

AMENDMENTS TO THE OHIO RULES OF PRACTICE AND PROCEDURE

The following amendments include the Ohio Rules of Appellate Procedure (26), Ohio Rules of Civil Procedure (4, 4.1, 4.7, 30, and 45), Ohio Rules of Criminal Procedure (4), Ohio Rules of Evidence (702), and Ohio Rules of Juvenile Procedure (1). The history of these amendments is as follows:

September 11, 2023 First publication for public comment (ENDING October 26,
2023)

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 October 26, 2023, on the following proposed amendments to the Ohio Rules of Appellate Procedure (26), Ohio Rules of Civil Procedure (4, 4.1, 4.7, 30, and 45), Ohio Rules of Criminal Procedure (4), Ohio Rules of Evidence (702), and Ohio Rules of Juvenile Procedure (1).

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 October 26, 2023. 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 October 26, 2023.

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 must 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 concludes, 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

1. OHIO RULES OF APPELLATE PROCEDURE

- Reopening Appeal Based on Ineffective Assistance of Counsel

(App.R. 26)

Related Revised Code Sections: None.

The Commission recommends expanding the category of people who may apply for reopening their appeal based on a claim of ineffective assistance of counsel. Currently, App.R. 26(B) allows a “defendant in a criminal case” to make such an application. (*See In re T.A.*, 2022-Ohio-4173). The proposed amendment adds others to whom a right to counsel is provided for under continuing law, including a delinquent child in a juvenile case; a parent in an abuse, neglect, dependency or permanent custody case; and a defendant facing civil commitment after a finding of unrestorable incompetence.

2. OHIO RULES OF CIVIL PROCEDURE

- Waiver of Service

(Civ.R. 4 and 4.7)

Related Revised Code Section: 2109.03 (fiduciary’s attorney).

The Commission recommends three clarifications to waiver of service. First, changes to Civ.R. 4(D)(1) and 4.7 would clarify that the general authority for waiver of service under Civ.R. 4(D) applies in domestic relations and civil protection order cases. Civ.R. 4 currently directs a plaintiff to Civ.R. 4.7 for waiver of service in civil actions filed in common pleas court. Domestic relations and civil protection order cases are such actions. However, given problems reported with the extended answer period guaranteed under Civ.R. 4.7, the Court specifically excluded those case types from the scope of Civ.R. 4.7 effective July 1, 2022, leaving plaintiffs in those cases without a specific rule on which they can rely for waiver of service. The proposal clarifies that waiver of service under Civ.R. 4(D) applies “in any type of action.” Civ.R. 4.7, by its own terms, continues to apply only in civil actions in the court of common pleas.

Second, the revisions to Civ.R. 4(D)(2) make clear that an attorney may sign a waiver of service for his or her client, but only if the attorney is the attorney of record in the matter. It is reported that, in practice, attorneys are signing waivers of service for their clients without clear authority to do so. By requiring the signing attorney be the attorney of record, authority to sign on behalf of the client can be inferred from the authority inherent to the documented representation.

Third, the Commission recommends that an individual signing a waiver on their own behalf must provide an address for future service under Civ.R. 5.

Conforming revisions are recommended to the waiver of service forms in Civ.R. 4.7.

- Accepting Service

(Civ.R. 4.1)

Related Revised Code Sections: None.

The Commission recommends this amendment to limit signatures on certified or express mail service to those *accepting* delivery. Currently, the rule states that certified or express mail service is evidenced by “return receipt signed by *any person*” (emphasis added). This language has proven problematic where mail carriers sign the receipt upon delivery, failing to truly establish whether service on a person was accomplished. The proposed amendment will clarify the signature of a person “accepting delivery” is required for the receipt.

- Depositions; Time Limits

(Civ.R. 30)

Related Revised Code Sections: None.

The Commission recommends limiting the duration of depositions by rule. Currently, parties might agree to time limits for depositions as part of their discovery plan under Civ.R. 26(F)(3) and proportionality may guide in limiting deposition times, generally. Additionally, Civ.R. 30 allows parties to seek an end to or a limitation in the scope of a deposition *after* the deposition has started. Other than those provisions, no other rule limits the duration of depositions or provides guidance on a reasonable time for depositions.

The proposed amendment limits depositions to one day of seven hours, unless otherwise stipulated or ordered by the court. The amendment further instructs that courts must allow additional time “if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.” The proposal aligns the rule with its federal counterpart, Fed. R. Civ. P. 30(d).

- Subpoena Service

(Civ.R. 45)

Related Revised Code Section: 2319.09 (Uniform Interstate Depositions and Discovery Act).

The Commission recommends revising Civ.R. 45 to specifically reference unrepresented parties as those who may be issuing subpoenas under the rule. Currently, the rule refers only to the “issuing attorney.” In practice, courts generally recognize unrepresented parties as the “issuing attorney” under the rule. The proposal reflects that practice.

The Commission also recommends revisions to the rule’s service language to make it consistent with the July 1, 2023, effective changes to process server requirements under Civ.R. 4.1. Those changes heightened the standards to qualify as a personal or residential process server. Civ.R. 45 currently includes the former criteria (i.e., not a party to the case and at least 18 years old). The proposed amendment instead incorporates the Civ.R. 4.1 standards by reference.

3. OHIO RULES OF CRIMINAL PROCEDURE

- Timing of Probable Cause Determination, Complaint, and Initial Hearing
(Crim.R. 4)

Related Revised Code Sections: 2151.31 (apprehension, custody, and detention of a child), 2937.011 (pretrial release), 2953.13 (proceedings upon arrest), and 2935.16 (prisoners held without process).

This amendment sets the following times for certain post-arrest events:

- For warrantless arrests, the arresting officer must file the complaint within 24 hours after arrest.
- Also, for warrantless arrests or arrests on warrant *not* issued by a judge or magistrate, the court must conduct a probable cause review no later than the defendant's first appearance or 48 hours after arrest, whichever occurs first.
- Regardless of whether a warrant issued for the arrest, the defendant's initial appearance must occur by the second court day or 72 hours after arrest, whichever occurs first.

"Court day" is defined as any weekday other than a legal holiday.

Regarding the timing of the complaint following a warrantless arrest and the defendant's initial court appearance regardless of warrant (i.e., the first and third points above), the rule currently requires these events to occur "without unnecessary delay." The rule does not currently set a time for the probable cause determination.

4. OHIO RULES OF EVIDENCE

- Expert Witness Qualification
(Evid.R. 702)

Related Revised Code Sections: None.

The proposed amendment adds a preponderance of the evidence standard for expert witness qualification. The rule currently states the criteria that must be satisfied for a witness to testify as an expert. The rule is silent as to the standard of proof for those criteria. The amendment adds the criteria must be shown as "more likely than not." The amendment mirrors, in part, an amendment being considered to its federal counterpart, Fed. R. Evid. 702, to take effect December 1, 2023.

5. OHIO RULES OF JUVENILE PROCEDURE

- Scope of Rules

(Juv.R. 1)

Related Revised Code Sections: None.

The Commission recommends changing the scope of the Ohio Rules of Juvenile Procedure to specifically exclude proceedings for custody, parenting time, companionship, visitation, and child support brought under Revised Code Chapter 3109. With that exclusion, the Ohio Rules of Civil Procedure would apply, instead. Currently, the Ohio Rules of Civil Procedure clearly apply to custody, parenting time, companionship, visitation, and child support actions between married individuals. Some courts apply those same rules in the same case types between unmarried individuals, while others apply the Juvenile Rules in those cases. The amendment ensures consistent application of the Civil Rules for these case types regardless of the parties' marital relationship.

The proposed amendment also clarifies the exclusion for criminal matters. Currently, the rule provides that only the "trial of criminal actions" is excluded from the Juvenile Rules. The amendment would exclude the entirety of a criminal proceeding.

1 **OHIO RULES OF APPELLATE PROCEDURE**

2
3 **RULE 26. Application for Reconsideration; Application for En Banc Consideration;**
4 **Application for Reopening.**

5
6 [Existing language unaffected by the amendments is omitted to conserve space]

7
8 **(B) Application for reopening**

9
10 (1) A defendant in a criminal case, a delinquent child in a juvenile case, a parent in an
11 abuse, neglect, dependency or permanent custody case, or a defendant facing civil
12 commitment after a finding of unrestorable incompetence may apply for reopening of the
13 appeal either taken by a prosecutor or from the judgment of conviction and sentence,
14 disposition, or commitment, based on a claim of ineffective assistance of appellate counsel.
15 An application for reopening shall be filed in the court of appeals where the appeal was
16 decided within ninety days from journalization of the appellate judgment unless the
17 applicant shows good cause for filing at a later time.

18
19 [Existing language unaffected by the amendments is omitted to conserve space]

20 **OHIO RULES OF CIVIL PROCEDURE**

21
22 **RULE 4. Process: Summons.**

23
24 **[Existing language unaffected by the amendments is omitted to conserve space]**

25
26 **(D) Waiver of service of summons**

27
28 **Service (1) Authority to waive service of summons, generally**

29
30 In any type of action, service of summons may be waived in writing by any person
31 entitled thereto under ~~Rule~~ Civ.R. 4.2 who is at least eighteen years of age and not
32 under disability, or by the defendant’s attorney as permitted under division (D)(2)
33 of this rule. ~~For any civil action filed in a Court of Common Pleas, the plaintiff~~
34 may request that the defendant waive service of a summons pursuant to the
35 provisions of Civ.R. 4.7.

36
37 **(2) Waiver by attorney on behalf of client**

38
39 A waiver signed by an attorney on behalf of a client is valid only if the attorney is
40 an attorney of record with respect to the proceeding to which the summons applies.

41
42 **(3) Waiver by individual on own behalf**

43
44 A waiver signed by an individual on that individual’s own behalf is valid only if
45 the waiver sets forth an address for that individual, which address shall be deemed
46 a proper address for service under Civ.R. 5.

47
48 **[Existing language unaffected by the amendments is omitted to conserve space]**

49
50
51 **Proposed Staff Note (July 1, 2024 Amendment)**

52
53 Civil Rule 4(D) is amended in three respects. First, Civ.R. 4(D) and 4.7(B) are amended to clarify
54 that service of summons may be waived in any case. No substantive change is intended in this respect.
55 Second, the rule is amended such that an attorney may waive service of summons on behalf of a client,
56 but only if the attorney is an attorney of record with respect to the proceeding to which the summons applies.
57 This amendment promotes the reliability of a waiver signed by an attorney on behalf of a client and
58 minimizes the risk of a defendant, late in the course of an action, asserting that the attorney lacked authority
59 to waive service of summons on behalf of the defendant. Third, the rule is amended such that a waiver
60 signed by an individual on the individual’s own behalf is valid only if the waiver sets forth an address for
61 that individual, which address is then deemed a proper address for service of subsequent papers. This
62 amendment is prompted by instances, especially in juvenile court and domestic relations court, of
63 unrepresented parties waiving service of summons without providing the court and the opposing parties an
64 address for service of subsequent papers.

65 **RULE 4.1. Process: Methods of Service.**

66

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

68

69 **(A) Service by clerk**

70

71 (1) Methods of service

72

73 (a) Service by United States certified or express mail

74

75 Evidenced by return receipt signed by any person accepting
76 delivery, service of any process shall be by United States certified
77 or express mail unless otherwise permitted by these rules. The clerk
78 shall deliver a copy of the process and complaint or other document
79 to be served to the United States Postal Service for mailing at the
80 address set forth in the caption or at the address set forth in written
81 instructions furnished to the clerk as certified or express mail return
82 receipt requested, with instructions to the delivering postal
83 employee to show to whom delivered, date of delivery, and address
84 where delivered.

85

86 (b) Service by commercial carrier service

87

88 Unless the serving party furnishes written instructions to the clerk
89 that service be made pursuant to Civ.R. 4.1(A)(1)(a), the clerk may
90 make service of any process by a commercial carrier service
91 utilizing any form of delivery requiring a signed receipt. The clerk
92 shall deliver a copy of the process and complaint or other document
93 to be served to a commercial carrier service for delivery at the
94 address set forth in the caption or at the address set forth in written
95 instructions furnished to the clerk, with instructions to the carrier to
96 return a signed receipt showing to whom delivered, date of delivery,
97 and address where delivered.

98

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

100 **RULE 4.7. Process: Waiving Service.**

101

102 **(A) Requesting a waiver**

103

104 An individual, corporation, partnership, or association that is subject to service under
105 Civ.R. 4 through 4.6 has a duty to avoid unnecessary expenses of serving the
106 summons. The plaintiff may notify such a defendant that an action has been commenced
107 and request that the defendant waive service of a summons. The notice and request must
108 satisfy all of the following requirements:

109

(1) Be in writing and be addressed as required by Civ.R. 4.2;

111

(2) Name the court where the complaint was filed;

113

(3) Be accompanied by a copy of the complaint, two copies of the waiver form
115 appended to this Rule 4.7, and a prepaid means for returning the form;

116

(4) Inform the defendant, using the form appended to this Rule 4.7, of the
118 consequences of waiving and not waiving service;

119

(5) State the date when the request is sent;

121

(6) Give the defendant a reasonable time of at least twenty-eight days after the
123 request was sent - or at least sixty days if sent to the defendant outside of the United
124 States - to return the waiver; ~~and~~

125

(7) Be sent by first-class mail or other reliable means.

127

128 **(B) ~~Limited to courts of common pleas~~ Scope of application**

129

130 The waiver of service provisions in this rule ~~are limited to~~ apply only in civil actions filed
131 in the courts of common pleas ~~but, except that~~ they do not apply to ~~civil protection orders~~
132 ~~pursuant to~~ petitions seeking orders under Civ.R. 65.1 ~~or to~~ nor domestic relations matters
133 as defined in R.C. 3105.011.

134

135 **(C) Failure to waive**

136

137 If a defendant over which the court has personal jurisdiction fails, without good cause, to
138 sign and return a waiver requested by a plaintiff, ~~then~~ the court may impose on the
139 defendant both of the following:

140

(1) The expenses later incurred in making service; ~~and~~

142

(2) The reasonable expenses, including attorney's fees, of any motion required
144 to collect those service expenses.

145

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

147
148 [Form] RULE 4.7 NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF SUMMONS.

149
150 (Caption)

151
152 To (name the defendant or — if the defendant is a corporation, partnership, or association
153 — name an officer or agent authorized to receive service):

154
155 WHY ARE YOU GETTING THIS?

156
157 A lawsuit has been filed against you, or the entity you represent, in this court under the
158 number shown above. A copy of the complaint is attached.

159
160 This is not a summons, or an official notice from the court. It is a request that, to avoid
161 expenses, you waive formal service of a summons by signing and returning the enclosed
162 waiver. To avoid these possible expenses, you must return the signed waiver within (give
163 at least 28 days or at least 60 days if the defendant is outside the United States) from the
164 date shown below, which is the date this notice was sent. Two copies of the waiver form
165 are enclosed, along with a stamped, self-addressed envelope or other prepaid means for
166 returning one copy. You may keep the other copy.

167
168 WHAT HAPPENS NEXT?

169
170 If you return the signed waiver, I will file it with the court. The action will then proceed as
171 if you had been served on the date the waiver is filed, but no summons will be served on
172 you and you will have 60 days from the date this notice is sent (see the date below) to
173 answer the complaint (or 90 days if this notice is sent to you outside the United States).

174
175 If you do not return the signed waiver within the time indicated, I will arrange to have the
176 summons and complaint served on you. And I will ask the court to require you, or the entity
177 you represent, to pay the expenses of making service.

178
179 Please read the enclosed statement about the duty to avoid unnecessary expenses.

180
181 I certify that this request is being sent to you on the date below.

182
183 Date: _____

184
185 ~~(Signature of the attorney or unrepresented party)~~

186
187 _____

188
189 ~~(Printed name)~~

190
191 _____

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~~(Address)-~~

~~(E-mail address)-~~

~~(Telephone number)-~~

Name of party requesting waiver of service of summons: _____

Individual issuing this request on behalf of that party:

Printed name: _____

Signature: _____

Address: _____

E-mail address: _____

Telephone number: _____

[Form] RULE 4.7 WAIVER OF THE SERVICE OF SUMMONS.

(Caption)

To *(name the plaintiff's attorney or the unrepresented plaintiff)*:

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment could be entered against me or the entity I represent.

240 Date: _____

241
242 ~~(Signature of the attorney or unrepresented party)~~

243
244 _____

245
246 ~~(Printed name)~~

247
248 _____

249
250 ~~(Address)~~

251
252 _____

253
254 ~~(E-mail address)~~

255
256 _____

257
258 ~~(Telephone number)~~

259
260 _____

261
262 Name of party waiving service of summons: _____

263
264 Individual signing on behalf of party waiving service of summons:

265
266 Printed name: _____

267
268 Relationship to party waiving service of summons: _____

269
270 Signature: _____

271
272 Address: _____

273
274 E-mail address: _____

275
276 Telephone number: _____

277
278 (Attach the following)

279
280 **DUTY TO AVOID UNNECESSARY EXPENSES OF SERVING A SUMMONS**

281
282 Rule 4.7 of the Ohio Rules of Civil Procedure requires certain defendants to cooperate in
283 saving unnecessary expenses of serving a summons and complaint. A defendant who is
284 subject to the court’s personal jurisdiction and who fails to return a signed waiver of service
285 requested by a plaintiff may be required to pay the expenses of service, unless the defendant
286 shows good cause for the failure.

287

288 “Good cause” does not include a belief that the lawsuit is groundless, or that it has been
289 brought in an improper venue, or that the court has no jurisdiction over this matter or over
290 the defendant or the defendant’s property.

291
292 If the waiver is signed and returned, you can still make these and all other defenses and
293 objections, but you cannot object to the absence of a summons or of service.

294
295 If you waive service, then you must, within the time specified on the waiver form, serve an
296 answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing
297 and returning the waiver form, you are allowed more time to respond than if a summons
298 had been served.

299
300

301 Proposed Staff Note (July 1, 2024 Amendment)

302
303 Division (B) of this rule is amended with Civ.R. 4(D) to clarify that service of summons may be
304 waived in any type of action. No substantive change is intended. The signature blocks of the forms are
305 amended to promote clarity.

306 **RULE 30. Depositions Upon Oral Examination.**

307

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

309

310 **(D) ~~Motion~~ Duration; motion to terminate or limit examinations**

311

312 **(1) Duration**

313

314 Unless otherwise stipulated or ordered by the court, a deposition is limited to one
315 day of seven hours. The court shall allow additional time consistent with Civ.R.
316 26(B)(6)(a) and (b) if needed to fairly examine the deponent or if the deponent,
317 another person, or any other circumstance impedes or delays the examination.

318

319 **(2) Motion to terminate or limit examinations**

320

321 At any time during the taking of the deposition, on motion of any party or of the
322 deponent and upon a showing that the examination is being conducted in bad faith
323 or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or
324 party, the court in which the action is pending may order the officer conducting the
325 examination to cease forthwith from taking the deposition, or may limit the scope
326 and manner of the taking of the deposition as provided in Civ.R. 26(C). If the order
327 made terminates the examination, it shall be resumed thereafter only upon the order
328 of the court in which the action is pending. Upon demand of the objecting party or
329 deponent, the taking of the deposition shall be suspended for the time necessary to
330 make a motion for an order. The provisions of Civ.R. 37 apply to the award of
331 expenses incurred in relation to the motion.

332

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

334 **RULE 45. Subpoena.**

335

336 **(A) Form; issuance; notice**

337

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

339

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

346

347 **(B) Service**

348

349 A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, or a
350 deputy of any, by an attorney at law, or by any other person designated by court order ~~of~~
351 ~~court who is not a party and is not less than eighteen years of age~~ under Civ.R. 4.1(E).
352 Service of a subpoena upon a person named therein shall be made by delivering a copy of
353 the subpoena to the person, by reading it to him or her in person, by leaving it at the person's
354 usual place of residence, or by placing a sealed envelope containing the subpoena in the
355 United States mail as certified or express mail return receipt requested with instructions to
356 the delivering postal authority to show to whom delivered, date of delivery and address
357 where delivered, and by tendering to the person upon demand the fees for one day's
358 attendance and the mileage allowed by law. The person responsible for serving the
359 subpoena shall file a return of the subpoena with the clerk. When the subpoena is served
360 by mail delivery, the person filing the return shall attach the signed receipt to the return. If
361 the witness being subpoenaed resides outside the county in which the court is located, the
362 fees for one day's attendance and mileage shall be tendered without demand. The return
363 may be forwarded through the postal service or otherwise.

364

365 **(C) Protection of persons subject to subpoenas**

366

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

370

371 (2)

372

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

376

377 ~~(b)(3)~~ Subject to division (D)(2) of this rule, a person commanded to produce under
378 divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service
379 of the subpoena or before the time specified for compliance if such time is less than

380 fourteen days after service, serve upon the party or attorney designated in the subpoena
381 written objections to production. If objection is made, the party serving the subpoena shall
382 not be entitled to production except pursuant to an order of the court by which the subpoena
383 was issued. If objection has been made, the party serving the subpoena, upon notice to the
384 person commanded to produce, may move at any time for an order to compel the
385 production. An order to compel production shall protect any person who is not a party or
386 an officer of a party from significant expense resulting from the production commanded.
387

388 ~~(3)~~(4) On timely motion, the court from which the subpoena was issued shall quash or
389 modify the subpoena, or order appearance or production only under specified conditions,
390 if the subpoena does any of the following:

391 (a) Fails to allow reasonable time to comply;

392 (b) Requires disclosure of privileged or otherwise protected matter and no
393 exception or waiver applies;

394 (c) Requires disclosure of a fact known or opinion held by an expert not
395 retained or specially employed by any party in anticipation of litigation or
396 preparation for trial as described by Civ.R. 26(B)(7)(h), if the fact or opinion does
397 not describe specific events or occurrences in dispute and results from study by that
398 expert that was not made at the request of any party;

399 (d) Subjects a person to undue burden.
400
401
402

403 ~~(4)~~(5) Before filing a motion pursuant to division (C)~~(3)~~(4)(d) of this rule, a person
404 resisting discovery under this rule shall attempt to resolve any claim of undue burden
405 through discussions with the issuing attorney or unrepresented party. A motion filed
406 pursuant to division (C)~~(3)~~(4)(d) of this rule shall be supported by an affidavit of the
407 subpoenaed person or a certificate of that person's attorney of the efforts made to resolve
408 any claim of undue burden.
409
410

411 ~~(5)~~(6) If a motion is made under division (C)~~(3)~~(4)(c) or (C)~~(3)~~(4)(d) of this rule, the court
412 shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued
413 shows a substantial need for the testimony or material that cannot be otherwise met without
414 undue hardship and assures that the person to whom the subpoena is addressed will be
415 reasonably compensated.
416
417

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

OHIO RULES OF CRIMINAL PROCEDURE

RULE 4. Warrant or Summons; Arrest.

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

(E) Arrest

(1) Arrest upon warrant

(a) Where a person is arrested upon a warrant that states it was issued before a scheduled initial appearance, or the warrant is silent as to when it was issued, the judicial officer before whom the person is brought shall determine bail.

(b) Where a person is arrested upon a warrant that states it was issued after an initial appearance or the failure to appear at an initial appearance and the arrest occurs either in the county from which the warrant issued or in an adjoining county, the arresting officer shall, except as provided in division (F) of this rule, where the warrant provides for the posting of bail, permit the arrested person to post a sum of cash or secured bail bond as contained in the warrant with the requirement that the arrested person appear before the warrant issuing court at a time and date certain, or bring the arrested person ~~without unnecessary delay~~ before the court that issued the warrant promptly and in no event later than the second court day or seventy-two hours after arrest, whichever first occurs. If the defendant is brought before the court and if a probable cause determination has not already been conducted as required by division (E)(3) of this rule, the court shall first conduct a probable cause determination under division (E)(3) and shall also determine bail.

(c) Where a person is arrested upon a warrant that states it was issued after an initial appearance or the failure to appear at an initial appearance and the arrest occurs in any county other than the county from which the warrant was issued or in an adjoining county, the following sequence of procedures shall be followed:

(i) Where the warrant provides for the posting of bail, the arrested person shall be permitted to post a sum of cash or secured bail bond as contained in the warrant with the requirement that the arrested person appear before the warrant issuing court at a time and date certain.

(ii) The arrested person may in writing waive the procedures in division (E)(1)(c)(iii) of this rule after having been informed in writing and orally by a law enforcement officer of those procedures, and consenting to being removed to the warrant issuing court without further delay. This waiver shall contain a representation by a law enforcement officer that the waiver was read to the arrested person and that the arrested person signed the waiver in the officer's presence.

465 (iii) Where the warrant is silent as to the posting of bail, requires that the
466 arrested person be held without bail, the arrested person chooses not to post
467 bail, or the arrested person chooses not to waive the procedures contained
468 in division (E)(1) of this rule, the arrested person shall, except as provided
469 in division (F) of this rule, be brought ~~without unnecessary delay~~ before a
470 court of record therein, having jurisdiction over such an offense, ~~and the~~
471 promptly and in no event later than the second court day or seventy-two
472 hours after arrest, whichever first occurs. If a probable cause determination
473 has not already been conducted as required by division (E)(3) of this rule,
474 the court shall first proceed under division (E)(3) of this rule. The arrested
475 person shall not be removed from that county until the arrested person has
476 been given a reasonable opportunity to consult with an attorney, or
477 individual of the arrested person's choice, and to post bail to be determined
478 by the judge or magistrate of that court not inconsistent with the directions
479 of the issuing court as contained in the warrant or after consultation with
480 the issuing court. ~~if~~ If the warrant is silent as to the posting of bail or holding
481 the arrested person without bail, the court may permit the arrested person to
482 post bail, hold the arrested person without bail, or consult with the warrant
483 issuing court on the issue of bail.
484

485 (d) If the arrested person is not released, the arrested person shall then be
486 removed from the county and brought before the court issuing the warrant, without
487 unnecessary delay. If the arrested person is released, the release shall be on
488 condition that the arrested person appear in the issuing court at a time and date
489 certain.
490

491 (2) Arrest without warrant
492

493 Where a person is arrested without a warrant, the arresting officer shall, ~~except as~~
494 ~~provided in division (F), bring the arrested person without unnecessary delay before~~
495 ~~a court having jurisdiction of the offense, and shall promptly and in no event later~~
496 ~~than twenty-four hours~~ file or cause to be filed a complaint describing the offense
497 for which the person was arrested. The defendant shall be brought before a court
498 having jurisdiction of the offense promptly and in no event later than the second
499 court day or seventy-two hours after arrest, whichever first occurs. If a probable
500 cause determination has not already been conducted as required by division (E)(3)
501 of this rule, the court shall first proceed under division (E)(3) of this rule. Thereafter
502 the court shall proceed in accordance with Crim. R.5.
503

504 (3) Probable cause review for defendants in custody
505

506 If a defendant remains in custody following a warrantless arrest or arrest on a
507 warrant not issued by a judge or magistrate, the complaint and supporting affidavits
508 shall be reviewed by a judge or magistrate promptly and in no event later than the
509 defendant's first appearance before the court or forty-eight hours after arrest,
510 whichever first occurs. Such probable cause review may be conducted in open

511 court or in the presence of the parties. If the judge or magistrate determines that
512 the complaint does not establish probable cause, the defendant shall be ordered
513 released.

514
515 (4) "Court day" defined

516
517 As used in division (E) of this rule, "court day" means any weekday other than a
518 weekday designated in its entirety as a legal holiday under the laws of the State of
519 Ohio.

520
521 **[Existing language unaffected by the amendments is omitted to conserve space]**

522 **OHIO RULES OF EVIDENCE**

523
524 **RULE 702. Testimony by Experts.**

525
526 A witness may testify as an expert if the proponent demonstrates to the court that it is more likely
527 than not that all of the following apply:

528
529 (A) The witness' testimony either relates to matters beyond the knowledge or
530 experience possessed by lay persons or dispels a misconception common among lay
531 persons;

532
533 (B) The witness is qualified as an expert by specialized knowledge, skill, experience,
534 training, or education regarding the subject matter of the testimony;

535
536 (C) The witness' testimony is based on reliable scientific, technical, or other specialized
537 information. To the extent that the testimony reports the result of a procedure, test, or
538 experiment, the testimony is reliable only if all of the following apply:

539
540 (1) The theory upon which the procedure, test, or experiment is based is
541 objectively verifiable or is validly derived from widely accepted knowledge, facts,
542 or principles;

543
544 (2) The design of the procedure, test, or experiment reliably implements the
545 theory;

546
547 (3) The particular procedure, test, or experiment was conducted in a way that
548 will yield an accurate result.

549 **OHIO RULES OF JUVENILE PROCEDURE**

550
551 **RULE 1. Scope of Rules: Applicability; Construction; Exceptions.**

552
553 **(A) Applicability**

554 These rules prescribe the procedure to be followed in all juvenile courts of this state in all
555 proceedings coming within the jurisdiction of such courts, with the exceptions stated in
556 ~~subdivision~~ division (C) of this rule.

557
558
559 **(B) Construction**

560 These rules shall be liberally interpreted and construed so as to effectuate all of the
561 following purposes:

562
563
564 (1) To effect the just determination of every juvenile court proceeding by
565 ensuring the parties a fair hearing and the recognition and enforcement of their
566 constitutional and other legal rights;

567
568 (2) To secure simplicity and uniformity in procedure, fairness in
569 administration, and the elimination of unjustifiable expense and delay;

570
571 (3) To provide for the care, protection, and mental and physical development
572 of children subject to the jurisdiction of the juvenile court, and to protect the welfare
573 of the community; ~~and~~

574
575 (4) To protect the public interest by treating children as persons in need of
576 supervision, care, and rehabilitation.

577
578 **(C) Exceptions**

579 These rules shall not apply to ~~procedure~~ any of the following procedures:

580
581 (1) Upon appeal to review any judgment, order, or ruling;

582
583 (2) ~~Upon the trial of~~ In criminal actions proceedings;

584
585 (3) ~~Upon the trial of actions for~~ In divorce, annulment, legal separation, and
586 related proceedings;

587
588 (4) In proceedings to determine parent-child relationships, provided, however
589 that appointment of counsel shall be in accordance with Rule Juv.R. 4(A) of the
590 Rules of Juvenile Procedure;

591
592 (5) In proceedings for custody, parenting time, companionship, visitation, or
593 child support brought under Revised Code Chapter 3109;
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(6) In the commitment of the mentally ill and ~~mentally retarded~~ intellectually disabled;

~~(6)(7)~~ In proceedings under Revised Code section 2151.85 ~~of the Revised Code~~ to the extent ~~that~~ there is a conflict between these rules and Revised Code section 2151.85 ~~of the Revised Code~~.

When any statute provides for procedure by general or specific reference to the statutes governing procedure in juvenile court actions, procedure shall be in accordance with these rules.

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