

## AMENDMENTS TO THE OHIO RULES OF PRACTICE AND PROCEDURE

The following amendments include the Ohio Rules of Civil Procedure (1, 1.1, 4.1, 4.6, 10, 26, 30, 33, 36, 37, 39, 43, 45, 53, 57, 65.1, 73, 75, and Civil Form 20), the Ohio Rules of Criminal Procedure (1, 2, 4, 6, 9, 10, 12, 15, 19, 40, 43, and 46), the Ohio Traffic Rules (4), the Ohio Rules of Evidence (101, 601, 607, 609, and 616), and the Ohio Rules of Juvenile Procedure (1, 2, 7, 8, 18, 30, 34, 35, 40, and 41). The history of these amendments is as follows:

September 12, 2022	First publication for public comment (ENDED October 27, 2022)
January 3, 2023	Second publication for public comment (ENDED February 17, 2023)
January 10, 2023	First filing with General Assembly*
April 6, 2023	Final approval by conference
April 27, 2023	Final filing with General Assembly
June 1, 2023	Effective date of amendments

### 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

\*Amendments to forms and the Ohio Traffic Rules are not filed with the General Assembly, per Article IV, Section 5(B) of the Ohio Constitution, R.C. 2937.46, and Civ.R. 84.

## Summary

### 1. OHIO RULES OF CIVIL PROCEDURE

#### - *Remote Technology Proposals* (Civ.R. 1, 1.1, 30, 39, and 43)

These proposed amendments focus on making the use of technology in Courts more prevalent and effective, based on recommendations from the iCourt Task Force. They were previously recommended by this Commission and approved by the Court for a July 1, 2022, effective date. However, the General Assembly disapproved the proposals. With some revision, the Commission recommends the amendments again for a July 1, 2023, effective date.

The proposals include new definitions relating to physical and remote appearance, for uniform use throughout the Civil Rules. They also specify that courts generally retain the authority to order a person to *physically* appear at a proceeding despite any remote appearance option. The definitions and judicial discretion language clarify that permissible remote presence includes both video *and* audio technology, rather than one or the other. Language was reinserted to clarify that telephone depositions (i.e., audio only) would continue to be permitted under Civ.R. 30(B)(6).

Regarding remote testimony given in depositions, the proposed amendments change the place in which the deposition is deemed taken, from the “place where the deponent answers the questions” to the “jurisdiction in which the case is pending.” When signing the deposition transcript, the proposed amendment clarifies that signature can be by hand or electronic.

For remote testimony at a trial or hearing, Civ.R. 43 already allows remote testimony. A proposed rule change removes the need for “compelling circumstances,” however, and requires a request for remote testimony be filed with the court as set in the case scheduling order *or* at least 30 days before the testimony is to be given. The proposal further clarifies the jurisdiction for the remote testimony, stating the remote witness must affirm on the record that they have submitted to the Ohio court’s jurisdiction for purposes of enforcing their oath or affirmation. A proposed staff note includes a cross reference to factors for consideration when deciding whether to proceed remotely and instructs courts, counsel, and *pro se* litigants to prepare remote witnesses for the on-the-record affirmation of jurisdiction and the potential need to present photo identification.

Regarding remote trials, the Commission recommends a more limited proposal than was previously approved by the Court but disapproved by the General Assembly. Specifically, the Commission recommends that Civ.R. 39 be amended to expressly allow bench trials to be conducted remotely. The proposal expressly states the decision to conduct a remote bench trial is in the court’s discretion; it instructs the court to consider the views of the parties, the anticipated probative value of the evidence, difficulty and expense of presenting witnesses by physical presence versus remote presence, convenience and efficiency for the parties to the case, and the nature and complexity of the issues to be tried; and a proposed staff note provides further guidance with factors for courts and litigants to consider when deciding whether to conduct a remote trial to the court.

Following the first round of public comment, the Commission recommended further revisions to the remote trial option, based on feedback from two General Assembly members who championed the rule's prior disapproval and considering the stated need and support for the flexibility that remote trials offer. Specifically, the Commission recommends remote bench trials be available only upon a party's request, as opposed to *sua sponte*. The Commission also recommends no remote bench trial shall occur over a party's objection unless a party's physical appearance is restricted because of (1) active duty in the United States military, (2) incarceration, (3) medical restrictions, or (4) significant travel distance from court, or for other good cause shown.

- *Statewide Minimum Standards for Process Servers*  
**(Civ.R. 4.1)**

The Commission recommends this amendment in response to practitioner concerns regarding the current, minimal requirements for a person to qualify as a process server. Specifically, Civ.R. 4.1(B) currently requires a person who is to make personal service of process to be at least 18 years old and not a party to the case. Some Ohio courts require higher standards to qualify as a personal service process server. The Commission recommends greater standards be adopted, to promote uniformity and public safety across the state.

Specifically, the Commission recommends personal service process servers be required to attest to and satisfy the following standards before a court designates them a process server by court order:

- (1) Not less than eighteen years of age;
- (2) Not a party to the proceeding, related to a party to the proceeding, or having a financial interest in the outcome of the case;
- (3) Certain residency requirements;
  - Initially, the Commission recommended the person be a permanent resident of Ohio. That residency restriction is not practicable for out-of-state service, however. The Commission instead recommends the person be a United States citizen or legal resident of the United States.
- (4) Holding certain valid identification;
  - The Commission previously recommended the person be required to hold a valid Ohio driver's license. Given the recommended residency requirement changes, however, the Commission instead recommends the person be required to hold a valid government-issued identification card, passport, or driver's license.
- (5) Not convicted in the last ten years of any felony, offense of violence, offense involving dishonesty, or certain other offenses, and not currently under community control sanctions, probation, post-release control, or parole;
  - The Commission previously recommended that convictions in the last ten years involving offenses of "moral turpitude" would disqualify one from process

server appointment. Considering that term is outdated, the Commission recommends its removal from the proposal. The Commission recommends *adding* offenses involving false statements, consistent with Evid.R. 609(A)(3).

- (6) Not currently a respondent under any civil protection order;
- (7) Familiar with the required procedure for service of process;
- (8) Will conduct themselves in a professional manner.

Following the first round of public comment and based on the same concerns for uniformity and public safety, the Commission recommends the same standards proposed for *personal* process servers be applied to *residence* process servers.

The Commission also recommends guidance to courts regarding appointment orders given the new process server requirements. Specifically, the proposal instructs that the duration of such orders shall not exceed one year, and that continued appointment beyond one year requires the process server to reapply. Furthermore, standing orders must provide that if the appointed person fails to satisfy the appointment requirements during the period of appointment, authority to serve process under the order ceases.

*- Unclaimed Commercial Carrier Service*  
**(Civ.R. 4.6 and 73)**

The Commission recommends this change to address the sometimes slow and unreliable United States Postal Service delivery times in different parts of the state. Some Ohio courts have responded to slower USPS delivery by turning to commercial carrier services, such as FedEx and UPS, to send court mail, including service documents. When those deliveries are refused, the party who requested service may ask that it be delivered instead using USPS ordinary mail delivery; service is deemed accomplished once sent. The same is true of USPS certified and express mail deliveries that are refused *or* unclaimed. For unclaimed commercial carrier deliveries, however, failed service cannot be cured with the simple ordinary USPS delivery option.

The proposed change to Civ.R. 4.6 makes it so unclaimed commercial carrier service deliveries can be sent by USPS ordinary mail to accomplish service, just as is the case with refused commercial carrier service and refused *and* unclaimed USPS certified and express mail. The proposed change in Civ.R. 73 does the same for service in probate matters. In both rules, new language clarifies that an endorsement on the envelope indicating that the item was unclaimed would suffice, given concerns that commercial carriers may not use the term “unclaimed” and that an “equivalent endorsement,” as was previously proposed, might not provide the clearest directive.

*- Discovery: Meet-and-Confer Requirement*  
**(Civ.R. 26(F))**

The Commission recommends amending Civ.R. 26(F) to clarify that courts may exempt entire categories of cases from the meet-and-confer requirements of Civ.R. 26, in addition to the already permissible exemption by court order on a case-by-case basis. Civ.R. 26(F) requires

attorneys and unrepresented parties to discuss discovery issues at least 21 days before the scheduling conference with the court. Recognizing that some case-types require little-to-no discovery, the Commission recommends this amendment to expressly allow courts to adopt a local rule exempting from the meet-and-confer requirement “categories of cases . . . in which little or no pretrial discovery is anticipated.”

*- Discovery: Proportionality and Privilege Logs*  
**(Civ.R. 26, Staff Note)**

The Commission proposes a staff note to Civ.R. 26, providing guidance on the proportionality requirement of Civ.R. 26(B)(1). Specifically, the proposed staff note makes clear that that requirement applies to *all* parts of discovery, including the format used to assert privilege in a log or otherwise.

*- Discovery: Depositions of Corporate and Other Entities*  
**(Civ.R. 30(B)(5))**

The Commission recommends changes to Civ.R. 30 to clarify the obligations of the serving party and the corporate deponent when a notice or subpoena issues under the rule. Most notably, the proposed amendment adds that the two must confer in good faith, before or promptly after the notice or subpoena is served, regarding the matters for examination. The proposal is based on the 2020 update to Fed.R.Civ.R. 30(b)(6) and was previously approved by this Court, but disapproved by the General Assembly together with other then-proposed but unrelated Civ.R. 30 rule changes.

*- Discovery: Service of Interrogatories and Admissions*  
**(Civ.R. 33 and 36)**

The Commission recommends changes to the method of service required for interrogatories and admissions under Civ.R. 33 and 36, respectively. Currently, the rules require an electronic copy of those items be served by e-mail or other means agreed by the parties. When a party cannot provide an electronic copy, such as if that party or the other does not have e-mail or other means to produce and deliver an electronic copy of the item, they must seek a court order allowing other service. The proposal eliminates the need to involve the court, requiring electronic service “when feasible” but generally allowing other service when not.

The Commission recommends adding a requirement for unrepresented parties to be served with a paper copy of the discovery, in addition to the electronic copy. This new requirement is based on input from the Ohio Association of Domestic Relations Judges, which expressed concern for the ability of unrepresented parties to fully utilize electronic copies of discovery requests.

Regarding interrogatories, the Commission also recommends that courts be permitted to *reduce* the number of interrogatories upon motion and for good cause, in addition to being able to extend the number as is currently permitted.

*- Discovery: Sanctions*  
**(Civ.R. 37)**

The Commission recommends additions to sanctionable discovery failures. Civ.R. 37 currently allows courts to issue certain sanctions when a party fails to provide information regarding a witness or fails to properly admit under Civ.R. 36. The Commission recommends adding to those sanctionable offenses failure to confer regarding discovery or an organization deposition under Civ.R. 26(F) or Civ.R. 30(B)(5), respectively. The Commission also recommends adding for both - the failure to provide witness information and the failure to confer - an option for the court to treat the failure as contempt of court under Civ.R. 37(B)(1)(g).

Considering input received during the first round of public comment, the Commission recommends clarifying that the Civ.R. 37 sanctions apply only to *parties*, rather than non-party deponents. Non-party deponents, operating under subpoena, would continue to be subject to sanctions under Civ.R. 45.

*- Double-Dismissal Rule in Domestic Relations and Civil Protection Order Cases*  
**(Civ.R. 65.1 and 75)**

The Commission recommends changes to Civ.R. 65.1 and 75 to exclude certain domestic relations and civil protection order cases from the double-dismissal rule in Civ.R. 41. Under Civ.R. 41(A), a plaintiff's second dismissal of a case operates as an adjudication upon the merits of the case. The recommended amendment specifically states that such a dismissal of a divorce, dissolution, annulment, or legal petition (under Civ.R. 65.1) or a domestic violence, dating violence, stalking, or sexually oriented offense civil protection order (under Civ.R. 75) does *not* operate as an adjudication of the merits or a bar to a subsequent filing of the action. Based on input from the Ohio Association of Domestic Relations Judges, the language is revised to better describe the action ("denial" rather than "dismissal").

*- Technical Changes*  
**(Civ.R. 10, 45, 53, and 57)**

The Commission recommends several revisions throughout the rules to correct cross references based on prior amendments, and other revisions to conform to the Court's Rule Drafting Manual.

## **2. OHIO RULES OF CRIMINAL PROCEDURE & OHIO TRAFFIC RULES**

*- Remote Technology Proposals*  
**(Crim.R. 1, 2, 10, 12, 15, 40, and 43)**

These proposed amendments focus on making the use of technology in Courts more prevalent and effective, based on recommendations from the iCourt Task Force. All but two of the proposals (Crim.R. 12 and 15) were recommended by the Commission and approved by the Court previously, for a July 1, 2022, effective date, but the General Assembly disapproved the

rules. Having considered and addressed the General Assembly's stated concerns, the Commission recommends the amendments again for a July 1, 2023, effective date.

Like the proposals for the Ohio Rules of Civil Procedure, the Criminal Rules proposals include new definitions relating to physical and remote appearance. They also specify that courts generally retain the authority to order a person to *physically* appear at a proceeding despite any remote appearance option. The definitions and judicial discretion language clarify that permissible remote presence includes both video *and* audio technology, rather than one or the other.

Further easing in-person requirements, the proposed amendments eliminate the need for the prosecutor's approval for the defendant not to appear at a not-guilty arraignment under Crim.R. 10. The Commission previously recommended removing the need for the defendant's written consent for non-appearance at the same proceeding. Following the first round of public comment, the Commission recommends reinserting that consent requirement.

The proposed change to Crim.R. 15 adds an option for the defendant to attend and participate in a deposition remotely if the defendant has waived their right to be physically present and agreed to remote presence. Currently, the rule only provides an option not to attend, with waiver in writing and in open court. The Commission recommends revising the waiver requirement for non-attendance to be either written *or* in open court, consistent with the new waiver requirement for remote presence.

For the defendant's remote presence at court proceedings, the proposed amendment removes the waiver requirement that exists currently for non-substantive proceedings. For substantive proceedings, such as trial and sentencing, the proposed amendment maintains the waiver requirement and adds that the defendant must agree to the remote appearance. The proposals also specify that testimony can be taken remotely when certain safeguards are established and with the witness affirming on the record that they submit to the Ohio court's jurisdiction for purposes of their oath being enforced. Following the first round of public comment, the Commission recommends adding that remote testimony is permissible "with the agreement of the parties or for good cause shown" consistent with the Juvenile Rule regarding same.

The proposed amendment to Crim.R. 12 would require local courts to establish some method of accepting filings electronically. This change mirrors that recently made to the Civil rules, effective July 1, 2022 (Civ.R. 5(E)) and that being proposed in Juv.R. 8.

*- Procedure for New Trial*  
**(Crim.R. 33.1, removed)**

The Task Force on Conviction Integrity and Postconviction Review submitted for the Court's consideration the proposed Crim.R. 33.1, setting forth a different procedure for considering a new trial when based on new evidence that would produce a reasonable likelihood of acquittal. Given the late introduction of this proposal in the rule-making cycle and the substantial and mixed public comment received in that short time, the Commission recommends this proposal not be filed with the General Assembly for a 2023 effective date.

*- Bail Procedures*  
**(Crim.R. 4, 6, 9, 19, and 46, and Traf.R. 4)**

Last November, voters approved Issue 1, which amended Article I, Section 9 of the Ohio Constitution concerning bail. Among the changes implemented by the amendment was the repeal of this sentence in Article, I, Section 9 - “Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the State of Ohio.” In response, the Court has proposed the full repeal of Crim.R. 46, which addresses bail procedures, with cross references to the rule revised accordingly.

**3. OHIO RULES OF EVIDENCE**

*- Remote Technology Proposals*  
**(Evid.R. 101)**

This amendment includes new definitions relating to physical and remote appearance, for uniform use throughout the Evidence Rules. It also specifies that courts generally retain the authority to order a person to *physically* appear at a proceeding despite any remote appearance option. The definitions and judicial discretion language clarify that permissible remote presence includes both video *and* audio technology, rather than one or the other.

This amendment previously was recommended by the iCourt Task Force and approved by the Commission and this Court for a July 1, 2022, effective date. However, the General Assembly disapproved the amendment. Having considered and addressed the General Assembly’s stated concerns, the Commission recommends the amendments again for a July 1, 2023, effective date.

*- Expert Qualifications: Active Clinical Practice Requirement*  
**(Evid.R. 601)**

The Commission recommends this clarification to the active-clinical-practice requirement for an expert witness. Specifically, the proposal provides that a witness for whom expert designation is sought must have satisfied the active-clinical-practice requirement at the time the claim accrued, as opposed to at the time of trial. Considering Ohio’s “discovery rule,” under which a negligence claim does not “accrue” until the patient becomes aware of the alleged negligence, the Commission recommends adding that the active-clinical-practice requirement also can be satisfied at the time of the alleged negligent act.

*- Technical Changes*  
**(Evid.R. 607 and 616)**

The Commission recommends revisions throughout the rules to correct cross references, and other revisions to conform to the Court’s Rule Drafting Manual.



#### 4. OHIO RULES OF JUVENILE PROCEDURE

*- Remote Technology Proposals*  
**(Juv.R. 1, 2, 8, and 41)**

As with the other rule sets, the proposals here focus on making the use of technology in Courts more prevalent and effective, based on recommendations from the iCourt Task Force. All but one of these proposals (Juv.R. 8) was recommended by the Commission and approved by the Court previously, for a July 1, 2022, effective date, but the General Assembly disapproved the rules. Having considered and addressed the General Assembly's stated concerns, the Commission recommends the amendments again for a July 1, 2023, effective date.

Like the other rule-set proposals, these proposals include new definitions relating to physical and remote appearance. They also specify that courts generally retain the authority to order a person to *physically* appear at a proceeding despite any remote appearance option. The definitions and judicial discretion language clarify that permissible remote presence includes both video *and* audio technology, rather than one or the other.

The Juvenile Rules already allow remote testimony at a trial or hearing. The proposed amendments more clearly differentiate between physical presence and remote presence and add certain safeguards for remote testimony. The amendments also require a request for remote testimony be filed with the court as set in the case scheduling order *or* at least 30 days before the testimony is to be given. The proposal further clarifies the jurisdiction for the remote testimony, stating that the remote witness must affirm on the record that they have submitted to the Ohio court's jurisdiction for purposes of enforcing their oath or affirmation. The proposals also expand the case types in which remote testimony may be accepted, to include adjudicatory hearings in delinquency, unruly, and juvenile traffic cases and adult criminal trials.

The proposed amendment to Juv.R. 8 would require local courts to establish some method of accepting filings electronically. This change mirrors that recently made to the Civil Rules, effective July 1, 2022 (Civ.R. 5(E)) and that being proposed in Crim.R. 12.

*- Jury Option*  
**(Juv.R. 27, removed)**

The Commission previously recommended this proposal to clarify when cases in juvenile court can be heard with and without a jury. In addition to serious youthful offender cases, the proposal specifies that adult criminal cases filed under the exclusive jurisdiction of the juvenile court may be heard with a jury. A proposed staff note lists the specific Revised Code sections exclusive to the juvenile court.

Upon further consideration and understanding that the Juvenile Rules specifically do not apply to criminal trials under Juv.R. 1(C)(2), the Commission recommends this proposal not be filed with the General Assembly for a 2023 effective date.

*- Dispositional Hearings*  
**(Juv.R. 34(A))**

The Commission recommends a change to Juv.R. 34 that matches recently passed legislation regarding the timing of dispositional hearings in juvenile cases.

*- Technical Changes*  
**(Juv.R. 2, 7, 18, 30, and 40)**

The Commission recommends revisions throughout the rules to correct cross references, and other revisions to conform to the Court's Rule Drafting Manual.

1 **OHIO RULES OF CIVIL PROCEDURE**

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

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

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7 **(D) As used in these rules, any option to use live two-way video and audio technology**

8 **shall not be construed to limit the power of a court to order that a party, attorney, or witness**

9 **physically appear at a proceeding without the use of live two-way video and audio technology.**

10 **RULE 1.1. Definitions**

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12 As used in these rules:

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

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

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

21

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

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

27 **RULE 4.1 Process: Methods of Service**

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

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

33  
34 **(1) Civil process server; general.** When process issued from the Supreme  
35 Court, a court of appeals, a court of common pleas, or a county court is to be served  
36 personally under this division, the clerk of the court shall deliver the process and  
37 sufficient copies of the process and complaint, or other document to be served, to  
38 the sheriff of the county in which the party to be served resides or may be found.  
39 When process issues from the municipal court, delivery shall be to the bailiff of the  
40 court for service on all defendants who reside or may be found within the county or  
41 counties in which that court has territorial jurisdiction and to the sheriff of any other  
42 county in this state for service upon a defendant who resides in or may be found in  
43 that other county. In the alternative, process issuing from any of these courts may  
44 be delivered by the clerk to ~~any a person not less than eighteen years of age, who is~~  
45 ~~not a party and who has been~~ designated by court order of the court to make personal  
46 ~~service of~~ serve civil process under this division (E) of this rule.

47  
48 **(2) Civil process server; procedure**

49  
50 **(a)** The person serving process shall locate the person to be served and  
51 shall tender a copy of the process and accompanying documents to the  
52 person to be served. When the copy of the process has been served, the  
53 person serving process shall endorse that fact on the process and return it to  
54 the clerk, who shall make the appropriate entry on the appearance docket.

55  
56 **(b)** When the person serving process is unable to serve a copy of the  
57 process within twenty-eight days, the person shall endorse that fact and the  
58 reasons therefor on the process and return the process and copies to the clerk  
59 who shall make the appropriate entry on the appearance docket. In the event  
60 of failure of service, the clerk shall follow the notification procedure set  
61 forth in division (A)(2) of this rule. Failure to make service within the  
62 twenty-eight-day period and failure to make proof of service do not affect  
63 the validity of the service.

64  
65 **(C) Residence service.** When the plaintiff files a written request with the clerk for  
66 residence service, service of process shall be made by that method.

67  
68 **(1) Civil process server; general.** When process is to be served under this  
69 division, deliver the process and sufficient copies of the process and complaint, or  
70 other document to be served, to the sheriff of the county in which the party to be  
71 served resides or may be found. When process issues from the municipal court,  
72 delivery shall be to the bailiff of the court for service on all defendants who reside

73 or may be found within the county or counties in which that court has territorial  
74 jurisdiction and to the sheriff of any other county in this state for service upon a  
75 defendant who resides in or may be found in that county. In the alternative, process  
76 may be delivered by the clerk to ~~any a person not less than eighteen years of age,~~  
77 ~~who is not a party and who has been~~ designated by court order of the court to make  
78 ~~residence service of~~ serve civil process under ~~this~~ division (E) of this rule.

79  
80 **(2) Civil process server; procedure**

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82 (a) The person serving process shall effect service by leaving a copy of  
83 the process and the complaint, or other document to be served, at the usual  
84 place of residence of the person to be served with some person of suitable  
85 age and discretion then residing therein. When the copy of the process has  
86 been served, the person serving process shall endorse that fact on the process  
87 and return it to the clerk, who shall make the appropriate entry on the  
88 appearance docket.

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

99  
100 **(D) Civil process server; applicant requirements.** To qualify as a civil process server  
101 for personal or residence service under divisions (B) or (C) of this rule, an applicant shall certify  
102 the applicant satisfies each of the following requirements:

103  
104 (1) Not less than eighteen years of age;

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106 (2) Not a party to the proceeding, related to a party to the proceeding, or having  
107 a financial interest in the outcome of the proceeding;

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109 (3) A United States citizen or a legal resident of the United States;

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111 (4) Hold a valid government-issued identification card, passport, or driver's  
112 license;

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114 (5) Not convicted in the last ten years of any felony, offense of violence, or  
115 offense involving dishonesty or false statement, and not currently under community  
116 control sanctions, probation, post-release control, or parole;

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118 (6) Not currently a respondent under any civil protection order;

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- (7) Familiar with the required procedure for service of process;
- (8) Will conduct themselves in a professional manner.

**(E) Order for process server.** Upon application and certification by an applicant under oath or affirmation that the applicant satisfies the requirements of division (D) of this rule, the court may designate that person by court order to make personal or residence service of process under divisions (B) or (C) of this rule for a period up to one year. The order shall provide that if the appointed person fails to satisfy the requirements set forth under division (D) of this rule during the period of appointment, the authority to serve process under the order shall cease. Continued appointment beyond one year shall require reapplication as set forth in this rule.

Proposed Staff Note (July 1, 2023)

Civ. R. 4.1(C) adds minimum guidelines for the appointment of a special process server to promote uniformity and public safety across the state. For appointment orders in place on the effective date of this amendment, courts shall ensure that the appointed server satisfies the new criteria for appointment before or upon the renewal of that order.

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

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

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143 **(D) United States certified or express mail, or commercial carrier service**  
144 **unclaimed.** If a attempted service using United States certified or express mail ~~envelope~~  
145 ~~attempting service or commercial carrier~~ within or outside the state is returned with an endorsement  
146 stating that the envelope was unclaimed or a similar endorsement indicating the item was  
147 unclaimed, the clerk shall forthwith notify the attorney of record or, if there is no attorney of record,  
148 the party at whose instance process was issued and enter the fact and method of notification on the  
149 appearance docket. If the attorney, or serving party, after notification by the clerk, files with the  
150 clerk a written request for ordinary mail service, the clerk shall send by United States ordinary  
151 mail a copy of the summons and complaint or other document to be served to the defendant at the  
152 address set forth in the caption, or at the address set forth in written instructions furnished to the  
153 clerk. The mailing shall be evidenced by a certificate of mailing which shall be completed and  
154 filed by the clerk. Answer day shall be twenty-eight days after the date of mailing as evidenced  
155 by the certificate of mailing. The clerk shall endorse this answer date upon the summons which is  
156 sent by ordinary mail. Service shall be deemed complete when the fact of mailing is entered of  
157 record, provided that the ordinary mail envelope is not returned by the postal authorities with an  
158 endorsement showing failure of delivery. If the ordinary mail envelope is returned undelivered,  
159 the clerk shall forthwith notify the attorney, or serving party.

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



162 **RULE 10. Form of Pleadings**

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

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(D) **Attachments to pleadings.**

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

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(2) *Affidavit of merit; medical, dental, optometric, and chiropractic liability claims.*

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(a) Except as provided in division (D)(2)(b) of this rule, a complaint that contains a medical claim, dental claim, optometric claim, or chiropractic claim, as defined in R.C. 2305.113, shall be accompanied by one or more affidavits of merit relative to each defendant named in the complaint for whom expert testimony is necessary to establish liability. Affidavits of merit shall be provided by an expert witness meeting the requirements of Evid.R. 702 and, if applicable, also meeting the requirements of Evid.R. 601~~(D)~~(B)(5). Affidavits of merit shall include all of the following:

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(i) A statement that the affiant has reviewed all medical records reasonably available to the plaintiff concerning the allegations contained in the complaint;

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(ii) A statement that the affiant is familiar with the applicable standard of care;

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(iii) The opinion of the affiant that the standard of care was breached by one or more of the defendants to the action and that the breach caused injury to the plaintiff.

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

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Proposed Staff Note (July 1, 2023)

195

196

The amendment to division (D)(2)(a) of this rule makes a cross-reference change necessitated by prior amendments to Evid.R. 601.

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198

199 **RULE 26. General Provisions Governing Discovery**

200

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

202

203 **(F) Conference of the Parties; Planning for Discovery.**

204

205 (1) Conference Timing. ~~Except those matters~~ Other than in cases excepted under Civ.  
206 R. 1(C), ~~or~~ when the court orders otherwise in a specific case, or in categories of cases  
207 excepted by local rule in which little or no pretrial discovery is anticipated, the attorneys  
208 and unrepresented parties shall confer as soon as practicable~~—~~, and in any event no later  
209 than ~~21~~ twenty-one days before a scheduling conference is to be held.

210

211 (2) Conference Content; Parties' Responsibilities. In conferring, the parties must  
212 consider the nature and basis of their claims and defenses and the possibilities for promptly  
213 settling or resolving the case; make or arrange for the disclosures required by Civ.-R.  
214 26(B)(3); discuss any issues about preserving discoverable information; and develop a  
215 proposed discovery plan. The attorneys of record and all unrepresented parties that have  
216 appeared in the case are jointly responsible for arranging the conference, for attempting in  
217 good faith to agree on the proposed discovery plan, and for filing with the court within ~~14~~  
218 fourteen days after the conference a written report outlining the plan. The court may order  
219 the parties or attorneys to attend the conference in person.

220

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

222

223

224 Proposed Staff Note (July 1, 2023)

225

226 Civ. R. 26(B)(8) requires assertions of privilege or trial-preparation protection be made clearly, so  
227 that the party seeking discovery understands the basis for withholding material and, if appropriate, may  
228 contest the claim. Often this entails preparation of a privilege log, but that may prove burdensome and  
229 expensive. Proportionality as set out in Civ.R. 26(B)(1) applies to all scope of discovery issues including  
230 the format used to assert privilege or work-product protection in a log or by other appropriate means.

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

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

233  
234  
235 **(B) Notice of Examination; General Requirements; Nonstenographic Recording;**  
236 **Production of Documents and Things; Deposition of Organization; Deposition by Telephone**  
237 **or ~~Other Means~~ Remote Presence.**

238  
239 (1) A party desiring to take the deposition of any person upon oral examination shall  
240 give reasonable notice in writing to every other party to the action. The notice shall state the time  
241 and place for taking the deposition and the name and address of each person to be examined, if  
242 known, and, if the name is not known, a general description sufficient to identify the person or the  
243 particular class or group to which the person belongs. If a subpoena duces tecum is to be served  
244 on the person to be examined, a designation of the materials to be produced shall be attached to or  
245 included in the notice.

246  
247 (2) If any party shows that when the party was served with notice the party was unable,  
248 through the exercise of diligence, to obtain counsel to represent the party at the taking of the  
249 deposition, the deposition may not be used against the party.

250  
251 (3) If a party taking a deposition wishes to have the testimony recorded by other than  
252 stenographic means, the notice shall specify the manner of recording, preserving, and filing the  
253 deposition. The court may require stenographic taking or make any other order to ensure that the  
254 recorded testimony will be accurate and trustworthy. With prior notice to the deponent and other  
255 parties, any party may designate another method for recording the testimony in addition to that  
256 specified in the original notice. That party bears the expense of the additional record or transcript  
257 unless the court orders otherwise.

258  
259 (4) The notice to a party deponent may be accompanied by a request made in  
260 compliance with Civ.R. 34 for the production of documents and tangible things at the taking of the  
261 deposition.

262  
263 (5) ~~A In its notice or subpoena, a party, in the party's notice,~~ may name as the deponent  
264 a public or private corporation, a partnership, ~~or~~ an association, a limited liability entity, a  
265 governmental agency, or other entity and designate shall describe with reasonable particularity the  
266 matters on which for examination is requested. The named organization ~~so named~~ shall ~~choose~~  
267 designate one or more of its ~~proper employees,~~ officers, directors, or managing agents, or designate  
268 other persons duly authorized who consent to testify on its behalf; and it may set out the matters  
269 on which each person designated will testify. Before or promptly after the notice or subpoena is  
270 served, the serving party and the organization shall confer in good faith about the matters for  
271 examination. A subpoena shall advise a nonparty organization of its duty to confer with the serving  
272 party and to designate each person who will testify. The persons ~~so~~ designated shall testify ~~as to~~  
273 matters about information known or reasonably available to the organization. Division (B)(5) does  
274 not preclude ~~taking~~ a deposition by any other procedure ~~authorized in~~ allowed by these rules.

275  
276 (6) The parties may stipulate or the court may upon motion order that a deposition be  
277 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 or with  
279 participants in remote presence is considered to be taken in the county and at the place where the  
280 deponent 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]**

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305

Proposed Staff Note (July 1, 2023)

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 court 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.

316 **RULE 33. Interrogatories to Parties**

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**(A) Availability; procedures for use.** Any party, without leave of court, may serve upon any other party up to forty written interrogatories to be answered by the party served. ~~The~~ Whenever feasible, the party serving the interrogatories shall serve ~~an electronic copy of the interrogatories~~ them pursuant to Civ.R. 5(B)(2)(f) or (B)(3) on a shareable medium and in an editable format, ~~by electronic mail, or by other means agreed to by the parties.~~ If the party being served is unrepresented by counsel, the serving party also shall provide a paper copy of the interrogatories to the unrepresented party. A party who is unable to ~~provide an electronic copy of~~ serve the interrogatories electronically may ~~seek leave of court to be relieved of this requirement~~ serve them by other means permitted under Civ.R. 5(B)(2). A party shall not propound more than forty interrogatories to any other party without leave of court. Upon motion, and for good cause shown, the court may reduce or extend the number of interrogatories that a party may serve upon another party. For purposes of this rule, any subpart propounded under an interrogatory shall be considered a separate interrogatory.

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

333 **RULE 36. Requests for Admission**

334

335 **(A) Availability; procedures for use.** A party may serve upon any other party a written  
336 request for the admission, for purposes of the pending action only, of the truth of any matters  
337 within the scope of Civ.R. 26(B) set forth in the request, that relate to statements or opinions of  
338 fact or of the application of law to fact, including the genuineness of any documents described in  
339 the request. Copies of documents shall be served with the request unless they have been or are  
340 otherwise furnished or made available for inspection and copying. The request may, without leave  
341 of court, be served upon the plaintiff after commencement of the action and upon any other party  
342 after service of the summons and complaint upon that party. ~~The~~ Whenever feasible, the party  
343 -serving the request for admission shall serve an electronic copy of the request pursuant to Civ.R.  
344 5(B)(2)(f) or (B)(3) on a shareable medium and in an editable format, by electronic mail, or by  
345 other means agreed to by the parties. If the party being served is unrepresented by counsel, the  
346 serving party also shall provide a paper copy of the request to the unrepresented party. A party  
347 who is unable to ~~provide an electronic copy of~~ serve a request for admission electronically may  
348 ~~seek leave of court to be relieved of this requirement~~ serve the request by other means permitted  
349 under Civ.R. 5(B)(2).

350

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

352 **RULE 37. Failure to Make Discovery, Disclosures, or Participate in Discovery-Related**  
353 **Obligations; Sanctions**

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

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356  
357 **(C) Failure Sanctions for failure to disclose, to participate in a Civ.R. 26(F) or**  
358 **Civ.R. 30(B)(5) conference, to supplement an earlier response, or to admit.**  
359

360 **(1) Failure to disclose or supplement.** If a party fails to provide information or  
361 identify a witness in a timely manner as required by Civ.R. 26(A) or (E), the party is not allowed  
362 to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless  
363 the failure was substantially justified or is harmless. In addition to or instead of this sanction, the  
364 court, on motion and after giving an opportunity to be heard, may do any of the following:  
365

366 (a) ~~may order~~ Order payment of the reasonable expenses, including attorney's  
367 fees, caused by the failure;

368 (b) ~~may inform~~ Inform the jury of the party's failure; ~~and~~

369 (c) ~~may impose~~ Impose other appropriate sanctions, including any of the orders  
370 listed in Civ.R. 37(B)(1)(a) through ~~(f)~~(g).  
371

372  
373  
374 **(2) Failure to participate.** If a party fails to participate in a conference or in drafting  
375 a discovery plan required by Civ.R. 26(F), or a party fails to confer in good faith as required by  
376 Civ.R. 30(B)(5), the court, on motion and after giving an opportunity to be heard, may do either  
377 of the following:  
378

379 (a) Order payment of the reasonable expenses, including attorney's fees,  
380 caused by the failure;

381 (b) Impose other appropriate sanctions on a party or the party's counsel  
382 including any of the orders listed in Civ.R. 37(B)(1)(a) through (g).  
383

384  
385 **(3) Failure to admit.** If a party fails to admit what is requested under Civ.R. 36, and if  
386 the requesting party later proves a document to be genuine or the matter true, the requesting party  
387 may move that the party who failed to admit pay the reasonable expenses, including attorney's  
388 fees, incurred in making that proof. The court shall so order unless any of the following  
389 circumstances apply:  
390

391 (a) The request was held objectionable under Civ.R. 36(A);

392 (b) The admission sought was of no substantial importance;

393 (c) The party failing to admit had a reasonable ground to believe that it might  
394 prevail on the matter; ~~or~~

395 (d) There was other good reason for the failure to admit.  
396  
397  
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401 **RULE 39. Trial by Jury or by the Court**

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

403

404

(B) **By the court.**

405

406

(1) Issues not demanded for trial by jury as provided in ~~Rule~~ Civ.R. 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

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(2) No later than the deadline set in a case scheduling order or thirty days before a scheduled trial, a party may request that a trial to the court be conducted using live two-way video and audio conference technology. The requesting party shall indicate in the request whether any special accommodations are anticipated or required.

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(3) Upon a party's request under division (B)(2) of this rule, the court may, in its discretion, conduct the trial using live two-way video and audio conference technology. In deciding on the party's request, the court shall consider the views of the parties, the anticipated probative value of the evidence, difficulty and expense of presenting witnesses by physical presence versus remote presence, convenience and efficiency for the parties to the case, and the nature and complexity of the issues to be tried. No trial shall be conducted remotely over the objection of a party to the case unless one of the parties is restricted in physical appearance due to one of the following circumstances, or for other good cause shown:

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(a) Active duty in the United States military;

428

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(b) Incarceration;

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431

(c) Medical restrictions;

432

433

(d) Significant travel distance from court.

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

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Proposed Staff Note (July 1, 2023)

440

441

A nonexclusive list of factors that courts and litigants may consider in regard to remote trials or hearings includes (1) the age and any disabilities or special needs of a witness that may affect the taking of testimony; (2) whether language translation will be required; (3) procedures available for handling exhibits or demonstrations; (4) arrangements for making and ruling on objections or for sidebar conferences within or outside the hearing of a witness appearing by remote presence; (5) limitations upon persons who may be present in the location where the witness testifies, assuring identification of all such persons prior to the

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447 testimony; and (6) whether any technological issues involving the video display or recording of the trial or  
448 hearing via remote presence may affect the ability to create a clear record of all testimony.

449 **RULE 43. Taking Testimony**

450

451 **(A) In open court.** At a trial or hearing, the witnesses' testimony shall be taken in open  
452 court unless a statute, the Rules of Evidence, these rules, or other rules adopted by the Supreme  
453 Court provide otherwise. For good cause ~~in compelling circumstances~~ and with appropriate  
454 safeguards, the court may permit testimony in open court by ~~contemporaneous transmission from~~  
455 ~~a different location~~ remote presence.

456

457 **(B) Notice.** A request to present testimony remotely shall be discussed among counsel  
458 and unrepresented parties and filed with the court no later than the deadline set in the case  
459 scheduling order or thirty days before the trial or hearing, unless for good cause the court permits  
460 later notice.

461

462 **(C) Evidence on a motion.** When a motion relies on facts outside the record, the court  
463 may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on  
464 depositions.

465

466 **(D) Oath or Affirmation.**

467

468 (1) The oath or affirmation of the witness may be administered in a manner that  
469 allows the person authorized to administer it to verify the identity of the witness at  
470 the time it is administered.

471

472 (2) Every witness testifying remotely, including those outside this state, in a  
473 trial or other proceeding in open court in Ohio must affirm on the record that the  
474 witness has submitted to the jurisdiction of the Ohio court for the purpose of  
475 enforcement of his or her oath or affirmation, including any consideration of perjury  
476 charges arising from such testimony.

477

478

479 Proposed Staff Note (July 1, 2023)

480

481 The July 1, 2023, staff note for Civ.R. 39 suggests factors sensibly discussed when considering  
482 remote proceedings using this rule.

483

484 The new division (D)(2) is added to explicitly provide "long-arm" jurisdiction over a witness testifying  
485 in open court remotely, whether from inside or outside Ohio. Some means is needed to handle perjury or  
486 more common issues, such as a witness who refuses to answer a proper question. This new division  
487 explicitly gives the presiding judicial officer the same authority with a virtual witness as is available when a  
488 witness testifies in person in the court. The court, counsel, and pro se litigants should be mindful of two  
489 practical concerns when using virtual witnesses: first, it may be appropriate not only to require the witness  
490 to affirm on the record that the witness understands he or she has submitted to the authority of the Ohio  
491 court, but also to require the witness to display a driver's license or other photographic identification if he  
492 or she is not known or recognizable to those in the court; and second, counsel or pro se litigants should  
493 inform witnesses of these requirements ahead of the remote testimony to prevent misunderstanding by the  
494 witness, delay of the proceedings, or possible exclusion of the witness.

495 **RULE 45. Subpoena**

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**(A) Form; Issuance; Notice.**

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

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

(b) ~~command~~ Command each person to whom it is directed, at a time and place specified in the subpoena, to do at least one of the following:

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

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

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

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

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

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

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

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

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

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

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

- 542 (a) Fails to allow reasonable time to comply;  
543  
544 (b) Requires disclosure of privileged or otherwise protected matter and  
545 no exception or waiver applies;  
546  
547 (c) Requires disclosure of a fact known or opinion held by an expert not  
548 retained or specially employed by any party in anticipation of litigation or  
549 preparation for trial as described by Civ.R. 26(B)(5)(7)(h), if the fact or  
550 opinion does not describe specific events or occurrences in dispute and  
551 results from study by that expert that was not made at the request of any  
552 party;  
553  
554 (d) Subjects a person to undue burden.  
555

556 **[Existing language unaffected by the amendments is omitted to conserve space]**  
557

558 **(D) Duties in responding to subpoena.**  
559

560 **[Existing language unaffected by the amendments is omitted to conserve space]**  
561

- 562 (3) A person need not provide discovery of electronically stored information  
563 when the production imposes undue burden or expense. On motion to compel  
564 discovery or for a protective order, the person from whom electronically stored  
565 information is sought must show that the information is not reasonably accessible  
566 because of undue burden or expense. If a showing of undue burden or expense is  
567 made, the court may nonetheless order production of electronically stored  
568 information if the requesting party shows good cause. The court shall consider the  
569 factors in Civ. R. 26(B)(4)(b) when determining if good cause exists. In  
570 ordering production of electronically stored information, the court may specify  
571 the format, extent, timing, allocation of expenses and other conditions for the  
572 discovery of the electronically stored information.  
573

574 **[Existing language unaffected by the amendments is omitted to conserve space]**  
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576

577 Proposed Staff Note (July 1, 2023)  
578

579 The amendments to divisions (C)(3)(c) and (D)(3) of this rule make cross-reference changes  
580 necessitated by prior amendments to Civ.R. 26(B).

581 **RULE 53. Magistrates**

582

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

584

585 **(D) Proceedings in Matters Referred to Magistrates.**

586

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

588

589 (8) *Contempt in the presence of a magistrate.*

590

591 (a) *Contempt order.* Contempt sanctions under Civ. R. 53(C)~~(2)~~(3)(f)  
592 may be imposed only by a written order that recites the facts and certifies that  
593 the magistrate saw or heard the conduct constituting contempt.

594

595 (b) *Filing and provision of copies of contempt order.* A contempt order  
596 shall be filed and copies provided forthwith by the clerk to the appropriate  
597 judge of the court and to the subject of the order.

598

599 (c) *Review of contempt order by court; bail.* The subject of a contempt  
600 order may by motion obtain immediate review by a judge. A judge or the  
601 magistrate entering the contempt order may set bail pending judicial review  
602 of the order.

603

604

605 Proposed Staff Note (July 1, 2023)

606

607 The amendment to division (D)(8)(a) of this rule makes a cross-reference change necessitated by  
608 prior amendments to the rule.

609 **RULE 57. Declaratory Judgments**

610

611 The procedure for obtaining a declaratory judgment pursuant to ~~Sections 2721.01 to~~  
612 ~~2721.15, inclusive, Chapter 2721.~~ of the Revised Code, shall be in accordance with these rules.

613 The existence of another adequate remedy does not preclude a judgment for declaratory relief in  
614 cases where it is appropriate. The court may advance on the trial list the hearing of an action for  
615 a declaratory judgment.

616 **RULE 65.1. Civil Protection Orders**

617

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

625

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

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627  
628 **(H) Dismissal of petitions for protection orders.** Notwithstanding Civ.R. 41, any  
629 dismissal of a petition for domestic violence, dating violence, stalking, or sexually oriented offense  
630 civil protection order by a court or party, other than a denial on the merits, shall not operate as an  
631 adjudication of the merits or a bar to a subsequent filing of the petition.



632 **RULE 73. Probate Division of the Court of Common Pleas**

633

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

635

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

641

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

643

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

645

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

652

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

655

656 (5) By United States ordinary mail after a United States certified or express mail or  
657 commercial carrier envelope is returned with an endorsement stating that it was unclaimed or a  
658 similar endorsement indicating the item was unclaimed, provided that the United States ordinary  
659 mail envelope is not returned by the postal authorities showing failure of delivery;

660

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

667

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

669

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

672

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

676

677 When service is made without court intervention, proof of service of notice shall be made  
678 by affidavit. When service is made by United States certified or express mail or by commercial

679 carrier service, the return receipt which shows delivery shall be attached to the affidavit. When  
680 service is made by United States ordinary mail, the prior returned certified or express mail or  
681 commercial carrier envelope which shows that the mail was refused or unclaimed shall be attached  
682 to the affidavit.

683  
684 Service of notice by United States ordinary mail shall be complete when the fact of mailing  
685 is entered of record except as stated in division (E)(5) of this rule. Service by publication shall be  
686 complete at the date of the last publication.

687  
688 **[Existing language unaffected by the amendments is omitted to conserve space]**

689 **RULE 75. Divorce, Annulment, and Legal Separation Actions**

690

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

692

693 **(P) Dismissal of domestic relations actions.** Notwithstanding Civ.R. 41, any  
694 dismissal of a divorce, dissolution, annulment, or legal separation action by a court or party, other  
695 than a denial on the merits, shall not operate as an adjudication of the merits or a bar to a subsequent  
696 filing of the action.

**FORM 20. CIVIL FEE WAIVER AFFIDAVIT AND ORDER**

IN \_\_\_\_\_

	)	CASE NO.
	)	
Plaintiff,	)	JUDGE
	)	
vs.	)	
	)	
Defendant.	)	<b><u>FINANCIAL DISCLOSURE / FEE- WAIVER AFFIDAVIT AND ORDER</u></b>

Pursuant to R.C. 2323.311, the below-named Applicant requests that the Court determine that the Applicant is an indigent litigant and be granted a waiver of the prepayment of costs or fees in the above captioned matter. The Applicant submits the following information in support of said request.

Personal Information			
Applicant's First Name	Applicant's Last Name		
Applicant's Date of Birth	Last 4 Digits of Applicant's SSN		
Applicant's Address			
Other Persons Living in Your Household			
First Name	Last Name	Is this person a child under 18?	Relationship (Spouse or Child)
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Public Benefits			
I receive the following public benefits and my gross income, including the cash benefits marked below, does not exceed <b>187.5%</b> of the federal poverty guidelines.			
Place an "X" next to any benefits you receive.			
Ohio Works First <sup>1</sup> : ___    SSI <sup>2</sup> : ___    Medicaid <sup>3</sup> : ___    Veterans Pension Benefit <sup>4</sup> : ___    SNAP / Food Stamps <sup>5</sup> : ___			
Monthly Income			
I am <b>NOT</b> able to access my spouse's income <input type="checkbox"/>			
	Applicant	Spouse (If Living in Household)	Total Monthly Income

Gross Monthly Employment Income, including Self-Employment Income (Before Taxes)	\$	\$	\$
Unemployment, Worker's Compensation, Spousal Support (If Receiving)	\$	\$	\$
<b>TOTAL MONTHLY INCOME</b>			\$
<b>Liquid Assets</b>			
<b>Type of Asset</b>	<b>Estimated Value</b>		
Cash on Hand	\$		
Available Cash in Checking, Savings, Money Market Accounts	\$		
Stocks, Bonds, CDs	\$		
Other Liquid Assets	\$		
<b>Total Liquid Assets</b>			\$
<b>Monthly Expenses</b>			
<b>Column A</b>		<b>Column B</b>	
<b>Type of Expense</b>	<b>Amount</b>	<b>Type of Expense</b>	<b>Amount</b>
Rent / Mortgage / Property Tax / Insurance	\$	Insurance (Medical, Dental, Auto, etc.)	\$
Food / Paper Products/Cleaning Products/Toiletries	\$	Child or Spousal Support that You Pay	\$
Utilities (Heat, Gas, Electric, Water / Sewer, Trash)	\$	Medical / Dental Expenses or Associated Costs of Caring for a Sick or Disabled Family Member	\$
Transportation / Gas	\$	Credit Card, Other Loans	\$
Phone	\$	Taxes Withheld or Owed	\$
Child Care	\$	Other (e.g. garnishments)	\$
<b>Total Column A Expenses</b>	\$	<b>Total Column B Expenses</b>	\$
<b>TOTAL MONTHLY EXPENSES (Column A + Column B)</b>			

I, \_\_\_\_\_, hereby certify that the information I have provided on  
 (Print Name)  
 this financial disclosure form is true to the best of my knowledge and that I am unable to prepay the costs or fees in this case.

\_\_\_\_\_  
 Signature

**NOTARY PUBLIC:**

Sworn to before me and signed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
 in \_\_\_\_\_ County, Ohio.

\_\_\_\_\_  
 Notary Public (Signature)

\_\_\_\_\_  
 Notary Public (Printed)  
 My Commission expires: \_\_\_\_\_

If available, an individual duly authorized to administer this oath at the Clerk of Court's Office will do so at no cost to the Applicant.

\_\_\_\_\_

**ORDER**

- Upon the request of the Applicant and the Court's review, the Court finds that the Applicant IS an indigent litigant and **GRANTS** a waiver of the prepayment of costs or fees in this matter. Pursuant to R.C. 2323.311(B)(3), upon the filing of a civil action or proceeding and the affidavit of indigency under division (B)(1) of this section, the clerk of the court shall accept the action, motion, or proceeding for filing.
  
- Upon the request of the Applicant and the Court's review, the Court finds that the Applicant is NOT an indigent litigant and **DENIES** a waiver of the prepayment of costs or fees in this matter. Applicant is granted thirty (30) days from the issuance of this Order to make the required advance deposit or security. Failure to do so within the time allotted may result in dismissal of the applicant's filing.

**IT IS SO ORDERED**

---

Judge / Magistrate

---

Date

[Effective: April 15, 2020; amended effective April 15, 2022; July 1, 2023.]

## APPENDIX

### **2022 FEDERAL POVERTY LIMIT (FPL)**

<b>Persons in family/household</b>	<b>100% Poverty</b>	<b>100% Poverty Monthly Gross Income</b>	<b>187.5% Poverty</b>	<b>187.5% Poverty Monthly Gross Income</b>
1	\$13,590	\$1,132.50	\$25,481.25	<b>\$2,123.44</b>
2	\$18,310	\$1,525.83	\$34,331.25	<b>\$2,860.94</b>
3	\$23,030	\$1,919.17	\$43,181.25	<b>\$3,598.44</b>
4	\$27,750	\$2,312.50	\$52,031.25	<b>\$4,335.94</b>
5	\$32,470	\$2,705.83	\$60,881.25	<b>\$5,073.44</b>
6	\$37,190	\$3,099.17	\$69,731.25	<b>\$5,810.94</b>
7	\$41,910	\$3,492.50	\$78,581.25	<b>\$6,548.44</b>
8	\$46,630	\$3,885.83	\$87,431.25	<b>\$7,285.94</b>

R.C. 2323.311(B)

(4) A judge or magistrate of the court shall review the affidavit of indigency as filed pursuant to division (B)(2) of this section and shall approve or deny the applicant's application to qualify as an indigent litigant. The judge or magistrate shall approve the application if the applicant's gross income does not exceed one hundred eighty-seven and five-tenths per cent of the federal poverty guidelines as determined by the United States department of health and human services for the state of Ohio and the applicant's monthly expenses are equal to or in excess of the applicant's liquid assets as specified in division (C)(2) of section 120-1-03 of the Administrative Code, as amended, or a substantially similar provision. If the application is approved, the clerk shall waive the advance deposit or security and the court shall proceed with the civil action or proceeding. If the application is denied, the clerk shall retain the filing of the action or proceeding, and the court shall issue an order granting the applicant whose application is denied thirty days to make the required advance deposit or security, prior to any dismissal or other action on the filing of the civil action or proceeding.

(6) Nothing in this section shall prevent a court from approving or affirming an application to qualify as an indigent litigant for an applicant whose gross income exceeds one hundred eighty-seven and five-tenths per cent of the federal poverty guidelines as determined by the United States department of health and human services for the state of Ohio, or whose liquid assets equal or exceed the applicant's monthly expenses as specified in division (C)(2) of section 120-1-03 of the Administrative Code, as amended, or a substantially similar provision.

---

<sup>1</sup>Ohio Works First Income Limit: 50% FPL (R.C. 5107.10(D)(1)(a))

<sup>2</sup>SSI Income Limit: cannot have countable income that exceeds the Federal Benefit Rate (FBR). 2019 FBR: \$771 monthly for single disabled individual; \$1157 monthly for disabled couple (20 CFR 416.1100)

<sup>3</sup>Medicaid Income Limit:

Modified Adjusted Gross Income (MAGI):138% FPL (OAC 5160:1-4-01; 42 USC 1396a(a)(10)(A)(i)(VIII))

Aged, Blind or Disabled: \$791 for single person; \$1177 for disabled couple

<sup>4</sup>Veterans Pension Benefit Income Limit: \$13,535 annually / \$1,127 monthly for a single person; \$17,724 annually / \$1,477 monthly for a veteran with one dependent

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<sup>5</sup>Supplemental Nutrition Assistance Program (SNAP) Income Limit: 130% FPL for assistance groups with nondisabled/nonelderly member; 165% FPL for elderly and disabled assistance groups (OAC 5101:4-4-11; Food Assistance Change Transmittal No. 61)



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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 and audio technology shall not be construed to limit the power of a court to order that a party, attorney, or witness physically appear at a proceeding without the use of live two-way video and audio technology.**

706 **RULE 2. Definitions.**

707

708 As used in these rules:

709

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

711

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

714

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

717

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

720

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

723

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

725

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

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

729

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

731

732 **(C) Warrant and summons: form.**

733

734 **(1) Warrant.** The warrant shall contain the name of the defendant or, if that is  
735 unknown, any name or description by which the defendant can be identified with reasonable  
736 certainty, a description of the offense charged in the complaint, whether the warrant is being issued  
737 before the defendant has appeared or was scheduled to appear, and the numerical designation of  
738 the applicable statute or ordinance. A copy of the complaint shall be attached to the warrant.

739

740 (a) If the warrant is issued after the defendant has made an initial appearance or has  
741 failed to appear at an initial appearance, the warrant shall command that the defendant be arrested  
742 and either of the following:

743

744 (i) That the defendant shall be required to post a sum of cash or secured bail bond with  
745 the condition that the defendant appear before the issuing court at a time and date certain;

746

747 (ii) That the defendant shall be held without bail until brought before the issuing court  
748 without unnecessary delay.

749

750 (b) If the warrant is issued before the defendant has appeared or is scheduled to appear,  
751 the warrant shall so indicate ~~and the bail provisions of Crim.R. 46 shall apply.~~

752

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

753

754 **(E) Arrest.**

755

756 **(1) Arrest upon warrant.**

757

758 (a) Where a person is arrested upon a warrant that states it was issued before a  
759 scheduled initial appearance, or the warrant is silent as to when it was issued, the judicial officer  
760 before whom the person is brought shall ~~apply Crim.R. 46~~ determine bail.

761

762

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

763

764 **RULE 6. The Grand Jury.**

765

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

767

768 **(F) Finding and return of indictment.** An indictment may be found only upon the  
769 concurrence of seven or more grand jurors. When so found the foreperson or deputy foreperson  
770 shall sign the indictment as foreperson or deputy foreperson. The indictment shall be returned by  
771 the foreperson or deputy foreperson to a judge of the court of common pleas and filed with the  
772 clerk who shall endorse thereon the date of filing and enter each case upon the appearance and trial  
773 dockets. If the defendant is in custody or has been released ~~pursuant to Crim.R. 46~~ on bail and  
774 seven grand jurors do not concur in finding an indictment, the foreperson shall so report to the  
775 court forthwith.

776

777

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

778 **RULE 9. Warrant or Summons Upon Indictment or Information.**

779

780 (A) **Issuance.** Upon the request of the prosecuting attorney the clerk shall forthwith  
781 issue a warrant for each defendant named in the indictment or in the information. The clerk shall  
782 issue a summons instead of a warrant where the defendant has been released pursuant to Rule 46  
783 on bail and is indicted for the same offense for which he was bound over pursuant to Rule 5. In  
784 addition, the clerk shall issue a summons instead of a warrant upon the request of the prosecuting  
785 attorney or by direction of the court.

786

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

788 **RULE 10. Arraignment.**

789

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

791

792 **(B) Presence of defendant.**

793

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

797

798 (2) In a felony or misdemeanor arraignment or a felony initial appearance, a court may  
799 permit the remote presence and participation of a defendant ~~by remote contemporaneous video,~~  
800 provided the ~~use of video~~ appearance complies with the requirements set out in Rule Crim.R.  
801 ~~43(A)(2) of these rules. This division shall not apply to any other felony proceeding.~~

802

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

804 **RULE 12. Pleadings and Motions Before Trial: Defenses and Objections.**

805

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

807

808 **(B) Filing with the court defined.** The filing of documents with the court, as required  
809 by these rules, shall be made by filing them with the clerk of court, except that the judge may  
810 permit the documents to be filed with the judge, in which event the judge shall note the filing date  
811 on the documents and transmit them to the clerk. A court ~~may shall~~ provide, by court order or  
812 local rules rule, for the filing of documents by electronic means. ~~If the~~ The court adopts such order  
813 or local rules, they rule shall include all of the following:

814

815 (1) The complaint, ~~if permitted by local rules to be filed electronically,~~ shall comply  
816 with Crim.R. 3.

817

818 (2) Any signature on electronically transmitted documents shall be considered that of  
819 the attorney or party it purports to be for all purposes. If it is established that the documents were  
820 transmitted without authority, the court shall order the filing stricken.

821

822 (3) A provision shall specify the days and hours during which electronically  
823 transmitted documents will be received by the court, and a provision shall specify when documents  
824 received electronically will be considered to have been filed.

825

826 (4) Any document filed electronically that requires a filing fee may be rejected by the  
827 clerk of court unless the filer has complied with the mechanism established by the court for the  
828 payment of filing fees.

829

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

831 **RULE 15. Deposition.**

832

833 (A) **When taken.** If it appears probable that a prospective witness will be unable to  
834 attend or will be prevented from attending a trial or hearing, and if it further appears that ~~his~~ the  
835 witness's testimony is material and that it is necessary to take ~~his~~ the witness's deposition in order  
836 to prevent a failure of justice, the court at any time after the filing of an indictment, information,  
837 or complaint shall upon motion of the defense attorney or the prosecuting attorney and notice to  
838 all the parties, order that ~~his~~ the witness's testimony be taken by deposition and that any designated  
839 books, papers, documents or tangible objects, not privileged, be produced at the same time and  
840 place.

841

842 If a witness is committed for failure to give bail or to appear to testify at a trial or hearing,  
843 the court on written motion of the witness and notice to the parties, may direct that ~~his~~ the witness's  
844 deposition be taken. After the deposition is completed, the court may discharge the witness.

845

846 (B) **Notice of taking.** The party at whose instance a deposition is to be taken shall give  
847 to every other party reasonable written notice of the time and place for taking the deposition. The  
848 notice shall state the name and address of each person to be examined. On motion of a party upon  
849 whom the notice is served, the court for cause shown may extend or shorten the time or fix the  
850 place of deposition.

851

852 (C) **Attendance of defendant.** The defendant shall have the right to ~~attend~~ appear at  
853 the deposition. If ~~he~~ the defendant is confined, the person having custody of the defendant shall  
854 be ordered by the court to take ~~him~~ the defendant to the deposition. The defendant may waive ~~his~~  
855 the right to attend appear at the deposition, provided ~~he~~ the defendant does so in writing ~~and~~ or in  
856 open court, is represented by counsel, and is fully advised of ~~his~~ the right to ~~attend~~ appear by the  
857 court at a recorded proceeding. The court may permit the remote presence and participation of a  
858 defendant if the defendant has waived in writing or orally on the record the right to be physically  
859 present and agreed to appear by remote presence in accordance with Crim.R. 43(A)(2).

860

861 (D) **Counsel.** Where a defendant is without counsel, the court shall advise ~~him~~ the  
862 defendant of ~~his~~ the right to counsel and assign counsel to represent ~~him~~ the defendant unless the  
863 defendant waives counsel or is able to obtain counsel. If it appears that a defendant at whose  
864 instance a deposition is to be taken cannot bear the expense thereof, the court may direct that all  
865 deposition expenses, including but not limited to travel and subsistence of the defendant's attorney  
866 for attendance at such examination together with a reasonable attorney fee, in addition to the  
867 compensation allowed for defending the defendant, and the expenses of the prosecuting attorney  
868 in the taking of such deposition, shall be paid out of public funds upon the certificate of the court  
869 making such order. Waiver of counsel shall be as prescribed in ~~Rule~~ Crim.R. 44(C).

870

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



872 **RULE 19. Magistrates.**

873

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

875

876 **(C) Authority.**

877

878 (1) *Scope.* To assist courts of record and pursuant to reference under Crim. R.  
879 19(D)(1), magistrates are authorized, subject to the terms of the relevant reference, to do any of  
880 the following:

881

882 (a) Conduct initial appearances and preliminary hearings pursuant to Crim. R. 5.

883

884 (b) Conduct arraignments pursuant to Crim. R. 10.

885

886 (c) Receive pleas, in accordance with Crim R. 11, only as follows:

887

888 (i) In felony and misdemeanor cases, accept and enter not guilty pleas.

889

890 (ii) In misdemeanor cases, accept and enter guilty and no contest pleas, determine guilt  
891 or innocence, receive statements in explanation and in mitigation of sentence, and recommend a  
892 penalty to be imposed. If imprisonment is a possible penalty for the offense charged, the matter  
893 may be referred only with the unanimous consent of the parties, in writing or on the record in open  
894 court.

895

896 (d) Conduct pretrial conferences pursuant to Crim. R. 17.1.

897

898 (e) Conduct proceedings to establish bail ~~pursuant to Crim. R. 46.~~

899

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

901

902 (2) *Regulation of proceedings.* In performing the responsibilities described in Crim.  
903 R. 19(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate  
904 all proceedings as if by the court and to do everything necessary for the efficient performance of  
905 those responsibilities, including but not limited to, the following:

906

907 (a) Issuing subpoenas for the attendance of witnesses and the production of evidence;

908

909 (b) Ruling upon the admissibility of evidence in misdemeanor cases in accordance with  
910 division (C)(1)(f) of this rule;

911

912 (c) Putting witnesses under oath and examining them;

913

914 (d) When necessary to obtain the presence of an alleged contemnor in cases involving  
915 direct or indirect contempt of court, issuing attachment for the alleged contemnor and setting ~~the~~  
916 ~~type, amount, and any conditions of bail pursuant to Crim. R. 46;~~

917

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

919 **RULE 40. Taking Testimony.**

920  
921 **(A) In open court.** Except as provided in division (B) of this rule, at trial or hearing,  
922 the witnesses' testimony shall be taken in open court.

923  
924 **(B) Remote testimony.**

925  
926 **(1)** With the agreement of the parties or for good cause shown, the court may  
927 permit the remote presence and participation of a witness, including that of a  
928 defendant, for any proceeding if all of the following apply:

929  
930 **(a)** The court gives appropriate notice to all parties;

931  
932 **(b)** The court finds that the remote appearance of the witness is based  
933 on important state interests, public policies, or necessities of the case;

934  
935 **(c)** The witness is administered the oath or affirmation using live two-  
936 way video and audio conference technology that allows the person  
937 authorized to administer the oath to verify the identity of the witness at the  
938 time the oath is administered;

939  
940 **(d)** The witness is subject to full cross-examination;

941  
942 **(e)** The video arrangements allow the witness to speak, and to be seen  
943 and heard by the court, all parties, and the jury if applicable.

944  
945 **(2)** Every witness testifying remotely, including those outside this state, in a  
946 trial or other proceeding in open court in Ohio shall affirm on the record that the  
947 witness has submitted to the jurisdiction of the Ohio court for the purpose of  
948 enforcement of his or her oath or affirmation, including any consideration of perjury  
949 charges arising from such testimony.

950  
951  
952 

Proposed Staff Note (July 1, 2023)

953  
954 The addition of division (B)(2) to this rule was promulgated to ensure that Ohio has jurisdiction over  
955 those who are testifying remotely during a criminal trial.

956 **RULE 43. Presence of the Defendant.**

957

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

959

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

967

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

972

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

974

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

976

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

979

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

985

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

988

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

994

995 **(B) Defendant excluded because of disruptive conduct.** Where a defendant's  
996 conduct in the courtroom is so disruptive that the hearing or trial cannot reasonably be conducted  
997 with the defendant's continued physical presence, the hearing or trial may proceed in the  
998 defendant's absence or by remote ~~contemporaneous video~~ presence, and judgment and sentence  
999 may be pronounced as if the defendant were present. Where the court determines that it may be  
1000 essential to the preservation of the constitutional rights of the defendant, it may take such steps as  
1001 are required for the communication of the courtroom proceedings to the defendant.

1002  
1003

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

1004 **RULE 46. Pretrial Release and Detention.**

1005  
1006 (A) **Pretrial detention.** A defendant may be detained pretrial, pursuant to a motion by  
1007 the prosecutor or the court's own motion, in accordance with the standards and procedures set forth  
1008 in the Revised Code.

1009  
1010 (B) **Pretrial release.** Unless the court orders the defendant detained under division (A)  
1011 of this rule, the court shall release the defendant on the least restrictive conditions that, in the  
1012 discretion of the court, will reasonably assure the defendant's appearance in court, the protection  
1013 or safety of any person or the community, and that the defendant will not obstruct the criminal  
1014 justice process. If the court orders financial conditions of release, those financial conditions shall  
1015 be related to the defendant's risk of non-appearance, the seriousness of the offense, and the  
1016 previous criminal record of the defendant. Any financial conditions shall be in an amount and type  
1017 which are least costly to the defendant while also sufficient to reasonably assure the defendant's  
1018 future appearance in court.

1019  
1020 (1) **Financial conditions of release.** Any person who is entitled to release shall be  
1021 released upon one or more of the following types of bail in the amount set by the court:

1022  
1023 (a) An unsecured bail bond;

1024  
1025 (b) A bail bond secured by the deposit of ten percent of the amount of the bond in  
1026 cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the  
1027 bond;

1028  
1029 (c) A surety bond, a bond secured by real estate or securities as allowed by law, or the  
1030 deposit of cash, at the option of the defendant.

1031  
1032 (2) **Non-financial conditions of release.** The court may impose any of the following  
1033 conditions of release:

1034  
1035 (a) The personal recognizance of the accused;

1036  
1037 (b) Place the person in the custody of a designated person or organization agreeing to  
1038 supervise the person;

1039  
1040 (c) Place restrictions on the travel, association, or place of abode of the person during  
1041 the period of release;

1042  
1043 (d) Place the person under a house arrest, electronic monitoring, or work release  
1044 program;

1045  
1046 (e) Regulate or prohibit the person's contact with the victim;

1047  
1048 (f) Regulate the person's contact with witnesses or others associated with the case  
1049 upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to intimidate  
1050 those persons;

1051  
1052 (g) ~~Require completion of drug and/or alcohol assessment and compliance with~~  
1053 ~~treatment recommendations, for any person charged with an offense that is alcohol or drug related,~~  
1054 ~~or where alcohol or drug influence or addiction appears to be a contributing factor in the offense,~~  
1055 ~~and who appears based upon an evaluation, prior treatment history, or recent alcohol or drug use,~~  
1056 ~~to be in need of treatment;~~

1057  
1058 (h) ~~Require compliance with alternatives to pretrial detention, including but not limited~~  
1059 ~~to diversion programs, day reporting, or comparable alternatives, to ensure the person's appearance~~  
1060 ~~at future court proceedings;~~

1061  
1062 (i) ~~Any other constitutional condition considered reasonably necessary to reasonable~~  
1063 ~~assure appearance or public safety.~~

1064  
1065 **(C) Factors.** ~~Subject to subsection (G)(2) of this rule, in determining the types,~~  
1066 ~~amounts, and conditions of bail, the court shall consider all relevant information, including but not~~  
1067 ~~limited to:-~~

1068  
1069 (1) ~~The nature and circumstances of the crime charged, and specifically whether the~~  
1070 ~~defendant used or had access to a weapon;~~

1071  
1072 (2) ~~The weight of the evidence against the defendant;~~

1073  
1074 (3) ~~The confirmation of the defendant's identity;~~

1075  
1076 (4) ~~The defendant's family ties, employment, financial resources, character, mental~~  
1077 ~~condition, length of residence in the community, jurisdiction of residence, record of convictions,~~  
1078 ~~record of appearance at court proceedings or of flight to avoid prosecution;~~

1079  
1080 (5) ~~Whether the defendant is on probation, a community control sanction, parole, post-~~  
1081 ~~release control, bail, or under a court protection order.~~

1082  
1083 **(D) Appearance pursuant to summons.** ~~When summons has been issued and the~~  
1084 ~~defendant has appeared pursuant to the summons, absent good cause, there is a presumption of~~  
1085 ~~release on personal recognizance.~~

1086  
1087 **(E) Continuation of bail.** ~~When a judicial officer, either on motion of a party or on~~  
1088 ~~the court's own motion, determines that the considerations set forth in subsections (B) and (C)~~  
1089 ~~require a modification of the conditions of release, the judicial officer may order additional or~~  
1090 ~~different types, amounts or conditions of bail, or may eliminate or lessen conditions of bail~~  
1091 ~~determined to be no longer necessary. Unless a modification is agreed to by the parties, the court~~  
1092 ~~shall hold a hearing on the modification of bond as promptly as possible. Unless modified by the~~  
1093 ~~judicial officer, or if application is made by a surety for discharge from a bond pursuant to R.C.~~  
1094 ~~2937.40, conditions of release shall continue until the return of a verdict or the entry of a guilty~~  
1095 ~~plea, or a no-contest plea, and may continue thereafter pending sentence or disposition of the case~~  
1096 ~~on review.~~

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~~(F) **Information need not be admissible.** Information stated in or offered in connection with any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law. Statements or admissions of the defendant made at a bail proceeding or in the course of compliance with a condition of bail shall not be received as substantive evidence in the trial of the case.~~

~~(G) **Bond schedule.**~~

~~(1) In order to expedite the prompt release of a defendant prior to initial appearance, each court shall establish a bail bond schedule covering all misdemeanors including traffic offenses, either specifically, by type, by potential penalty, or by some other reasonable method of classification. The court also may include requirements for release in consideration of divisions (B) and (C)(5) of this rule. The sole purpose of a bail schedule is to allow for the consideration of release prior to the defendant's initial appearance.~~

~~(2) A bond schedule shall not be considered as "relevant information" under division (C) of this rule.~~

~~(3) Each municipal or county court shall, by rule, establish a method whereby a person may make bail by use of a credit card.~~

~~(4) Each court shall review its bail bond schedule biennially by January 31 of each even numbered year, to ensure an appropriate bail bond schedule that does not result in the unnecessary detention of defendants due to inability to pay.~~

~~(H) **Review of Release Conditions.** A person who has been arrested, either pursuant to a warrant or without a warrant, and who has not been released on bail, shall be brought before a judicial officer for an initial bail hearing no later than the second court day following the arrest. That bail hearing may be combined with the initial appearance provided for in Crim. R. 5(A).~~

~~If, at the initial bail hearing before a judicial officer, the defendant was not represented by counsel, and if the defendant has not yet been released on bail, a second bail hearing shall be held on the second court day following the initial bail hearing. An indigent defendant shall be afforded representation by appointed counsel at State's expense at this second bail hearing.~~

~~(I) **Failure to appear; breach of conditions.** Any person who fails to appear before any court as required is subject to the punishment provided by the law, and any bail given for the person's release may be forfeited. If there is a breach of condition of bail, the court may amend the bail.~~

~~(J) **Justification of sureties.** Every surety, except a corporate surety licensed as provided by law, shall justify by affidavit, and may be required to describe in the affidavit, the property that the surety proposes as security and the encumbrances on it, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged, and all of the surety's other liabilities. The surety shall provide other evidence of financial responsibility as the court or clerk may require. No bail bond shall be approved unless the surety~~

1144 or sureties appear, in the opinion of the court or clerk, to be financially responsible in at least the  
1145 amount of the bond. No licensed attorney at law shall be a surety.

1146  
1147 [~~Effective: July 1, 1973; amended effective July 1, 1990; July 1, 1994; July 1, 1998; July 1,~~  
1148 ~~2006; July 1, 2020.~~]

1149  
1150  
1151 **Staff Note (July 1, 2020 Amendment)**  
1152

1153 **~~Crim.R. 46-~~**  
1154

1155 ~~Crim. R. 46 has been amended to improve efficiency in setting bail in an amount that effectively~~  
1156 ~~ensures (1) the defendant's continued presence at future proceedings, (2) that future proceedings will not~~  
1157 ~~be impeded by any effort to obstruct justice, and (3) the safety of any person as well as the community in~~  
1158 ~~general. Crim. R. 46 continues to entrust to the judicial officer's sound discretion the setting of particular~~  
1159 ~~conditions of release that will be imposed on a particular defendant in a particular case. At the same time,~~  
1160 ~~the amendments seek to ensure that excessive money bails are not used as a means of simply denying a~~  
1161 ~~defendant bail without benefit of a detention hearing prescribed by statute. See~~  
1162 ~~R.C. 2937.222-~~

1163  
1164 ~~The title of Crim. R. 46 has been changed to recognize that pretrial detention is available under the~~  
1165 ~~Revised Code in those cases where no conditions of release are reasonably available. Subsection (A) has~~  
1166 ~~been added to that same effect.~~

1167  
1168 ~~Subsection (B) recognizes that conditions of release include both financial and non-financial~~  
1169 ~~conditions, either or both of which may be employed by the judicial officer in the exercise of the judicial~~  
1170 ~~officer's discretion. Financial conditions should be the least costly to reasonably ensure the defendant's~~  
1171 ~~presence at future proceedings; limiting financial conditions to ensuring against risk of flight is consistent~~  
1172 ~~with subsection (I), which provides that bond can only be forfeited when a defendant fails to appear at a~~  
1173 ~~future proceeding. The subsection's list of non-financial conditions is not exclusive, but identifies a number~~  
1174 ~~of non-financial conditions already employed by courts in Ohio and elsewhere.~~

1175  
1176 ~~Subsection (G) recognizes that a bond schedule is to be used for the sole purpose of securing a~~  
1177 ~~release before an initial appearance, and is not to be considered by a judicial officer during a bond hearing.~~

1178  
1179 ~~Subsection (H) has been amended to ensure that a person arrested who has not already been~~  
1180 ~~released pursuant to posting a bond specified in a bond schedule or prescribed in an arrest warrant, will~~  
1181 ~~appear before a judicial officer no later than the second court day after arrest. If the defendant's appearance~~  
1182 ~~at that time is without counsel, and if the defendant has not yet been released, then a second hearing, with~~  
1183 ~~the opportunity for the defendant to be represented by counsel, must take place within two court days after~~  
1184 ~~the initial court appearance.~~

1185  
1186 **Staff Note (July 1, 2006 Amendment)**  
1187

1188 ~~Rule 46 was modified, effective July 1, 1998, to reflect the amendment to Article I, Section 9 of the~~  
1189 ~~Ohio Constitution approved by the voters in November 1997. Subsequent changes in the law, such as the~~  
1190 ~~standard civil protection order forms promulgated by the Supreme Court (Rule 10.01 of the Rules of~~  
1191 ~~Superintendence for the Courts of Ohio) and legislative revisions to the criminal code make some~~  
1192 ~~elaboration appropriate. The changes to divisions (B), (C), and (G) are intended to update the rule to reflect~~  
1193 ~~available technology, provide for greater safety, amplify the options that may be used by the trial court, and~~  
1194 ~~confirm the ability of a trial court to control conditions and type of bail.~~

1195  
1196  
1197 **Rule 46(B) Conditions of bail**



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~~Division (B)(3) is modified to include electronic monitoring as one of the permissible conditions of bail that may be imposed by the trial court.~~

~~**Rule 46(C) Factors**~~

~~Division (C) is amended to permit the trial court to consider two express factors in determining the amount and conditions of bail. Division (C)(1) permits the trial court to consider whether the defendant used or had access to a weapon. Division (C)(5) allows the court to consider whether the defendant is subject to a court-issued protection order.~~

~~**Rule 46(G) Bond schedule**~~

~~Division (G) is revised to permit the court to include factors and conditions of bail in the bond schedule that the court must establish.~~

1214 **OHIO TRAFFIC RULES**

1215 **RULE 4. Bail and Security**

1217

1218 **(A) Posting of bail; depositing of security.** The posting of bail or the depositing of  
1219 security is for the purpose of securing appearance or compliance with R.C. 2935.26(C). The  
1220 forfeiture of the bail or security may be a substitute for appearance in court, compliance with R.C.  
1221 2935.26(C), and payment of penalty imposed on a finding of guilt, with consent of all parties.

1222

1223 **(B) Bail and security procedure.** ~~Criminal Rule 46 governs bail in traffic cases. In~~  
1224 ~~addition, the~~ The provisions of R.C. 2937.221 and R.C. 2935.27 apply in traffic cases.

1225 **OHIO RULES OF EVIDENCE**

1226  
1227 **RULE 101. Scope of Rules: Applicability; Privileges; Exceptions**

1228  
1229 **[Existing language unaffected by the amendments is omitted to conserve space]**

1230  
1231 **(C) Definitions.** As used in these rules:

1232  
1233 **(1)** “Present” means the physical or remote presence of an individual.

1234  
1235 **(2)** “Remote presence” means the presence of a person who is using live two-way video  
1236 and audio technology.

1237  
1238 **(D) Exceptions.** These rules (other than with respect to privileges) do not apply in the  
1239 following situations:

1240  
1241 **~~(1) Admissibility determinations.~~** **(1)** Determinations prerequisite to rulings on the  
1242 admissibility of evidence when the issue is to be determined by the court under Evid.R.  
1243 104.;

1244  
1245 **~~(2) Grand jury.~~** **(2)** Proceedings before grand juries.;

1246  
1247 **~~(3) Miscellaneous criminal proceedings.~~** **(3)** Proceedings for extradition or rendition  
1248 of fugitives; sentencing; granting or revoking probation; proceedings with respect to  
1249 community control sanctions; issuance of warrants for arrest, criminal summonses and  
1250 search warrants; and proceedings with respect to release on bail or otherwise.;

1251  
1252 **~~(4) Contempt.~~** **(4)** Contempt proceedings in which the court may act summarily.;

1253  
1254 **~~(5) Arbitration.~~** **(5)** Proceedings for those mandatory arbitrations of civil cases  
1255 authorized by the rules of superintendence and governed by local rules of court.;

1256  
1257 **~~(6) Other rules.~~** **(6)** Proceedings in which other rules prescribed by the Supreme  
1258 Court govern matters relating to evidence.;

1259  
1260 **~~(7) Special non-adversary statutory proceedings.~~** **(7)** Special statutory proceedings  
1261 of a non-adversary nature in which these rules would by their nature be clearly  
1262 inapplicable.;

1263  
1264 **~~(8) Small claims division.~~** **(8)** Proceedings in the small claims division of a county  
1265 or municipal court.

1266  
1267 **(E)** As used in these rules, any option to use live two-way video and audio technology  
1268 shall not be construed to limit the power of a court to order that a party, attorney, or witness  
1269 physically appear at a proceeding without the use of live two-way video and audio technology.

1270 **RULE 601. General Rule of Competency**

1271

1272 ~~(A)~~**(A) General rule.** Every person is competent to be a witness except as otherwise  
1273 provided in these rules.

1274

1275 ~~(B)~~**(B) Disqualification of witness in general.** A person is disqualified to testify as a  
1276 witness when the court determines that the person is any of the following:

1277

1278 (1) Incapable of expressing himself or herself concerning the matter as to be  
1279 understood, either directly or through interpretation by one who can understand him or her; ~~or~~

1280

1281 (2) Incapable of understanding the duty of a witness to tell the truth;

1282

1283 (3) A spouse testifying against the other spouse charged with a crime except when  
1284 either of the following applies:

1285

1286 (a) ~~a~~ A crime against the testifying spouse or a child of either spouse is charged;

1287

1288 (b) ~~the~~ The testifying spouse elects to testify.

1289

1290 (4) An officer, while on duty for the exclusive or main purpose of enforcing traffic  
1291 laws, arresting or assisting in the arrest of a person charged with a traffic violation punishable as  
1292 a misdemeanor where the officer at the time of the arrest was not using a properly marked motor  
1293 vehicle as defined by statute or was not wearing a legally distinctive uniform as defined by statute;

1294

1295 (5) A person giving expert testimony on the issue of liability in any medical claim, as  
1296 defined in R.C. 2305.113, asserted in any civil action against a physician, podiatrist, or hospital  
1297 arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist, unless  
1298 all the following apply:

1299

1300 (a) The person testifying is licensed to practice medicine and surgery, osteopathic  
1301 medicine and surgery, or podiatric medicine and surgery by the state medical board or by the  
1302 licensing authority of any state;

1303

1304 (b) The person devotes at least one-half of his or her professional time to the active  
1305 clinical practice in his or her field of licensure, or to its instruction in an accredited school ~~and~~, at  
1306 either the time the negligent act is alleged to have occurred or the date the claim accrued;

1307

1308 (c) The person practices in the same or a substantially similar specialty as the  
1309 defendant. The court shall not permit an expert in one medical specialty to testify against a health  
1310 care provider in another medical specialty unless the expert shows both that the standards of care  
1311 and practice in the two specialties are similar and that the expert has substantial familiarity between  
1312 the specialties.

1313

1314 If the person is certified in a specialty, the person must be certified by a board recognized  
1315 by the American board of medical specialties or the American board of osteopathic specialties in

1316 a specialty having acknowledged expertise and training directly related to the particular health care  
1317 matter at issue.

1318  
1319 Nothing in this division shall be construed to limit the power of the trial court to adjudge  
1320 the testimony of any expert witness incompetent on any other ground, or to limit the power of the  
1321 trial court to allow the testimony of any other witness, on a matter unrelated to the liability issues  
1322 in the medical claim, when that testimony is relevant to the medical claim involved.

1323  
1324 This division shall not prohibit other medical professionals who otherwise are competent  
1325 to testify under these rules from giving expert testimony on the appropriate standard of care in  
1326 their own profession in any claim asserted in any civil action against a physician, podiatrist,  
1327 medical professional, or hospital arising out of the diagnosis, care, or treatment of any person.

1328  
1329 (6) As otherwise provided in these rules.

1330  
1331  
1332 Proposed Staff Note (July 1, 2023)

1333  
1334 Division (B)(5)(b) is amended to clarify the time at which the active clinical practice requirement is  
1335 needed to qualify the witness as an expert witness, in response to the Supreme Court of Ohio's ruling in  
1336 Johnson v. Abdullah, 166 Ohio St.3d 427, 2021-Ohio-3304.

1337 **RULE 607. Impeachment**

1338

1339 **(A) Who may impeach.** The credibility of a witness may be attacked by any party  
1340 except that the credibility of a witness may be attacked by the party calling the witness by means  
1341 of a prior inconsistent statement only upon a showing of surprise and affirmative damage. This  
1342 exception does not apply to statements admitted pursuant to Evid.R. 801(D)(1)~~(A)(a)~~, 801(D)(2),  
1343 or 803.

1344

1345 **[Existing language unaffected by the amendments is omitted to conserve space]**

1346 **RULE 609. Impeachment by Evidence of Conviction of Crime**

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

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**(B) Time limit.** Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement, or the termination of community control sanctions, post-release control, ~~or~~ probation, ~~shock probation~~, parole, or ~~shock parole~~ judicial release imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

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

1362 **RULE 616. Methods of impeachment**

1363

1364 In addition to other methods, a witness may be impeached by any of the following methods:

1365

1366 **[Existing language unaffected by the amendments is omitted to conserve space]**

1367

1368 **(C) Specific contradiction.** Facts contradicting a witness's testimony may be shown  
1369 for the purpose of impeaching the witness's testimony. If offered for the sole purpose of  
1370 impeaching a witness's testimony, extrinsic evidence of contradiction is inadmissible unless the  
1371 evidence is one of the following:

1372

1373 (1) Permitted by Evid.R. 608(A), 609, 613, 616(A), 616(B), or ~~706~~ 803(18);

1374

1375 (2) Permitted by the common law of impeachment and not in conflict with the  
1376 Rules of Evidence.



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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 and audio technology shall not be construed to limit the power of a court to order that a party, attorney, or witness physically appear at a proceeding without the use of live two-way video and audio technology.**

1386 **RULE 2. Definitions**

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As used in these rules:

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

(B) “Adjudicatory hearing” means a hearing to determine whether a child is a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent or otherwise within the jurisdiction of the court.

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

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

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

(F) “Child” has the same meaning as in sections 2151.011 and 2152.02 of the Revised Code.

~~(E)~~(G) “Chronic truant” has the same meaning as in section 2151.011 of the Revised Code.

~~(F)~~(H) “Complaint” means the legal document that sets forth the allegations that form the basis for juvenile court jurisdiction.

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

~~(H)~~(J) “Custodian” means a person who has legal custody of a child or a public children’s services agency or private child-placing agency that has permanent, temporary, or legal custody of a child.

~~(I)~~(K) “Delinquent child” has the same meaning as in section 2152.02 of the Revised Code.

~~(J)~~(L) “Dependent child” has the same meaning as in section 2151.04 of the Revised Code.

~~(K)~~(M) “Detention” means the temporary care of children in restricted facilities pending court adjudication or disposition.

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

1432  
1433           ~~(M)~~(O) “Dispositional hearing” means a hearing to determine what action shall be taken  
1434 concerning a child who is within the jurisdiction of the court.  
1435

1436           ~~(N)~~(P) “Guardian” means a person, association, or corporation that is granted authority by  
1437 a probate court pursuant to Chapter 2111 of the Revised Code to exercise parental rights over a  
1438 child to the extent provided in the court’s order and subject to the residual parental rights of the  
1439 child’s parents.  
1440

1441           ~~(O)~~(Q) “Guardian ad litem” means a person appointed to protect the interests of a party in  
1442 a juvenile court proceeding.  
1443

1444           ~~(P)~~(R) “Habitual truant” has the same meaning as in section 2151.011 of the Revised Code.  
1445

1446           ~~(Q)~~(S) “Hearing” means any portion of a juvenile court proceeding before the court,  
1447 whether summary in nature or by examination of witnesses.  
1448

1449           ~~(R)~~(T) “Indigent person” means a person who, at the time need is determined, is unable by  
1450 reason of lack of property or income to provide for full payment of legal counsel and all other  
1451 necessary expenses of representation.  
1452

1453           ~~(S)~~(U) “Juvenile court” means a division of the court of common pleas, or a juvenile court  
1454 separately and independently created, that has jurisdiction under Chapters 2151 and 2152 of the  
1455 Revised Code.  
1456

1457           ~~(T)~~(V) “Juvenile judge” means a judge of a court having jurisdiction under Chapters 2151  
1458 and 2152 of the Revised Code.  
1459

1460           ~~(U)~~(W) “Juvenile traffic offender” has the same meaning as in section ~~2151.024~~ 2152.02 of  
1461 the Revised Code.  
1462

1463           ~~(V)~~(X) “Legal custody” means a legal status that vests in the custodian the right to have  
1464 physical care and control of the child and to determine where and with whom the child shall live,  
1465 and the right and duty to protect, train, and discipline the child and provide the child with food,  
1466 shelter, education, and medical care, all subject to any residual parental rights, privileges, and  
1467 responsibilities. An individual granted legal custody shall exercise the rights and responsibilities  
1468 personally unless otherwise authorized by any section of the Revised Code or by the court.  
1469

1470           ~~(W)~~(Y) “Mental examination” means an examination by a psychiatrist or psychologist.  
1471

1472           ~~(X)~~(Z) “Neglected child” has the same meaning as in section 2151.03 of the Revised Code.  
1473

1474           ~~(Y)~~(AA)       “Open court” includes a court proceeding open to the public in person or by  
1475 remote access to the live proceeding.  
1476

1477            (BB) “Party” means a child who is the subject of a juvenile court proceeding, the child’s  
1478 spouse, if any, the child’s parent or parents, or if the parent of a child is a child, the parent of that  
1479 parent, in appropriate cases, the child’s custodian, guardian, or guardian ad litem, the state, and  
1480 any other person specifically designated by the court.

1481  
1482            ~~(Z)~~(CC) “Permanent custody” means a legal status that vests in a public children’s  
1483 services agency or a private child-placing agency, all parental rights, duties, and obligations,  
1484 including the right to consent to adoption, and divests the natural parents or adoptive parents of  
1485 any and all parental rights, privileges, and obligations, including all residual rights and obligations.

1486  
1487            ~~(AA)~~(DD) “Permanent surrender” means the act of the parents or, if a child has only  
1488 one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the  
1489 Revised Code, to transfer the permanent custody of the child to a public children’s services agency  
1490 or a private child-placing agency.

1491  
1492            ~~(BB)~~(EE) “Person” includes an individual, association, corporation, or partnership  
1493 and the state or any of its political subdivisions, departments, or agencies.

1494  
1495            ~~(CC)~~(FF) “Personally” means the physical or remote presence of an individual.

1496  
1497            (GG) “Physical examination” means an examination by a physician.

1498  
1499            ~~(DD)~~(HH) “Planned permanent living arrangement” means an order of a juvenile court  
1500 pursuant to which both of the following apply:

1501  
1502            (1) The court gives legal custody of a child to a public children’s services agency or a  
1503 private child-placing agency without the termination of parental rights;

1504  
1505            (2) The order permits the agency to make an appropriate placement of the child and to  
1506 enter into a written planned permanent living arrangement agreement with a foster care provider  
1507 or with another person or agency with whom the child is placed.

1508  
1509            ~~(EE)~~(II) “Private child-placing agency” means any association, as defined in section  
1510 5103.02 of the Revised Code that is certified pursuant to sections 5103.03 to 5103.05 of the  
1511 Revised Code to accept temporary, permanent, or legal custody of children and place the children  
1512 for either foster care or adoption.

1513  
1514            ~~(FF)~~(JJ) “Public children’s services agency” means a children’s services board or a  
1515 county department of human services that has assumed the administration of the children’s services  
1516 function prescribed by Chapter 5153 of the Revised Code.

1517  
1518            ~~(GG)~~(KK) “Remote presence” means the presence of a person who is using live two-  
1519 way video and audio technology.

1520  
1521            (LL) “Removal action” means a statutory action filed by the superintendent of a school  
1522 district for the removal of a child in an out-of-county foster home placement.

1523  
1524           ~~(HH)~~(MM)   “Residence or legal settlement” means a location as defined by section  
1525 2151.06 of the Revised Code.

1526  
1527           ~~(H)~~(NN)   “Residual parental rights, privileges, and responsibilities” means those  
1528 rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal  
1529 custody of the child, including but not limited to the privilege of reasonable visitation, consent to  
1530 adoption, the privilege to determine the child’s religious affiliation, and the responsibility for  
1531 support.

1532  
1533           ~~(JJ)~~(OO)   “Rule of court” means a rule promulgated by the Supreme Court or a rule  
1534 concerning local practice adopted by another court that is not inconsistent with the rules  
1535 promulgated by the Supreme Court and that is filed with the Supreme Court.

1536  
1537           ~~(KK)~~(PP)   “Serious youthful offender” means a child eligible for sentencing as  
1538 described in sections 2152.11 and 2152.13 of the Revised Code.

1539  
1540           ~~(LL)~~(QQ)   “Serious youthful offender proceedings” means proceedings after a  
1541 probable cause determination that a child is eligible for sentencing as described in sections 2152.11  
1542 and 2152.13 of the Revised Code. Serious youthful offender proceedings cease to be serious  
1543 youthful offender proceedings once a child has been determined by the trier of fact not to be a  
1544 serious youthful offender or the juvenile judge has determined not to impose a serious youthful  
1545 offender disposition on a child eligible for discretionary serious youthful offender sentencing.

1546  
1547           ~~(MM)~~(RR)   “Shelter care” means the temporary care of children in physically  
1548 unrestricted facilities, pending court adjudication or disposition.

1549  
1550           ~~(NN)~~(SS)   “Social history” means the personal and family history of a child or any  
1551 other party to a juvenile proceeding and may include the prior record of the person with the juvenile  
1552 court or any other court.

1553  
1554           ~~(OO)~~(TT)   “Temporary custody” means legal custody of a child who is removed from  
1555 the child’s home, which custody may be terminated at any time at the discretion of the court or, if  
1556 the legal custody is granted in an agreement for temporary custody, by the person or persons who  
1557 executed the agreement.

1558  
1559           ~~(PP)~~(UU)   “Unruly child” has the same meaning as in section 2151.022 of the Revised  
1560 Code.

1561  
1562           ~~(QQ)~~(VV)   “Ward of court” means a child over whom the court assumes continuing  
1563 jurisdiction.

1564 **RULE 7. Detention and Shelter Care**

1565

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

1567

(F) Detention hearing.

1569

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

1571

1572 (4) **Release of child; serious youthful offender.** With respect to a child alleged to be  
1573 or adjudicated a serious youthful offender, the juvenile court shall set the terms and conditions for  
1574 release of the child ~~in accordance with Crim.R. 46.~~

1575

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

1576

1577 **RULE 8. Filing By ~~Faersimile~~ Electronic Transmission**

1578

1579 A court ~~may~~ shall provide, by court order or local rules ~~adopted pursuant to the Rules of~~  
1580 ~~Superintendence~~ rule, for the filing of documents by electronic means. ~~If the~~ The court ~~adopts~~  
1581 ~~such~~ order or local rules, ~~they~~ rule shall include all of the following:

1582

1583 (A) Any signature on electronically transmitted documents shall be considered that of  
1584 the attorney or party it purports to be for all purposes. If it is established that the documents were  
1585 transmitted without authority, the court shall order the filing stricken.

1586

1587 (B) A provision shall specify the days and hours during which electronically  
1588 transmitted documents will be received by the court, and a provision shall specify when documents  
1589 received electronically will be considered to have been filed.

1590

1591 (C) Any document filed electronically that requires a filing fee may be rejected by the  
1592 clerk of court unless the filer has complied with the mechanism established by the court for the  
1593 payment of filing fees.

1594 **RULE 18. Time**

1595

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

1597

1598 **(B) Time: enlargement.** When an act is required or allowed to be performed at or  
1599 within a specified time, the court for cause shown may at any time in its discretion (1) with or  
1600 without motion or notice, order the period enlarged if application therefor is made before  
1601 expiration of the period originally prescribed or of that period as extended by a previous order, or  
1602 (2) upon motion permit the act to be done after expiration of the specified period if the failure to  
1603 act on time was the result of excusable neglect or would result in injustice to a party, but the court  
1604 may not extend the time for taking any action under ~~Rule~~ Juv.R. 7(F)(1), ~~Rule~~ 22(F), ~~Rule~~ 29(A),  
1605 and ~~Rule~~ 29(F)(2)(~~B~~)(b), except to the extent and under the conditions stated in them.

1606

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

1607



1608 **RULE 30. Relinquishment of Jurisdiction for Purposes of Criminal Prosecution**

1609

1610 **[Existing language unaffected by the amendments is omitted to conserve space]**

1611

1612 **(H) Release of child.** With respect to the transferred case, the juvenile court shall set  
1613 the terms and conditions for release of the child ~~in accordance with Crim. R. 46.~~

1614 **RULE 34. Dispositional Hearing**

1615

1616 (A) **Scheduling the hearing.** Where a child has been adjudicated as an abused,  
1617 neglected, or dependent child, the court shall not issue a dispositional order until after it holds a  
1618 separate dispositional hearing. The dispositional hearing for an adjudicated abused, neglected, or  
1619 dependent child shall be held at least one day but not more than thirty days after the adjudicatory  
1620 hearing is held. The dispositional hearing may be held immediately after the adjudicatory hearing  
1621 if all parties were served prior to the adjudicatory hearing with all documents required for the  
1622 dispositional hearing and all parties consent to the dispositional hearing being held immediately  
1623 after the adjudicatory hearing. Upon the request of any party or the guardian ad litem of the child,  
1624 the court may continue a dispositional hearing for a reasonable time not to exceed the time limit  
1625 set forth in this division to enable a party to obtain or consult counsel. The dispositional hearing  
1626 shall not be held more than ninety days after the date on which the complaint in the case was filed,  
1627 except that, for good cause shown, the court, on its own motion or on the motion of any party or  
1628 the child’s guardian ad litem, may continue the dispositional hearing for a reasonable period of  
1629 time beyond the ninety-day deadline. This extension beyond the ninety-day deadline shall not  
1630 exceed forty-five days and shall not be available for any case in which the complaint was dismissed  
1631 and subsequently refiled. If the dispositional hearing is not held within this ninety-day or the  
1632 extended period of time, the court, on its own motion or the motion of any party or the guardian  
1633 ad litem of the child, shall dismiss the complaint without prejudice.

1634

1635 In all other juvenile proceedings, the dispositional hearing shall be held pursuant to Juv.-R.  
1636 29(F)(2)(a) through (d) and the ninety-day requirement shall not apply. Where the dispositional  
1637 hearing is to be held immediately following the adjudicatory hearing, the court, upon the request  
1638 of any party, shall continue the hearing for a reasonable time to enable the party to obtain or consult  
1639 counsel.

1640

1641 **[Existing language unaffected by the amendments is omitted to conserve space]**

1642

1643 (C) **Judgment.** After the conclusion of the hearing, the court shall enter an appropriate  
1644 judgment within seven days. A copy of the judgment shall be given to any party requesting a copy.  
1645 In all cases where a child is placed on ~~probation~~ community control, the child shall receive a  
1646 written statement of the conditions of ~~probation~~ the community control. If the judgment is  
1647 conditional, the order shall state the conditions. If the child is not returned to the child’s home,  
1648 the court shall determine the school district that shall bear the cost of the child’s education and  
1649 may fix an amount of support to be paid by the responsible parent or from public funds.

1650

1651 **[Existing language unaffected by the amendments is omitted to conserve space]**

1652

1653

1654

Proposed Staff Note (July 1, 2023)

1655

1656

Division (A) is amended to comply with R.C. 2151.35(B)(1).

1657 **RULE 35. Proceedings After Judgment**

1658

1659 (A) **Continuing jurisdiction; invoked by motion.** The continuing jurisdiction of the  
1660 court shall be invoked by motion filed in the original proceeding, notice of which shall be served  
1661 in the manner provided for the service of process.

1662

1663 (B) **Revocation of ~~probation~~ community control.** The court shall not revoke  
1664 ~~probation~~ community control except after a hearing at which the child shall be present and apprised  
1665 of the grounds on which revocation is proposed. The parties shall have the right to counsel and  
1666 the right to appointed counsel where entitled pursuant to Juv.-R. 4(A). ~~Probation~~ Community  
1667 control shall not be revoked except upon a finding that the child has violated a condition of  
1668 ~~probation~~ community control of which the child had, pursuant to Juv.-R. 34(C), been notified.

1669

1670 (C) **Detention.** During the pendency of proceedings under this rule, a child may be  
1671 placed in detention in accordance with the provisions of ~~Rule~~ Juv.R. 7.

1672 **RULE 40. Magistrates**

1673

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

1675

(C) Authority

1677

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

1679

1680 (2) *Regulation of proceedings.* In performing the responsibilities described in Juv. R.

1681 40(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate all

1682 proceedings as if by the court and to do everything necessary for the efficient performance of those

1683 responsibilities, including but not limited to, the following:

1684

(a) Issuing subpoenas for the attendance of witnesses and the production of evidence;

1686

(b) Ruling upon the admissibility of evidence;

1688

(c) Putting witnesses under oath and examining them;

1690

(d) Calling the parties to the action and examining them under oath;

1692

(e) When necessary to obtain the presence of an alleged contemnor in cases involving

1694 direct or indirect contempt of court, issuing an attachment for the alleged contemnor and setting the

1695 ~~type, amount, and any conditions of bail pursuant to Crim.R. 46;~~

1696

(f) Imposing, subject to Juv.R. 40(D)(8), appropriate sanctions for civil or criminal  
1698 contempt committed in the presence of the magistrate.

1699

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

1700

1701 **RULE 41. Taking Testimony**  
1702

1703 **(A) Physical presence of witness.** At a trial or hearing, ~~the witnesses' testimony a~~  
1704 ~~testifying witness shall be taken in open court~~ physically present unless a statute, the Rules of  
1705 Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. ~~In all~~  
1706 ~~juvenile matters, except adjudicatory hearings in delinquency, unruly, and juvenile traffic cases~~  
1707 ~~and adult criminal trials, the juvenile court, with appropriate safeguards, may permit testimony in~~  
1708 ~~open court by contemporaneous transmission from a different location either with the agreement~~  
1709 ~~of the parties or for good cause shown.~~

1710  
1711 **(B) Remote testimony.**  
1712

1713 **(1) General.** With the agreement of the parties or for good cause shown, the  
1714 court may permit the remote presence and participation of a witness, including a  
1715 party, if all of the following apply:  
1716

1717 (a) The court gives appropriate notice to all parties;  
1718

1719 (b) The court finds that the remote appearance of the witness is based  
1720 on important state interests, public policies, or necessities of the case;  
1721

1722 (c) The witness is administered the oath or affirmation using live two-  
1723 way video and audio conference technology that allows the person  
1724 authorized to administer the oath to verify the identity of the witness at the  
1725 time the oath is administered;  
1726

1727 (d) The witness is subject to full cross-examination;  
1728

1729 (e) The video arrangements allow the witness to speak, and to be seen  
1730 and heard by the court, all parties, and the jury if applicable.  
1731

1732 **(2) Notice.** A request to present testimony remotely shall be discussed among  
1733 counsel and unrepresented parties, and filed with the court no later than the deadline  
1734 set in the case scheduling order or thirty days before the trial or hearing, unless for  
1735 good cause the court permits later notice.  
1736

1737 **(3) Oath or affirmation.** Every witness testifying remotely, including those  
1738 outside this state, in a trial or other proceeding in open court in Ohio must affirm  
1739 on the record that the witness has submitted to the jurisdiction of the Ohio court for  
1740 the purpose of enforcement of his or her oath or affirmation, including any  
1741 consideration of perjury charges arising from such testimony.