdivisions, departments, or agencies.

1087
1088 ~~(CC)~~(FF) "Personally" means the physical or remote presence of an individual.

1089
1090 (GG) "Physical examination" means an examination by a physician.

1091
1092 ~~(DD)~~(HH) "Planned permanent living arrangement" means an order of a juvenile court
1093 pursuant to which both of the following apply:

1094
1095 (1) The court gives legal custody of a child to a public children's services agency or a
1096 private child-placing agency without the termination of parental rights;

1097
1098 (2) The order permits the agency to make an appropriate placement of the child and
1099 to enter into a written planned permanent living arrangement agreement with a foster care
1100 provider or with another person or agency with whom the child is placed.

1101
1102 ~~(EE)~~(II) "Private child-placing agency" means any association, as defined in
1103 section 5103.02 of the Revised Code that is certified pursuant to sections 5103.03 to 5103.05 of
1104 the Revised Code to accept temporary, permanent, or legal custody of children and place the
1105 children for either foster care or adoption.

1106
1107 ~~(FF)~~(JJ) "Public children's services agency" means a children's services board or a
1108 county department of human services that has assumed the administration of the children's
1109 services function prescribed by Chapter 5153 of the Revised Code.

1110
1111 ~~(GG)~~(KK) "Remote presence" means the presence of a person who is using live two-
1112 way video and/or audio technology.

1113
1114 (LL) "Removal action" means a statutory action filed by the superintendent of a school
1115 district for the removal of a child in an out-of-county foster home placement.

1116
1117 ~~(HH)~~(MM) "Residence or legal settlement" means a location as defined by section
1118 2151.06 of the Revised Code.

1119
1120 ~~(H)~~(NN) "Residual parental rights, privileges, and responsibilities" means those
1121 rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal
1122 custody of the child, including but not limited to the privilege of reasonable visitation, consent to
1123 adoption, the privilege to determine the child's religious affiliation, and the responsibility for
1124 support.

1125
1126 ~~(JJ)~~(OO) "Rule of court" means a rule promulgated by the Supreme Court or a rule
1127 concerning local practice adopted by another court that is not inconsistent with the rules
1128 promulgated by the Supreme Court and that is filed with the Supreme Court.

1129
1130 ~~(KK)~~(PP) "Serious youthful offender" means a child eligible for sentencing as
1131 described in sections 2152.11 and 2152.13 of the Revised Code.

1132
1133 ~~(LL)~~(QQ) "Serious youthful offender proceedings" means proceedings after a
1134 probable cause determination that a child is eligible for sentencing as described in sections 2152.11
1135 and 2152.13 of the Revised Code. Serious youthful offender proceedings cease to be serious
1136 youthful offender proceedings once a child has been determined by the trier of fact not to be a
1137 serious youthful offender or the juvenile judge has determined not to impose a serious youthful
1138 offender disposition on a child eligible for discretionary serious youthful offender sentencing.

1139
1140 ~~(MM)~~(RR) "Shelter care" means the temporary care of children in physically
1141 unrestricted facilities, pending court adjudication or disposition.

1142
1143 ~~(NN)~~(SS) "Social history" means the personal and family history of a child or any
1144 other party to a juvenile proceeding and may include the prior record of the person with the juvenile
1145 court or any other court.

1146
1147 ~~(OO)~~(TT) "Temporary custody" means legal custody of a child who is removed from
1148 the child's home, which custody may be terminated at any time at the discretion of the court or, if
1149 the legal custody is granted in an agreement for temporary custody, by the person or persons who
1150 executed the agreement.

1151
1152 ~~(PP)~~(UU) "Unruly child" has the same meaning as in section 2151.022 of the Revised
1153 Code.

1154
1155 ~~(QQ)~~(VV) "Ward of court" means a child over whom the court assumes continuing
1156 jurisdiction.

1157 **RULE 7. Detention and Shelter Care**

1158
1159 [Existing language unaffected by the amendments is omitted to conserve space]

1160
1161 **(F) Detention hearing.**

1162
1163 **(1) Hearing: time; notice.** When a child has been admitted to detention or shelter
1164 care, a detention hearing shall be held promptly, not later than seventy-two hours after the child is
1165 placed in detention or shelter care or the next court day, whichever is earlier, to determine whether
1166 detention or shelter care is required. Reasonable oral or written notice of the time, place, and
1167 purpose of the detention hearing shall be given to the child and to the parents, guardian, or other
1168 custodian, if that person or those persons can be found.

1169
1170 **(2) Hearing: advisement of rights.** Prior to the hearing, the court shall inform the
1171 parties of the right to counsel and to appointed counsel if indigent and the child's right to remain
1172 silent with respect to any allegation of a juvenile traffic offense, delinquency, or unruliness.

1173
1174 **(3) Hearing procedure.** The court may consider any evidence, including the reports
1175 filed by the person who brought the child to the facility and the admissions officer, without regard
1176 to formal rules of evidence. Unless it appears from the hearing that the child's detention or shelter
1177 care is required under division (A) of this rule, and except as provided in division (F)(4) of this
1178 rule, the court shall order the child's release to a parent, guardian, or custodian. Whenever abuse,
1179 neglect, or dependency is alleged, the court shall determine whether there are any appropriate
1180 relatives of the child who are willing to be temporary custodians and, if so, appoint an appropriate
1181 relative as the temporary custodian of the child. The court shall make a reasonable efforts
1182 determination in accordance with Juv. R. 27(B)(1).

1183
1184 **(4) Release of child; serious youthful offender.** With respect to a child alleged to be
1185 or adjudicated a serious youthful offender, the juvenile court shall set the terms and conditions for
1186 release of the child in accordance with Crim.R. 46.

1187
1188 [Existing language unaffected by the amendments is omitted to conserve space]

1189 **RULE 16. Process: Service**
1190

1191 **(A) Summons: service, return.** Except as otherwise provided in these rules, summons
1192 shall be served as provided in Civil Rules 4(A), (C) and (D), 4.1, 4.2, 4.3, 4.5 and 4.6. The
1193 summons shall direct the party served to appear at a stated time and place. Where service is by
1194 certified mail, the time shall not be less than seven days after the date of mailing.
1195

1196 Except as otherwise provided in this rule, when the residence of a party is unknown and
1197 cannot be ascertained with reasonable diligence, service shall be made by publication. Service by
1198 publication upon a non-custodial parent is not required in delinquent child or unruly child cases
1199 when the person alleged to have legal custody of the child has been served with summons pursuant
1200 to this rule, but the court may not enter any order or judgment against any person who has not been
1201 served with process or served by publication unless that person appears. Before service by
1202 publication can be made, an affidavit of a party or party's counsel shall be filed with the court. The
1203 affidavit shall aver that service of summons cannot be made because the residence of the person is
1204 unknown to the affiant and cannot be ascertained with reasonable diligence and shall set forth the
1205 last known address of the party to be served.
1206

1207 Service by publication shall be made by newspaper publication, by posting and mail, or by
1208 a combination of these methods. The court, by local rule, shall determine which method or
1209 methods of publication shall be used. If service by publication is made by newspaper publication,
1210 upon the filing of the affidavit, the clerk shall serve notice by publication in a newspaper of general
1211 circulation in the county in which the complaint is filed. If no newspaper is published in that
1212 county, then publication shall be in a newspaper published in an adjoining county. The publication
1213 shall contain the name and address of the court, the case number, the name of the first party on
1214 each side, and the name and last known address, if any, of the person or persons whose residence
1215 is unknown. The publication shall also contain a summary statement of the object of the complaint
1216 and shall notify the person to be served that the person is required to appear at the time and place
1217 stated. The time stated shall not be less than seven days after the date of publication. The
1218 publication shall be published once and service shall be complete on the date of publication.
1219

1220 After the publication, the publisher or the publisher's agent shall file with the court an
1221 affidavit showing the fact of publication together with a copy of the notice of publication. The
1222 affidavit and copy of the notice shall constitute proof of service.
1223

1224 If service by publication is made by posting and mail, upon the filing of the affidavit, the
1225 clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse
1226 in which the division of the common pleas court exercising jurisdiction over the complaint is
1227 located and in additional public places in the county that have been designated by local rule for
1228 the posting of notices pursuant to this rule. The number of additional public places to be designated
1229 shall be either two places or the number of state representative districts that are contained wholly
1230 or partly in the county in which the courthouse is located, whichever is greater. Alternatively, the
1231 postings may be made on the website of the clerk of courts, if available, in a section to be
1232 designated for such purpose. The notice shall contain the same information required to be
1233 contained in a newspaper publication. The notice shall be posted in the required locations for
1234 seven consecutive days. The clerk also shall cause the summons and accompanying pleadings to

1235 be mailed by ordinary mail, address correction requested, to the last known address of the party to
1236 be served. The clerk shall obtain a certificate of mailing from the United States Postal Service. If
1237 the clerk is notified of a corrected or forwarding address of the party to be served within the seven
1238 day period that notice is posted pursuant to this rule, the clerk shall cause the summons and
1239 accompanying pleadings to be mailed to the corrected or forwarding address. The clerk shall note
1240 the name, address, and date of each mailing in the docket.

1241
1242 After the seven days of posting, the clerk shall note on the docket where and when notice
1243 was posted. Service shall be complete upon the entry of posting.

1244
1245 The clerk shall forthwith enter on the appearance docket ~~the fact of~~ delivery to the United
1246 States Postal Service for mailing, or ~~the fact of~~ delivery to a specified commercial carrier service
1247 for delivery, ~~or the fact of delivery by electronic service was sent~~ and make a similar entry when
1248 the return receipt is received. If the return shows failure of delivery, the clerk shall forthwith notify
1249 the attorney of record or, if there is no attorney of record, the party at whose instance process was
1250 issued and enter the ~~fact and~~ method of notification on the appearance docket. The clerk shall file
1251 the return receipt, or returned envelope, ~~or evidence of electronic delivery~~ in the records of the
1252 action.

1253
1254 **[Existing language unaffected by the amendments is omitted to conserve space]**

1255 **RULE 20. Service and Filing of Papers Documents When Required Subsequent to**
1256 **Filing of Complaint.**

1257
1258 (A) **Service: when required.** Written notices, requests for discovery, designation of
1259 record on appeal and written motions, other than those which are heard ex parte, and similar ~~papers~~
1260 documents shall be served upon each of the parties.

1261
1262 (B) **Service: how made; proof of service.** Whenever under these rules or by an order
1263 of the court service is required or permitted to be made upon a party represented by an attorney,
1264 the service shall be made upon the attorney unless service is ordered by the court upon the party.
1265 Service upon the attorney or upon the party, and proof of service, shall be made in the manner
1266 provided in Civ.-R. 5(B). ~~Papers Documents~~ filed with the court shall not be considered until proof
1267 of service is endorsed thereon or separately filed.

1268
1269 (C) **Service in general.** A document is served under this rule by:

1270
1271 ~~(a)(1)~~ handing it to the person;

1272
1273 ~~(b)(2)~~ leaving it;

1274
1275 ~~(i)(a)~~ at the person's office with a clerk or other person in charge or, if no one is in charge,
1276 in a conspicuous place in the office; or

1277
1278 ~~(ii)(b)~~ if the person has no office or the office is closed, at the person's dwelling or usual
1279 place of abode with someone of suitable age and discretion who resides there;

1280
1281 ~~(e)(3)~~ mailing it to the person's last known address by United States mail, in which event
1282 service is complete upon mailing;

1283
1284 ~~(d)(4)~~ delivering it to a commercial carrier service for delivery to the person's last known
1285 address within three calendar days, in which event service is complete upon delivery to the carrier;

1286
1287 ~~(e)(5)~~ leaving it with the clerk of court if the person has no known address; or

1288
1289 ~~(f)(6)~~ sending it by electronic means to a facsimile number, or e-mail address, ~~or other~~
1290 electronic media platforms as designated by the attorney or the party provided in accordance with
1291 Civ.-R. 11 by the attorney or party to be served, or, if mutually agreed in writing by all counsel
1292 and unrepresented parties, any other electronic media platform(s), in which event service is
1293 complete upon transmission, but is not effective if the serving party learns that it did not reach the
1294 person served.

1295
1296 (D) **Using court facilities.** If a local rule so authorizes, a party may use the court's
1297 transmission facilities to make service under Civ.-R. 5(B)(2)(f).

1298
1299 (E) **Proof of service.** The served document shall be accompanied by a completed proof
1300 of service which shall state the date and manner of service, specifically identify the division of

1301 Civ.R. 5(B)(2) by which the service was made, and be signed in accordance with Civ.-R. 11.
1302 Documents filed with the court shall not be considered until proof of service is endorsed thereon
1303 or separately filed.

1304
1305 **(F) Filing.** All ~~papers~~ documents required to be served shall be filed with the court
1306 within three days after service. Discovery requests and responses shall not be filed until they are
1307 used in the proceeding or the court orders filing.

1308
1309 **~~(D)~~(G) Filing with the court defined.** Filing with the court shall be as defined by Civ.R.
1310 5(E).

1311 **RULE 24. Discovery**

1312
1313 (A) **Request for discovery.** Upon written request sent either by mail or remotely
1314 through a mutually agreed upon electronic platform, each party of whom discovery is requested
1315 shall-, to the extent not privileged or otherwise prohibited from disclosure by law, produce
1316 promptly for inspection, copying, or photographing the following information, documents, and
1317 ~~material~~ materials in that the party's custody, control, or possession:

1318
1319 (1) The names and last known addresses of each witness, telephone number and e-mail
1320 address of each individual likely to have discoverable information, along with the subjects of that
1321 information that forms the basis of the charge or defense or that the disclosing party may use to
1322 support its claims and defenses, unless the use would be solely for impeachment to the occurrence
1323 that forms the basis of the charge or defense;

1324
1325 (2) Copies of any written statements made by any party or witness;

1326
1327 (3) Transcriptions, recordings, and summaries of any oral statements of any party or
1328 witness, except the work product of counsel;

1329
1330 (4) Any scientific or other reports that a party intends to introduce at the hearing or that
1331 pertain to physical evidence that a party intends to introduce;

1332
1333 (5) Photographs and any physical evidence which a party intends to introduce at the
1334 hearing;

1335
1336 (6) Except in delinquency and unruly child proceedings, other evidence favorable to
1337 the requesting party and relevant to the subject matter involved in the pending action. In
1338 delinquency and unruly child proceedings, the prosecuting attorney shall disclose to respondent's
1339 counsel all evidence, known or that may become known to the prosecuting attorney, favorable to
1340 the respondent and material either to guilt or punishment;

1341
1342 (7) Parties may obtain discovery, ~~either in person or remotely through a mutually~~
1343 ~~agreed upon platform~~, by one or more of the following methods: deposition upon oral examination
1344 or written questions; written interrogatories; production of documents, electronically stored
1345 information, or things ~~or~~; permission to enter upon land or other property, for inspection and other
1346 purposes; physical and mental examinations; and requests for admission. Unless the court orders
1347 otherwise, the frequency of use of these methods is not limited.

1348 [Existing language unaffected by the amendments is omitted to conserve space]

1349
1350 Proposed Staff Note (July 1, 2022)

1351
1352
1353 Regarding these amendments, the court retains discretion to determine the manner in which
1354 discovery will be conducted, except as otherwise limited by statute or other controlling Rules of Procedure.
1355

1356 **RULE 25. Depositions, generally; Depositions by Telephone or Other Remote**
1357 **Means**

1358
1359 (A) Depositions in the following matters shall be governed by the Rules of Civil
1360 Procedure:

1361
1362 (1) Those taken in parentage actions and original actions to determine custody or the
1363 allocation of parental rights and responsibilities to which the State of Ohio is not a party;

1364
1365 (2) Those taken in any post-dispositional matters to which neither the State of Ohio nor
1366 any public child protective services agency is a party.

1367
1368 (3) The parties may stipulate or the court may upon motion order that a deposition be
1369 taken with one or more participants in remote presence. For purposes of this rule, a deposition
1370 with participants in remote presence is considered to be taken in the jurisdiction in which the case
1371 is pending.

1372
1373 (B) Depositions shall only be taken with leave of court in delinquency, unruly, juvenile
1374 traffic offender, abuse, neglect, and dependency actions and all other juvenile court proceedings
1375 not specified in division (A). Except as provided in division (A)(2), depositions taken under this
1376 division ~~shall~~ may be either in person or by remote presence using live two-way video and audio
1377 technology and only be taken for the purpose to preserve testimony when it appears probable that
1378 a prospective witness will be unable to attend or will be prevented from attending a hearing, and
1379 only if it further appears that the testimony is material and that it is necessary to take the deposition
1380 in order to prevent a miscarriage of justice. Depositions taken under this division shall be taken
1381 upon such terms and conditions and in such manner as the court may fix.

1382
1383 In a delinquency proceeding, the court may permit the remote presence and participation
1384 of a child in a deposition if the child has waived in writing or orally on the record ~~his~~ the right to
1385 be physically present. The child may also waive ~~his~~ the right to be both physically present and
1386 present by remote technology provided the child waives ~~his presence~~ the right in writing and in
1387 open court when represented by counsel and is fully advised of ~~his~~ the right to attend by the court.

1388 **RULE 27. Hearings: General**

1389
1390 **(A) General provisions.** Unless otherwise stated in this rule, the juvenile court may
1391 conduct its hearings in an informal manner and may adjourn its hearings from time to time.

1392
1393 **(1)** Except as As provided in this rule, a party must be physically present at every
1394 stage of all juvenile proceedings except when the court, in its discretion, excuses the attendance
1395 of a party, juvenile, or parent to address administrative matters, discovery, scheduling, and
1396 pretrial hearing for good cause.

1397
1398 **(2)** Notwithstanding, the court may permit the remote presence and participation of a
1399 party by remote contemporaneous video if all of the following apply:

1400
1401 **(a)** The court gives appropriate notice to all the parties;

1402
1403 **(b)** The video arrangements allow the party to hear and see the proceeding;

1404
1405 **(c)** The video arrangements allow the party to speak, and to be seen and heard by the
1406 court and all parties;

1407
1408 **(d)** The court makes provision to allow for private communication between a party and
1409 counsel. The court shall inform the party on the record how to, at any time, communicate
1410 privately with counsel. Counsel shall be afforded the opportunity to speak to the party privately
1411 and in person. Counsel shall be permitted to appear with the party at the remote location if
1412 requested.

1413
1414 **(e)** The proceeding may involve sworn testimony that is subject to cross examination,
1415 if counsel is present, participates and consents.

1416
1417 The court may excuse the attendance of the child at the hearing in neglect, dependency, or
1418 abuse cases.

1419
1420 ~~(1)~~**(3) Public access to hearings.** In serious youthful offender proceedings, hearings shall
1421 be open to the public. In all other proceedings, the court may exclude the general public from any
1422 hearing, but may not exclude either of the following:

1423
1424 **(a)** persons with a direct interest in the case;

1425
1426 **(b)** persons who demonstrate, at a hearing, a countervailing right to be present.

1427
1428 ~~(2)~~**(4) Separation of juvenile and adult cases.** Cases involving children shall be heard
1429 separate and apart from the trial of cases against adults, except for cases involving chronic or
1430 habitual truancy.

1431
1432 ~~(3)~~**(5) Trials; Jury trials.** The court shall hear and determine all cases of children and
1433 adult criminal cases without a jury, except for adult criminal cases where the defendant has filed a

1434 jury demand or the adjudication of a serious youthful offender complaint, indictment, or
1435 information in which trial by jury has not been waived.

1436
1437
1438

(6) Remote Trial.

1439 (a) No later than the deadline set in a case scheduling order or ~~twenty-one~~ thirty days
1440 prior to a scheduled trial a party may request trial be conducted remotely, in whole or in part, using
1441 live two-way video and audio conference technology. A party making such a request shall indicate
1442 in the request whether any special accommodations are anticipated or required.

1443

1444 (b) The court, in its discretion, shall determine the manner in which the trial will be
1445 conducted including whether it will be conducted remotely, in whole or in part. Unless there is
1446 unanimous agreement by all parties, the court may not require that a trial by jury be conducted
1447 without the jury physically present in the courtroom.

1448

1449 **(7) Number of Jurors.** In felony cases, juries shall consist of twelve. If an adult is
1450 charged with a misdemeanor, the jury shall consist of eight. If a felony and a misdemeanor
1451 involving a child are joined for trial, the jury shall consist of twelve.

1452

1453 **[Existing language unaffected by the amendments is omitted to conserve space]**

1454 **RULE 29. Adjudicatory Hearing**
1455

1456 **(A) Scheduling the hearing.** The date for the adjudicatory hearing shall be set when
1457 the complaint is filed or as soon thereafter as is practicable. If the child is the subject of a complaint
1458 alleging a violation of a section of the Revised Code that may be violated by an adult and that does
1459 not request a serious youthful offender sentence, and if the child is in detention or shelter care, the
1460 hearing shall be held not later than fifteen days after the filing of the complaint. Upon a showing
1461 of good cause, the adjudicatory hearing may be continued and detention or shelter care extended.
1462

1463 A court may permit the remote presence and participation of a party by remote
1464 contemporaneous video provided the use of video appearance complies with the requirements set
1465 out in Juv.R. 27.
1466

1467 The prosecuting attorney’s filing of either a notice of intent to pursue or a statement of an
1468 interest in pursuing a serious youthful offender sentence shall constitute good cause for continuing
1469 the adjudicatory hearing date and extending detention or shelter care.
1470

1471 The hearing of a removal action shall be scheduled in accordance with Juv. R. 39(B).
1472

1473 If the complaint alleges abuse, neglect, or dependency, the hearing shall be held no later
1474 than thirty days after the complaint is filed. For good cause shown, the adjudicatory hearing may
1475 extend beyond thirty days either for an additional ten days to allow any party to obtain counsel or
1476 for a reasonable time beyond thirty days to obtain service on all parties or complete any
1477 necessary evaluations. However, the adjudicatory hearing shall be held no later than sixty days
1478 after the complaint is filed.
1479

1480 The failure of the court to hold an adjudicatory hearing within any time period set forth in
1481 this rule does not affect the ability of the court to issue any order otherwise provided for in statute
1482 or rule and does not provide any basis for contesting the jurisdiction of the court or the validity of
1483 any order of the court.
1484

1485 **[Existing language unaffected by the amendments is omitted to conserve space]**

1486 **RULE 34. Dispositional Hearing**
1487

1488 **(A) Scheduling the hearing.** Where a child has been adjudicated as an abused,
1489 neglected, or dependent child, the court shall not issue a dispositional order until after it holds a
1490 separate dispositional hearing. The dispositional hearing for an adjudicated abused, neglected, or
1491 dependent child shall be held at least one day but not more than thirty days after the adjudicatory
1492 hearing is held. The dispositional hearing may be held immediately after the adjudicatory
1493 hearing if all parties were served prior to the adjudicatory hearing with all documents required
1494 for the dispositional hearing and all parties consent to the dispositional hearing being held
1495 immediately after the adjudicatory hearing. Upon the request of any party or the guardian ad
1496 litem of the child, the court may continue a dispositional hearing for a reasonable time not to
1497 exceed the time limit set forth in this division to enable a party to obtain or consult counsel. The
1498 dispositional hearing shall not be held more than ninety days after the date on which the
1499 complaint in the case was filed, except that, for good cause shown, the court, on its own motion
1500 or on the motion of any party or the child’s guardian ad litem, may continue the dispositional
1501 hearing for a reasonable period of time beyond the ninety-day deadline. This extension beyond
1502 the ninety-day deadline shall not exceed forty five days and shall not be available for any case in
1503 which the complaint was dismissed and subsequently refiled. If the dispositional hearing is not
1504 held within this ninety-day or the extended period of time, the court, on its own motion or the
1505 motion of any party or the guardian ad litem of the child, shall dismiss the complaint without
1506 prejudice.
1507

1508 In all other juvenile proceedings, the dispositional hearing shall be held pursuant to Juv. R.
1509 29(F)(2)(a) through (d) and the ninety day requirement shall not apply. Where the dispositional
1510 hearing is to be held immediately following the adjudicatory hearing, the court, upon the request
1511 of any party, shall continue the hearing for a reasonable time to enable the party to obtain or consult
1512 counsel.
1513

1514 **(B) Hearing procedure.** The hearing shall be conducted in the following manner:
1515

1516 (1) A court may permit the remote presence and participation of a party by remote
1517 contemporaneous video provided the use of video appearance complies with the requirements set
1518 out in Juv.R. 27.
1519

1520 (2) The judge or magistrate who presided at the adjudicatory hearing shall, if possible,
1521 preside;
1522

1523 ~~(2)~~(3) Except as provided in division (I) of this rule, the court may admit evidence that is
1524 material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;
1525

1526 ~~(3)~~(4) Medical examiners and each investigator who prepared a social history shall not be
1527 cross-examined, except upon consent of all parties, for good cause shown, or as the court in its
1528 discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any
1529 information contained in the social history or other reports that may be used by the court in
1530 determining disposition.
1531

1532 ~~(4)~~(5) To the extent required by Article I, Section 10a of the Ohio Constitution or by the
1533 Revised Code, before disposition, the trial court shall allow an alleged victim of a crime to be
1534 heard.

1535
1536 **[Existing language unaffected by the amendments is omitted to conserve space]**

1537 **RULE 41. Taking Testimony**

1538
1539 **(A) In open court.** At trial or hearing, the witnesses' testimony shall be taken in open
1540 court unless a statute, the Rules of Evidence, these rules, or other rules adopted by the Supreme
1541 Court provide otherwise. In all juvenile matters, ~~except adjudicatory hearings in delinquency,~~
1542 ~~unruly, and juvenile traffic cases and adult criminal trials,~~ the juvenile court, with appropriate
1543 safeguards, may permit testimony in open court by contemporaneous transmission or two-way
1544 video and audio technology from a different location either with the agreement of the parties or
1545 for good cause shown.

1546
1547 **(B) Remote testimony.**

1548
1549 **(1)** In any juvenile matter, the court may permit the remote presence and participation
1550 of a witness, including that of a party, for any proceeding if all of the following apply:

1551
1552 **(a)** The court gives appropriate notice to all the parties;

1553
1554 **(b)** The court finds that the remote appearance of the witness is based on important
1555 state interests, public policies, or necessities of the case.

1556
1557 **(c)** The witness is administered the oath or affirmation using live two-way video and
1558 audio conference technology that allows the person authorized to administer the oath to verify the
1559 identity of the witness at the time the oath is administered.

1560
1561 **(d)** The witness is subject to full cross examination.

1562
1563 **(e)** The video arrangements allow the witness to speak, and to be seen and heard by the
1564 court, all parties, and the jury if applicable.

1565
1566 **(2)** **Notice.** A request to present testimony remotely shall be discussed among counsel
1567 and unrepresented parties, and filed with the court no later than the deadline set in the case ~~schedule~~
1568 ~~scheduling order~~ or ~~twenty-one thirty~~ days prior to the trial or hearing, unless for good cause the
1569 court permits later notice.

1570
1571 **(3)** **Oath or Affirmation.** Every witness testifying remotely, including those outside
1572 this state, in a trial or other proceeding in open court in Ohio ~~is deemed to must affirm on the record~~
1573 ~~that they~~ have submitted to the jurisdiction of the Ohio court for the purpose of enforcement of
1574 their oath or affirmation, including any consideration of perjury charges arising from such
1575 testimony.