

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, 65.1, 73, 75 and Civil Form 20), the Ohio Rules of Criminal Procedure (1, 2, 10, 12, 15, 40, and 43), the Ohio Rules of Evidence (101, 601, and 609), and the Ohio Rules of Juvenile Procedure (1, 2, 8, 27, 34, 35, and 41). The history of these amendments is as follows:

September 12, 2022 First publication for public comment (ENDING October 27, 2022)

Key to Adopted Amendments:

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

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

Comments requested: The Supreme Court of Ohio will accept public comments until October 27, 2022, on the following proposed amendments to the Ohio Rules of Civil Procedure (1, 1.1, 4.1, 4.6, 10, 26, 30, 33, 36, 37, 39, 43, 65.1, 73, and 75), the Ohio Rules of Criminal Procedure (1, 2, 10, 12, 15, 40, and 43), the Ohio Rules of Evidence (101, 601, and 609), and the Ohio Rules of Juvenile Procedure (1, 2, 8, 27, 34, 35, and 41).

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

Purpose of Publication: The Supreme Court has authorized the publication of the proposed amendments for public comment. The authorization for publication by the Court is neither an endorsement of, nor a declaration of intent to approve the proposed amendments. The purpose of the publication is to invite the judiciary, the practicing bar, and the public at large to provide thoughtful and meaningful feedback on the legal and practical effect of the proposed amendments.

Comment Contact: Comments on the proposed amendments must be submitted in writing to Michel Jendretzky, Legal Counsel, Supreme Court of Ohio, 65 South Front Street, 7th Floor, Columbus, Ohio 43215-3431 or ruleamendments@sc.ohio.gov and received no later than October 27, 2022. Please include your full name and regular mailing address in any comment submitted by e-mail. Copies of all comments submitted will be provided to each member of the Commission on the Rules of Practice and Procedure and each Justice of the Supreme Court.

Comment Deadline: Comments must be submitted no later than October 27, 2022.

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

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

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

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

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

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

Pursuant to Article IV, Section 5(B) of the Ohio Constitution, the Supreme Court has until April 30 of each year to accept all or any provision of the proposed amendments and file with the General Assembly the amendments that the Court approves. The General Assembly has until June 30 to issue a concurrent resolution of disapproval for all or any portion of a proposed amendment the Supreme Court has proposed. If a concurrent resolution of disapproval is not issued by that date, the proposed amendments become effective July 1.

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

Summary

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.

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 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. A proposed staff note 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 for 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.

- 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 an interest in the outcome of the case;
- (3) A permanent resident of Ohio;
- (4) Holding a valid Ohio driver's license;
- (5) Neither convicted in the last ten years of any felony, offense of violence, or an offense involving moral turpitude or dishonesty, nor currently under community control sanctions, probation, post-release control, or parole;
- (6) Not currently a respondent under any civil protection order;
- (7) Familiar with the required procedure of service of process;
- (8) They will conduct themselves in a professional manner.

- 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.

- 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 Non-Party Corporate Entities
(Civ.R. 30(B)(5))

The Commission recommends changes to Civ.R. 30 to clarify the obligations of the serving party and the non-party corporate deponent when a subpoena issues under the rule. Most notably, the proposed amendment adds that the two must confer in good faith, before or promptly after the 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.

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).

- *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.

2. OHIO RULES OF CRIMINAL PROCEDURE

- *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.

Further easing in-person requirements, the proposed amendments remove certain defense-waiver and prosecutor-approval requirements for the defendant not to appear at a not-guilty arraignment. 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.

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.

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.

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. 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.

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 Juvenile Rules already allow remote testimony at a trial or hearing. The proposed amendments add certain safeguards for such 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)

The Commission recommends 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.

- 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.

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]**

6
7 **(D) As used in these rules, any option to use live two-way video or 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 or audio technology.**

10 **RULE 1.1. Definitions**

11

12 As used in these rules:

13

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

16

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

18

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.

24

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

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

28
29 **[Existing language unaffected by the amendments is omitted to conserve space]**

30
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 (C) 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) Civil process server; applicant requirements.** To qualify as a civil process server
66 for personal service, an applicant shall certify they satisfy each of the following requirements:

67
68 **(1) Not less than eighteen years of age;**

69
70 **(2) Not a party to the proceeding, related to a party to the proceeding, or having**
71 **a financial interest in the outcome of the proceeding;**

72

- 73 (3) A permanent resident of Ohio;
74
75 (4) Hold a valid Ohio driver's license;
76
77 (5) Neither convicted in the last ten years of any felony, offense of violence, or
78 offense involving moral turpitude or dishonesty, nor currently under community
79 control sanctions, probation, post-release control, or parole;
80
81 (6) Not currently a respondent under any civil protection order;
82
83 (7) Familiar with the required procedure for service of process;
84
85 (7) Will conduct themselves in a professional manner.
86

87 Upon certification by an applicant under oath or affirmation that the foregoing requirements
88 are met, the court may designate that person by court order to make personal service of process
89 under division (B) of this rule.
90

91 **(D) Residence service.** When the plaintiff files a written request with the clerk for
92 residence service, service of process shall be made by that method.
93

94 When process is to be served under this division, deliver the process and sufficient copies
95 of the process and complaint, or other document to be served, to the sheriff of the county in which
96 the party to be served resides or may be found. When process issues from the municipal court,
97 delivery shall be to the bailiff of the court for service on all defendants who reside or may be found
98 within the county or counties in which that court has territorial jurisdiction and to the sheriff of
99 any other county in this state for service upon a defendant who resides in or may be found in that
100 county. In the alternative, process may be delivered by the clerk to any person not less than eighteen
101 years of age, who is not a party and who has been designated by order of the court to make
102 residence service of process under this division. The person serving process shall effect service by
103 leaving a copy of the process and the complaint, or other document to be served, at the usual place
104 of residence of the person to be served with some person of suitable age and discretion then residing
105 therein. When the copy of the process has been served, the person serving process shall endorse
106 that fact on the process and return it to the clerk, who shall make the appropriate entry on the
107 appearance docket.
108

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

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

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

126

127 **(D) United States certified or express mail, or commercial carrier service**
128 **unclaimed.** If a attempted service using United States certified or express mail ~~envelope~~
129 ~~attempting service~~ or commercial carrier within or outside the state is returned with an endorsement
130 stating that the envelope was unclaimed or an equivalent endorsement, the clerk shall forthwith
131 notify the attorney of record or, if there is no attorney of record, the party at whose instance process
132 was issued and enter the fact and method of notification on the appearance docket. If the attorney,
133 or serving party, after notification by the clerk, files with the clerk a written request for ordinary
134 mail service, the clerk shall send by United States ordinary mail a copy of the summons and
135 complaint or other document to be served to the defendant at the address set forth in the caption,
136 or at the address set forth in written instructions furnished to the clerk. The mailing shall be
137 evidenced by a certificate of mailing which shall be completed and filed by the clerk. Answer day
138 shall be twenty-eight days after the date of mailing as evidenced by the certificate of mailing. The
139 clerk shall endorse this answer date upon the summons which is sent by ordinary mail. Service
140 shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary
141 mail envelope is not returned by the postal authorities with an endorsement showing failure of
142 delivery. If the ordinary mail envelope is returned undelivered, the clerk shall forthwith notify the
143 attorney, or serving party.

144

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

146 **RULE 10. Form of Pleadings**

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

149

150 **(D) Attachments to pleadings.**

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

153

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

155

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

164

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

168

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

171

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

175

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

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179 Proposed Staff Note (July 1, 2023)

180

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

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

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

186

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

188

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

194

195 (2) Conference Content; Parties' Responsibilities. In conferring, the parties must
196 consider the nature and basis of their claims and defenses and the possibilities for promptly
197 settling or resolving the case; make or arrange for the disclosures required by Civ.-R.
198 26(B)(3); discuss any issues about preserving discoverable information; and develop a
199 proposed discovery plan. The attorneys of record and all unrepresented parties that have
200 appeared in the case are jointly responsible for arranging the conference, for attempting in
201 good faith to agree on the proposed discovery plan, and for filing with the court within ~~14~~
202 fourteen days after the conference a written report outlining the plan. The court may order
203 the parties or attorneys to attend the conference in person.

204

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

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207

208 Proposed Staff Note (July 1, 2023)

209

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

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

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

218

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

222

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

230

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

234

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

242

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

246

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

259

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

262 purposes of this rule, Civ.R. 28, and Civ.R. 45(C), a deposition ~~taken by telephone with participants~~
263 in remote presence is considered to be taken in the county and at the place where the deponent
264 answers the questions jurisdiction in which the case is pending.
265

266 [Existing language unaffected by the amendments is omitted to conserve space]
267

268 **(E) Submission to witness; changes; signing.** When the testimony is fully transcribed,
269 the deposition shall be submitted to the witness for examination and shall be read to or by the
270 witness, unless examination and reading are waived by the witness and by the parties. Any changes
271 in form or substance that the witness desires to make shall be entered upon the deposition by the
272 officer with a statement of the reasons given by the witness for making them. The deposition shall
273 then be signed by the witness by hand or by electronic signature, unless the parties by stipulation
274 waive the signing or the witness is ill, cannot be found, or refuses to sign. The witness shall have
275 thirty days from submission of the deposition to the witness to review and sign the deposition. If
276 the deposition is taken within thirty days of a trial or hearing, the witness shall have seven days
277 from submission of the deposition to the witness to review and sign the deposition. If the trial or
278 hearing is scheduled to commence less than seven days before the deposition is submitted to the
279 witness, the court may establish a deadline for the witness to review and sign the deposition. If
280 the deposition is not signed by the witness during the period prescribed in this division, the officer
281 shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness
282 or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition
283 may then be used as fully as though signed, unless on a motion to suppress the court holds that the
284 reasons given for the refusal to sign require rejection of the deposition in whole or in part.
285

286 [Existing language unaffected by the amendments is omitted to conserve space]
287
288

289 Proposed Staff Note (July 1, 2023)

290
291 Division (B)(5) is amended to reflect the 2020 update to Fed.R.Civ.P. 30(b)(6).
292

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

300 **RULE 33. Interrogatories to Parties**

301

302 (A) **Availability; procedures for use.** Any party, without leave of court, may serve
303 upon any other party up to forty written interrogatories to be answered by the party served. ~~The~~
304 Whenever feasible, the party serving the interrogatories shall serve an electronic copy of ~~the~~
305 ~~interrogatories on a shareable medium and in an editable format, them~~ by electronic mail; or by
306 ~~other means agreed to by the parties~~ using electronic court facilities pursuant to Civ.R. 5(B)(2)(f)
307 or (B)(3). A party who is unable to provide an electronic copy of the interrogatories may ~~seek~~
308 ~~leave of court to be relieved of this requirement~~ serve them by other means permitted under Civ.R.
309 5(B)(2). A party shall not propound more than forty interrogatories to any other party without leave
310 of court. Upon motion, and for good cause shown, the court may reduce or extend the number of
311 interrogatories that a party may serve upon another party. For purposes of this rule, any subpart
312 propounded under an interrogatory shall be considered a separate interrogatory.

313

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

315 **RULE 36. Requests for Admission**

316

317 (A) **Availability; procedures for use.** A party may serve upon any other party a written
318 request for the admission, for purposes of the pending action only, of the truth of any matters
319 within the scope of Civ.R. 26(B) set forth in the request, that relate to statements or opinions of
320 fact or of the application of law to fact, including the genuineness of any documents described in
321 the request. Copies of documents shall be served with the request unless they have been or are
322 otherwise furnished or made available for inspection and copying. The request may, without leave
323 of court, be served upon the plaintiff after commencement of the action and upon any other party
324 after service of the summons and complaint upon that party. ~~The~~ Whenever feasible, the party
325 serving the request for admission shall serve an electronic copy of the request ~~on a shareable~~
326 ~~medium and in an editable format,~~ by electronic mail, or ~~by other means agreed to by the parties~~
327 using electronic court facilities pursuant to Civ.R. 5(B)(2)(f) or (B)(3). A party who is unable to
328 provide an electronic copy of a request for admission may ~~seek leave of court to be relieved of this~~
329 ~~requirement~~ serve the request by other means permitted under Civ.R. 5(B)(2).

330

331

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

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

334
335 [Existing language unaffected by the amendments is omitted to conserve space]
336

337 **(C) Failure Sanctions for failure to disclose, to participate in a Civ.R. 26(F) or**
338 **Civ.R. 30(B)(5) conference, to supplement an earlier response, or to admit.**
339

340 **(1) Failure to disclose or supplement.** If a party fails to provide information or
341 identify a witness in a timely manner as required by Civ.R. 26(A) or (E), the party is not allowed
342 to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless
343 the failure was substantially justified or is harmless. In addition to or instead of this sanction, the
344 court, on motion and after giving an opportunity to be heard:
345

346 (a) ~~may~~ May order payment of the reasonable expenses, including attorney's
347 fees, caused by the failure;

348
349 (b) ~~may~~ May inform the jury of the party's failure; and

350
351 (c) ~~may~~ May impose other appropriate sanctions, including any of the orders
352 listed in Civ.R. 37(B)(1)(a) through ~~(f)~~(g).
353

354 **(2) Failure to participate.** If a party fails to participate in a conference of counsel and
355 unrepresented parties or in drafting a discovery plan required by Civ.R. 26(F), or an organization
356 fails to confer in good faith as required by Civ.R. 30(B)(5), the court, on motion and after giving
357 an opportunity to be heard:
358

359 (a) May order payment of the reasonable expenses, including attorney's fees,
360 caused by the failure; and

361
362 (b) May impose other appropriate sanctions on a party, nonparty organization,
363 or their counsel including any of the orders listed in Civ.R. 37(B)(1)(a) through (g).
364

365 **(3) Failure to admit.** If a party fails to admit what is requested under Civ.R. 36, and if
366 the requesting party later proves a document to be genuine or the matter true, the requesting party
367 may move that the party who failed to admit pay the reasonable expenses, including attorney's
368 fees, incurred in making that proof. The court shall so order unless:
369

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

371
372 (b) The admission sought was of no substantial importance;

373
374 (c) The party failing to admit had a reasonable ground to believe that it might
375 prevail on the matter; or

376
377 (d) There was other good reason for the failure to admit.
378

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

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

381

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

383

384

(B) By the court.

385

386

(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.

387

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391

(2) In the court's discretion, a trial to the court may be conducted, in whole or in part, using live two-way video and audio conference technology. 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.

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(3) No later than the deadline set in a case scheduling order or thirty days before a scheduled trial, a party may request a remote trial under division (B)(2) of this rule. The requesting party shall indicate in the request whether any special accommodations are anticipated or required.

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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)

407

408

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

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416 **RULE 43. Taking Testimony**

417

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

423

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

428

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

432

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

434

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

438

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

444

445

446 Proposed Staff Note (July 1, 2023)

447

448 The new division (D)(2) is added to explicitly provide "long-arm" jurisdiction over a witness testifying
449 in open court remotely, whether from inside or outside Ohio. Some means is needed to handle perjury or
450 more common issues, such as a witness who refuses to answer a proper question. This new division
451 explicitly gives the presiding judicial officer the same authority with a virtual witness as is available when a
452 witness testifies in person in the court. The court, counsel, and pro se litigants should be mindful of two
453 practical concerns when using virtual witnesses: first, it may be appropriate not only to require the witness
454 to affirm on the record that they understand they have submitted to the authority of the Ohio court, but also
455 to require the witness to display a driver's license or other photographic identification if they are not known
456 or recognizable to those in the court; and second, counsel or pro se litigants should inform witnesses of
457 these requirements ahead of the remote testimony to prevent misunderstanding by the witness, delay of
458 the proceedings, or possible exclusion of the witness.

459 **RULE 65.1. Civil Protection Orders**

460

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

468

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

470

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

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

476

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

478

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

484

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

486

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

488

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

495

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

498

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

503

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

510

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

512

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

515

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

519

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

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

526
527 Service of notice by United States ordinary mail shall be complete when the fact of mailing
528 is entered of record except as stated in division (E)(5) of this rule. Service by publication shall be
529 complete at the date of the last publication.

530
531 **[Existing language unaffected by the amendments is omitted to conserve space]**

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

533

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

535

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

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OHIO RULES OF CRIMINAL PROCEDURE

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

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

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

549 **RULE 2. Definitions.**

550

551 As used in these rules:

552

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

554

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

557

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

560

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

563

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

566

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

568

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

571 **RULE 10. Arraignment.**

572

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

574

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

576

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

580

581 (2) In a felony or misdemeanor arraignment or a felony initial appearance, a court may
582 permit the remote presence and participation of a defendant ~~by remote contemporaneous video,~~
583 ~~provided the use of video~~ appearance complies with the requirements set out in Rule Crim.R.
584 43(A)(2) ~~of these rules. This division shall not apply to any other felony proceeding.~~

585

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

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

588

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

590

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

597

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

600

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

604

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

608

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

612

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

614 **RULE 15. Deposition.**

615

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

624

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

628

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

634

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

643

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

653

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

655 **RULE 40. Taking Testimony.**

656

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

659

660 **(B) Remote testimony.**

661

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

664

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

666

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

669

670 **(c) The witness is administered the oath or affirmation using live two-**
671 **way video and audio conference technology that allows the person**
672 **authorized to administer the oath to verify the identity of the witness at the**
673 **time the oath is administered;**

674

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

676

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

679

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

685

686

687

Proposed Staff Note (July 1, 2023)

688

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

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

692

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

694

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

702

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

707

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

709

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

711

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

714

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

720

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

723

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

729

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

731 **OHIO RULES OF EVIDENCE**

732
733 **RULE 101. Scope of Rules: Applicability; Privileges; Exceptions**

734
735 **[Existing language unaffected by the amendments is omitted to conserve space]**

736
737 **(C) Definitions.** As used in these rules:

738
739 **(1)** “Present” means the physical or remote presence of an individual.

740
741 **(2)** “Remote presence” means the presence of a person who is using live two-way video
742 or audio technology.

743
744 **(D) Exceptions.** These rules (other than with respect to privileges) do not apply in the
745 following situations:

746
747 **(1) Admissibility determinations.** Determinations prerequisite to rulings on the
748 admissibility of evidence when the issue is to be determined by the court under Evid.R. 104.

749
750 **(2) Grand jury.** Proceedings before grand juries.

751
752 **(3) Miscellaneous criminal proceedings.** Proceedings for extradition or rendition of
753 fugitives; sentencing; granting or revoking probation; proceedings with respect to community
754 control sanctions; issuance of warrants for arrest, criminal summonses and search warrants; and
755 proceedings with respect to release on bail or otherwise.

756
757 **(4) Contempt.** Contempt proceedings in which the court may act summarily.

758
759 **(5) Arbitration.** Proceedings for those mandatory arbitrations of civil cases
760 authorized by the rules of superintendence and governed by local rules of court.

761
762 **(6) Other rules.** Proceedings in which other rules prescribed by the Supreme Court
763 govern matters relating to evidence.

764
765 **(7) Special non-adversary statutory proceedings.** Special statutory proceedings of
766 a non-adversary nature in which these rules would by their nature be clearly inapplicable.

767
768 **(8) Small claims division.** Proceedings in the small claims division of a county or
769 municipal court.

770
771 **(E) As used in these rules, any option to use live two-way video or audio technology**
772 **shall not be construed to limit the power of a court to order that a party, attorney, or witness**
773 **physically appear at a proceeding without the use of live two-way video or audio technology.**

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

775

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

778

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

781

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

785

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

787

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

790

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

792

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

794

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

799

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

804

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

808

809 (b) The person devotes at least one-half of ~~his or her~~ their professional time to the active
810 clinical practice in ~~his or her~~ their field of licensure, or to its instruction in an accredited school
811 ~~and~~, at the time the claim accrues;

812

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

818

819 If the person is certified in a specialty, the person must be certified by a board recognized
820 by the American board of medical specialties or the American board of osteopathic specialties in
821 a specialty having acknowledged expertise and training directly related to the particular health care
822 matter at issue.

823
824 Nothing in this division shall be construed to limit the power of the trial court to adjudge
825 the testimony of any expert witness incompetent on any other ground, or to limit the power of the
826 trial court to allow the testimony of any other witness, on a matter unrelated to the liability issues
827 in the medical claim, when that testimony is relevant to the medical claim involved.

828
829 This division shall not prohibit other medical professionals who otherwise are competent
830 to testify under these rules from giving expert testimony on the appropriate standard of care in
831 their own profession in any claim asserted in any civil action against a physician, podiatrist,
832 medical professional, or hospital arising out of the diagnosis, care, or treatment of any person.

833
834 (6) As otherwise provided in these rules.

835
836
837 Proposed Staff Note (July 1, 2023)

838
839 Division (B)(5)(b) is amended to clarify the time at which the active clinical practice requirement is
840 needed to qualify the witness as an expert witness, in response to the Supreme Court of Ohio's ruling in
841 Johnson v. Abdullah, 166 Ohio St.3d 427, 2021-Ohio-3304.

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

843

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

845

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

856

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

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OHIO RULES OF JUVENILE PROCEDURE

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

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

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

867 **RULE 2. Definitions**

868

869 As used in these rules:

870

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

872

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

876

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

880

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

883

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

885

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

888

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

890

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

893

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

897

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

901

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

904

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

907

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

910

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

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

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

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

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

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

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

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

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

~~(U)~~(W) “Juvenile traffic offender” has the same meaning as in section 2151.021 of the Revised Code.

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

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

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

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

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

962
963 ~~(Z)~~(CC) “Permanent custody” means a legal status that vests in a public children’s
964 services agency or a private child-placing agency, all parental rights, duties, and obligations,
965 including the right to consent to adoption, and divests the natural parents or adoptive parents of
966 any and all parental rights, privileges, and obligations, including all residual rights and obligations.

967
968 ~~(AA)~~(DD) “Permanent surrender” means the act of the parents or, if a child has only
969 one parent, of the parent of a child, by a voluntary agreement authorized by section 5103.15 of the
970 Revised Code, to transfer the permanent custody of the child to a public children’s services agency
971 or a private child-placing agency.

972
973 ~~(BB)~~(EE) “Person” includes an individual, association, corporation, or partnership
974 and the state or any of its political subdivisions, departments, or agencies.

975
976 ~~(CC)~~(FF) “Personally” means the physical or remote presence of an individual.

977
978 (GG) “Physical examination” means an examination by a physician.

979
980 ~~(DD)~~(HH) “Planned permanent living arrangement” means an order of a juvenile court
981 pursuant to which both of the following apply:

982
983 (1) The court gives legal custody of a child to a public children’s services agency or a
984 private child-placing agency without the termination of parental rights;

985
986 (2) The order permits the agency to make an appropriate placement of the child and to
987 enter into a written planned permanent living arrangement agreement with a foster care provider
988 or with another person or agency with whom the child is placed.

989
990 ~~(EE)~~(II) “Private child-placing agency” means any association, as defined in section
991 5103.02 of the Revised Code that is certified pursuant to sections 5103.03 to 5103.05 of the
992 Revised Code to accept temporary, permanent, or legal custody of children and place the children
993 for either foster care or adoption.

994
995 ~~(FF)~~(JJ) “Public children’s services agency” means a children’s services board or a
996 county department of human services that has assumed the administration of the children’s services
997 function prescribed by Chapter 5153 of the Revised Code.

998
999 ~~(GG)~~(KK) “Remote presence” means the presence of a person who is using live two-
1000 way video or audio technology.

1001
1002 (LL) “Removal action” means a statutory action filed by the superintendent of a school
1003 district for the removal of a child in an out-of-county foster home placement.

1004
1005 ~~(HH)~~(MM) “Residence or legal settlement” means a location as defined by section
1006 2151.06 of the Revised Code.

1007
1008 ~~(H)~~(NN) “Residual parental rights, privileges, and responsibilities” means those
1009 rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal
1010 custody of the child, including but not limited to the privilege of reasonable visitation, consent to
1011 adoption, the privilege to determine the child’s religious affiliation, and the responsibility for
1012 support.

1013
1014 ~~(JJ)~~(OO) “Rule of court” means a rule promulgated by the Supreme Court or a rule
1015 concerning local practice adopted by another court that is not inconsistent with the rules
1016 promulgated by the Supreme Court and that is filed with the Supreme Court.

1017
1018 ~~(KK)~~(PP) “Serious youthful offender” means a child eligible for sentencing as
1019 described in sections 2152.11 and 2152.13 of the Revised Code.

1020
1021 ~~(LL)~~(QQ) “Serious youthful offender proceedings” means proceedings after a
1022 probable cause determination that a child is eligible for sentencing as described in sections 2152.11
1023 and 2152.13 of the Revised Code. Serious youthful offender proceedings cease to be serious
1024 youthful offender proceedings once a child has been determined by the trier of fact not to be a
1025 serious youthful offender or the juvenile judge has determined not to impose a serious youthful
1026 offender disposition on a child eligible for discretionary serious youthful offender sentencing.

1027
1028 ~~(MM)~~(RR) “Shelter care” means the temporary care of children in physically
1029 unrestricted facilities, pending court adjudication or disposition.

1030
1031 ~~(NN)~~(SS) “Social history” means the personal and family history of a child or any
1032 other party to a juvenile proceeding and may include the prior record of the person with the juvenile
1033 court or any other court.

1034
1035 ~~(OO)~~(TT) “Temporary custody” means legal custody of a child who is removed from
1036 the child’s home, which custody may be terminated at any time at the discretion of the court or, if
1037 the legal custody is granted in an agreement for temporary custody, by the person or persons who
1038 executed the agreement.

1039
1040 ~~(PP)~~(UU) “Unruly child” has the same meaning as in section 2151.022 of the Revised
1041 Code.

1042
1043 ~~(QQ)~~(VV) “Ward of court” means a child over whom the court assumes continuing
1044 jurisdiction.

1045 **RULE 8. Filing By ~~Faersimile~~ Electronic Transmission**

1046

1047 A court ~~may~~ shall provide, by court order or local rules adopted pursuant to the Rules of
1048 Superintendence rule, for the filing of documents by electronic means. ~~If the~~ The court ~~adopts~~
1049 ~~such order or local rules, they~~ rule shall include all of the following:

1050

1051 (A) Any signature on electronically transmitted documents shall be considered that of
1052 the attorney or party it purports to be for all purposes. If it is established that the documents were
1053 transmitted without authority, the court shall order the filing stricken.

1054

1055 (B) A provision shall specify the days and hours during which electronically
1056 transmitted documents will be received by the court, and a provision shall specify when documents
1057 received electronically will be considered to have been filed.

1058

1059 (C) Any document filed electronically that requires a filing fee may be rejected by the
1060 clerk of court unless the filer has complied with the mechanism established by the court for the
1061 payment of filing fees.

1062 **RULE 27. Hearings: General**

1063

1064 (A) **General provisions.** Unless otherwise stated in this rule, the juvenile court may
1065 conduct its hearings in an informal manner and may adjourn its hearings from time to time.

1066

1067 The court may excuse the attendance of the child at the hearing in neglect, dependency, or
1068 abuse cases.

1069

1070 (1) **Public access to hearings.** In serious youthful offender proceedings, hearings shall
1071 be open to the public. In all other proceedings, the court may exclude the general public from any
1072 hearing, but may not exclude either of the following:

1073

1074 (a) ~~persons~~ Persons with a direct interest in the case;

1075

1076 (b) ~~persons~~ Persons who demonstrate, at a hearing, a countervailing right to be present.

1077

1078 (2) **Separation of juvenile and adult cases.** Cases involving children shall be heard
1079 separate and apart from the trial of cases against adults, except for cases involving chronic or
1080 habitual truancy.

1081

1082 (3) **Jury trials.** The court shall hear and determine all cases of children and adult
1083 criminal cases filed under the exclusive jurisdiction of the juvenile court without a jury, except for
1084 adult criminal cases where the defendant has filed a jury demand or the adjudication of a serious
1085 youthful offender complaint, indictment, or information in which trial by jury has not been waived.

1086

1087 **[Existing language unaffected by the amendments is omitted to conserve space]**

1088

1089

1090

Proposed Staff Note (July 1, 2023)

1091

1092 **Juv.R. (A)(3) Jury Trials.**

1093

1094 At the time of this amendment, the Revised Code sections under which the juvenile court has
1095 exclusive jurisdiction include, but may not be limited to, the following: R.C. 2919.21, 2919.22, 2919.23,
1096 2919.24; 3321.22, 3321.38, 3321.99.

1097 **RULE 34. Dispositional Hearing**

1098

1099 (A) **Scheduling the hearing.** Where a child has been adjudicated as an abused,
1100 neglected, or dependent child, the court shall not issue a dispositional order until after it holds a
1101 separate dispositional hearing. The dispositional hearing for an adjudicated abused, neglected, or
1102 dependent child shall be held at least one day but not more than thirty days after the adjudicatory
1103 hearing is held. The dispositional hearing may be held immediately after the adjudicatory hearing
1104 if all parties were served prior to the adjudicatory hearing with all documents required for the
1105 dispositional hearing and all parties consent to the dispositional hearing being held immediately
1106 after the adjudicatory hearing. Upon the request of any party or the guardian ad litem of the child,
1107 the court may continue a dispositional hearing for a reasonable time not to exceed the time limit
1108 set forth in this division to enable a party to obtain or consult counsel. The dispositional hearing
1109 shall not be held more than ninety days after the date on which the complaint in the case was filed,
1110 except that, for good cause shown, the court, on its own motion or on the motion of any party or
1111 the child’s guardian ad litem, may continue the dispositional hearing for a reasonable period of
1112 time beyond the ninety-day deadline. This extension beyond the ninety-day deadline shall not
1113 exceed forty five days and shall not be available for any case in which the complaint was dismissed
1114 and subsequently refiled. If the dispositional hearing is not held within this ninety-day or the
1115 extended period of time, the court, on its own motion or the motion of any party or the guardian
1116 ad litem of the child, shall dismiss the complaint without prejudice.

1117

1118 In all other juvenile proceedings, the dispositional hearing shall be held pursuant to Juv.-R.
1119 29(F)(2)(a) through (d) and the ninety-day requirement shall not apply. Where the dispositional
1120 hearing is to be held immediately following the adjudicatory hearing, the court, upon the request
1121 of any party, shall continue the hearing for a reasonable time to enable the party to obtain or consult
1122 counsel.

1123

1124 **[Existing language unaffected by the amendments is omitted to conserve space]**

1125

1126 (C) **Judgment.** After the conclusion of the hearing, the court shall enter an appropriate
1127 judgment within seven days. A copy of the judgment shall be given to any party requesting a copy.
1128 In all cases where a child is placed on ~~probation~~ community control, the child shall receive a
1129 written statement of the conditions of ~~probation~~ the community control. If the judgment is
1130 conditional, the order shall state the conditions. If the child is not returned to the child’s home,
1131 the court shall determine the school district that shall bear the cost of the child’s education and
1132 may fix an amount of support to be paid by the responsible parent or from public funds.

1133

1134 **[Existing language unaffected by the amendments is omitted to conserve space]**

1135

1136

1137

Proposed Staff Note (July 1, 2023)

1138

1139

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

1140 **RULE 35. Proceedings After Judgment**

1141

1142 (A) **Continuing jurisdiction; invoked by motion.** The continuing jurisdiction of the
1143 court shall be invoked by motion filed in the original proceeding, notice of which shall be served
1144 in the manner provided for the service of process.

1145

1146 (B) **Revocation of ~~probation~~ community control.** The court shall not revoke
1147 ~~probation~~ community control except after a hearing at which the child shall be present and apprised
1148 of the grounds on which revocation is proposed. The parties shall have the right to counsel and
1149 the right to appointed counsel where entitled pursuant to Juv.-R. 4(A). ~~Probation~~ Community
1150 control shall not be revoked except upon a finding that the child has violated a condition of
1151 ~~probation~~ community control of which the child had, pursuant to Juv.-R. 34(C), been notified.

1152

1153 (C) **Detention.** During the pendency of proceedings under this rule, a child may be
1154 placed in detention in accordance with the provisions of ~~Rule~~ Juv.R. 7.

1155 **RULE 41. Taking Testimony**
1156

1157 **(A) In open court.** At a trial or hearing, the witnesses' testimony shall be taken in open
1158 court unless a statute, the Rules of Evidence, these rules, or other rules adopted by the Supreme
1159 Court provide otherwise. ~~In all juvenile matters, except adjudicatory hearings in delinquency,~~
1160 ~~unruly, and juvenile traffic cases and adult criminal trials, the juvenile court, with appropriate~~
1161 ~~safeguards, may permit testimony in open court by contemporaneous transmission from a different~~
1162 ~~location either with the agreement of the parties or for good cause shown.~~

1163
1164 **(B) Remote testimony.**
1165

1166 **(1) General.** With the agreement of the parties or for good cause shown, the
1167 court may permit the remote presence and participation of a witness, including a
1168 party, if all of the following apply:
1169

1170 (a) The court gives appropriate notice to all parties;
1171

1172 (b) The court finds that the remote appearance of the witness is based
1173 on important state interests, public policies, or necessities of the case;
1174

1175 (c) The witness is administered the oath or affirmation using live two-
1176 way video and audio conference technology that allows the person
1177 authorized to administer the oath to verify the identity of the witness at the
1178 time the oath is administered;
1179

1180 (d) The witness is subject to full cross-examination;
1181

1182 (e) The video arrangements allow the witness to speak, and to be seen
1183 and heard by the court, all parties, and the jury if applicable.
1184

1185 **(2) Notice.** A request to present testimony remotely shall be discussed among
1186 counsel and unrepresented parties, and filed with the court no later than the deadline
1187 set in the case scheduling order or thirty days before the trial or hearing, unless for
1188 good cause the court permits later notice.
1189

1190 **(3) Oath or affirmation.** Every witness testifying remotely, including those
1191 outside this state, in a trial or other proceeding in open court in Ohio must affirm
1192 on the record that they have submitted to the jurisdiction of the Ohio court for the
1193 purpose of enforcement of their oath or affirmation, including any consideration of
1194 perjury charges arising from such testimony.

FORM 20. CIVIL FEE WAIVER AFFIDAVIT AND ORDER

IN _____

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

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 187.5% of the federal poverty guidelines.			
Place an "X" next to any benefits you receive.			
Ohio Works First ¹ : ___ SSI ² : ___ Medicaid ³ : ___ Veterans Pension Benefit ⁴ : ___ SNAP / Food Stamps ⁵ : ___			
Monthly Income			
I am NOT 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)	\$	\$	\$
TOTAL MONTHLY INCOME			\$
Liquid Assets			
Type of Asset	Estimated Value		
Cash on Hand	\$		
Available Cash in Checking, Savings, Money Market Accounts	\$		
Stocks, Bonds, CDs	\$		
Other Liquid Assets	\$		
Total Liquid Assets			\$
Monthly Expenses			
Column A		Column B	
Type of Expense	Amount	Type of Expense	Amount
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)	\$
Total Column A Expenses	\$	Total Column B Expenses	\$
TOTAL MONTHLY EXPENSES (Column A + Column 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.]

APPENDIX

2022 FEDERAL POVERTY LIMIT (FPL)

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

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.~~

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

²SSI 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)

³Medicaid 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

⁴Veterans 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

⁵Supplemental 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)