**PROPOSED AMENDMENTS TO THE**

**RULES OF PRACTICE AND PROCEDURE IN OHIO COURTS**

The Supreme Court of Ohio is accepting public comments on the following proposed amendments to the Rules of Practice and Procedure in Ohio Courts: Ohio Rules of Appellate Procedure (4, 9, 10, 11, and 43), Ohio Rules of Civil Procedure (4.3, 4.5, 4.6, 7, 10, 33, 36, 37, 41, 45, 53, 75, and 86), Ohio Rules of Criminal Procedure (5, 41, and 59), the Ohio Rules of Juvenile Procedure (40 and 47), and the Ohio Rules of Evidence (601 and 1102).

**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 Jo Ellen Cline, Government Relations Counsel, Supreme Court of Ohio, 65 S. Front St., 7th Floor, Columbus, OH 43215-3431 or [j.cline@sc.ohio.gov](mailto:j.cline@sc.ohio.gov).

**Comment Deadline:** Comments must be submitted no later than October 30, 2013.

**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 ON AMENDING THE**

**RULES OF PRACTICE AND PROCEDURE IN OHIO COURTS**

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

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

In the fall of each year, the Commission submits to the Supreme Court proposed amendments to the rules of practice and procedure that it 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), 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 30.

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

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

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

**Ohio Rules of Appellate Procedure**

*App.R. 4*

The proposed amendments clarify when the time to appeal begins to run when the trial court enters an order that is not final when entered but becomes final as a result of merging into a subsequently entered final order or because of the dismissal of the action. The proposed amendments also clarify that a timely and appropriate motion for attorney fees or prejudgment interest suspends the time for appeal. This will avoid the procedural and jurisdictional uncertainty that results when a party files an appeal during the time period between when the trial court enters judgment and the filing of a motion for attorney’s fees or prejudgment interest. Under the proposed amendments, the appellate court has the authority to remand the matter for a ruling on the post-judgment motion, rather than dismissing the appeal.

*App.R. 9, App.R. 10, and App.R. 11*

The proposed amendments to App.R. 9 clarify that the appellant’s duty is to make reasonable arrangements for the transcription of recorded proceedings and that the appellant should not be penalized for failing to produce a timely transcript if the deficiency is outside the appellant’s control.

Similar to the proposed amendments to App.R. 9, the proposed amendments to App.R. 10 clarify that the appellant’s duty is to make reasonable arrangements for the timely transmission of the record and that the appellant should not be penalized for any failure in transmitting the record if the deficiency is outside the appellant’s control.

Finally, the proposed amendments to App.R. 11(C) reflect that the appellee can file a motion to dismiss the appeal if the appellant fails to make reasonable arrangements to transmit the record instead of penalizing the appellant for failure to timely transmit the record when such an action is outside the appellant’s control.

**Ohio Rules of Civil Procedure**

*Civ.R. 4.3 and Civ.R. 4.5*

Both Civ.R. 4.3 and Civ.R. 4.5 relating to service of summons outside the state and in a foreign country are amended to make their provisions consistent with the provisions of Civ.R. 4.1(B) relating to service of summons within the state as to the method of personal service which requires the person serving process to locate and tender a copy of the process to the person to be served and as to the provisions that a failure to make service within twenty-eight days and failure to make proof of service do not affect the validity of service.

*Civ.R. 4.6*

The caption for Civ.R. 4.6 is amended to clarify that the rule applies to all refusals to accept service.

*Civ.R. 7*

Consistent with the 2007 amendments to the Federal Rules of Civil Procedure, the proposed amendment deletes Civ.R. 7(C) which states that demurrers are abolished as demurrers are unknown in Ohio modern practice after the adoption of Civ.R. 12(B)(6).

*Civ.R. 10 and Evid.R. 601*

The proposed amendments to Civ.R. 10(D)(2) and Evid.R. 601 regarding expert qualifications and the affidavit of merit were originally brought to the Commission on the Rules of Practice and Procedure by a group of interested parties organized by the Ohio State Bar Association for consideration. The proposed amendments seek to enhance the rule regarding what is required in an affidavit of merit and clarify who qualifies as an expert to provide an affidavit in a medical claim.

The proposed amendments separate out medical claims as defined in R.C. 2305.113 which must have experts qualified under Evid.R. 610 and Evid.R. 702 and other medical claims or dental, optometric, or chiropractic claims which must have experts qualified under only Evid.R. 702. (See Civ.R. 10(D)(2)(a) & (b)). The proposed amendments also require a separate affidavit to be provided as to each defendant and that the affidavits set forth more specifically the qualifications of the expert providing the affidavit.

The proposed amendment to Evid.R. 601 requires that experts providing affidavits of merit must have devoted three-quarters of their professional time to active clinical practice at the time of the event giving rise to the claim.

The proposed amendments were previously recommended by the Commission and published for comment by the Court in October 2012. The working group of interested parties had indicated, at that time, that legislation would be introduced and passed to coincide with adoption of the proposed amendments. Because that did not happen, the Court determined that amendments to the rule would be premature and did not file the proposed amendments with the General Assembly in January 2013. H.B. 103 has now been introduced and has received at least one hearing in the Ohio General Assembly. The bill is designed to curtail the “shotgunning” of defendants in these cases. The proposed legislation would allow plaintiffs, notwithstanding the expiration of the statute of limitations, to engage in limited discovery for a limited period of time to identify and file suit against additional defendants.

In order to achieve simultaneous adoption of both the proposed rule amendments and the legislation, the Court is publishing the proposed amendments for public comment. Should the Ohio General Assembly decide not to move forward with H.B. 103 the Court may determine that the proposed amendments not be filed in January 2014.

*Civ.R. 33 and Civ.R. 36*

Prior amendments adopted by the Court to Civ.R. 33 and Civ.R. 36 intended that interrogatories and requests for admission be served by electronic means making a printed copy unnecessary and that therefore the time for responding should no longer run from service of a printed copy. The proposed amendments remove the phrase “a printed copy” from both rules.

*Civ.R. 37*

Due to the uncertainty over the issue raised by the Court in *State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register* (2007), 116 Ohio St.3d 88, 2007-Ohio-5542, the proposed amendments to Civ.R. 37 specifically include the reasonable value of time spent by an attorney, whether or not the party actually paid or is obligated to pay the attorney, for such time in the amount of recoverable attorney’s fees under the rule. The proposed amendments also adopt the 2007 stylistic changes to Federal Rule 37.

*Civ.R. 41*

The proposed amendments to Civ.R.41 are intended to protect a plaintiff’s right to voluntarily dismiss complaints while addressing inefficiencies associated with the rule. The proposed amendments would require an application to the court for an order of dismissal without prejudice pursuant to Civ.R. 41(A)(2) once the court has announced its ruling on the record or has filed an order granting summary judgment. The rule is also amended to require an application to the court for an order of dismissal without prejudice pursuant to Civ.R. 41(A)(2) when dismissal is sought less than ten days before trial.

*Civ.R. 45*

The proposed amendments to Civ.R. 45 account for the 2008 renumbering of Civ.R. 26(B).

*Civ.R. 53 and Forms*

The proposed amendments to Civ.R. 53 address procedure when magistrates conduct civil jury trials with the unanimous consent of all parties. The amendment was drafted in response to Court of Appeals decisions in *Yantek v. Coach Builders Ltd., Inc.,* 2007-Ohio-5126, and *Dixon v. O’Brien,* 2011-Ohio-3339 where the First and Seventh District Courts of Appeal scrutinized the conduct of jury trials by magistrates and found fault with the process.

The proposed amendments exempt magistrate jury trials from the current rules provisions regarding magistrate orders, decisions, and objections and to provide for trial of such matters as if tried by the court and the issuance of the magistrates’ recommended entries reviewed by the court for error of law or other defect evident upon the face of the recommended entries.

In conjunction with the proposed amendments, two forms would be added to the Appendix of Forms adopted pursuant to Civ.R. 84. The first form is a standardized consent and reference of a civil jury trial to a magistrate and the second form is a standardized recommended entry of judgment. The Court is not required, under the authority of Civ.R. 84, to file forms in the Appendix of Forms with the General Assembly; however, they are provided here to allow for public comment on their substance and form.

*Civ.R. 75*

The proposed amendments grant the court discretion to join persons or agencies claiming to have an interest in or rights with respect to a child, such as being designated as legal custodians or as persons entitled to visitation or companionship time.

**Ohio Rules of Criminal Procedure**

*Crim.R. 5*

The proposed amendments to Crim.R. 5 establish a general rule in favor of binding over misdemeanors, except for minor misdemeanors, committed with felonies as a part of the same criminal episode.

*Crim.R. 41*

Proposed amendments to Crim.R. 41 address the issuance and execution of a tracking device search warrant. Under the current rule a law-enforcement officer to whom a search warrant is issued is given “three days” to complete a search with no differentiation made between a search warrant for property and a search warrant that tracks the movement of a person or property. The ability to install the tracking device within the three day time period in the current rule was difficult if no opportunities arose for law enforcement to safely and secretly install the device.

The proposed amendments specify requirements for the issuance and execution of a tracking device search warrant, giving law enforcement greater flexibility while protecting the rights of the individual who is being the subject of the search.

**Ohio Rules of Juvenile Procedure**

*Juv.R. 40*

While reviewing the procedures for magistrates to conduct civil jury trials under Civ.R. 53, the Commission on the Rules of Practice and Procedure considered Juv.R. 40 regarding magistrates in juvenile courts. It was determined by the Commission that jury trials in juvenile court are extremely rare and occur only in cases of “serious youthful offenders” and of adult defendants charged with child endangering and/or contributing to the delinquency of minors. The rule, in its current form, excludes magistrates from conducting jury trials for “serious youthful offenders”. In addition, all trials of adult offenders are governed by the Ohio Rules of Criminal Procedure, which expressly exclude magistrates from hearing jury trials, therefore, the Commission’s recommendation is to eliminate the provision for jury trials under Juv.R. 40.

**PROPOSED AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE**

**FILED BY THE SUPREME COURT OF OHIO**

**PURSUANT TO ARTICLE IV, SECTION 5 OF THE OHIO CONSTITUTION**

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**OHIO RULES OF APPELLATE PROCEDURE**

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**RULE 4. Appeal as of Right--When Taken**

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**(A) Time for appeal**

**(1)** **Appeal from order that is final upon its entry.** Subject to the provisions of App.R. 4(A)(3), a ~~A~~ party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 ~~thirty~~ days of that ~~the later of~~ entry ~~of the judgment or order~~.

**(2)** **Appeal from order that is not final upon its entry.** Subject to the provisions of App.R. 4(A)(3), a party who wishes to appeal from an order that is not final upon its entry but subsequently becomes final—such as an order that merges into a final order entered by the clerk or that becomes final upon dismissal of the action—shall file the notice of appeal required by App.R. 3 within 30 days of the date on which the order becomes final.

**(3)** **Delay of clerk’s service in civil case.** In ~~in~~ a civil case, if the clerk has not completed service of the order ~~notice of judgment and its entry if service is not made on the party~~ within the three-day ~~three day~~ period prescribed in Civ.R. ~~Rule~~ 58(B) ~~of the Ohio Rules of Civil Procedure~~, the 30-day periods referenced in App.R. 4(A)(1) and 4(A)(2) begin to run on the date when the clerk actually completes service.

**(B) Exceptions**

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

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

**(2)** **Civil or juvenile post-judgment motion**. In a civil case or juvenile proceeding, if a party files any of the following, if timely and appropriate:

(a) a motion for judgment under Civ. R. 50(B)~~,~~;

(b) a motion for a new trial under Civ. R. 59~~,~~;

(c) objections to a magistrate's decision under Civ. R 53(D)(3)(b) or Juv. R. 40(D)(3)(b)~~,~~;

(d) a request for findings of fact and conclusions of law under Civ. R. 52, Juv. R. 29(F)(3), Civ. R. 53(D)(3)(a)(ii) or Juv. R. 40(D)(3)(a)(ii);

(e) a motion for attorney~~s'~~ fees ~~under R.C. 2323.42,~~; or

(f) a motion for prejudgment interest,

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

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

**(3) Criminal and traffic post-judgment motions**

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

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

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

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

(d) a request for findings of fact and conclusions of law under Crim.R. 19(d)(3)(a)(ii),

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

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

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

**(4) Appeal by prosecution**

In an appeal by the prosecution under Crim. R. 12(K) or Juv. R. 22(F), the prosecution shall file a notice of appeal within seven days of entry of the judgment or order appealed.

**(5) Partial final judgment or order**

If an appeal is permitted from a judgment or order entered in a case in which the trial court has not disposed of all claims as to all parties, other than a judgment or order entered under Civ. R. 54(B), a party may file a notice of appeal within thirty days of entry of the judgment or order appealed or the judgment or order that disposes of the remaining claims. Division (A) of this rule applies to a judgment or order entered under Civ. R. 54(B).

**(C) Premature notice of appeal**

A notice of appeal filed after the announcement of a decision, order, or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry.

**(D) Definition of “entry” or “entered”**

As used in this rule, “entry” or “entered” means when a judgment or order is entered under Civ. R. 58(A) or Crim. R. 32(C).

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**Staff Note (July 1, 2014 amendment)**

The amendments to App.R. 4(A) are designed to clarify confusion that can arise when the trial court enters an order that is not final when entered but becomes final as a result of merging into a subsequently entered final order or because of the dismissal of the action (*e.g.*, under Civ.R. 41(A)). In these circumstances, the time to appeal begins to run when the previously non-final order becomes a final order. Not all interlocutory orders will survive the voluntary dismissal of the action, and the amendment is not intended to suggest otherwise. But it does provide guidance about the time to appeal in the event that a case terminates without a final order into which a prior order can merge. The amendments to App.R. 4(A) also remove the references to “judgment or order”; this change is not substantive but merely recognizes that there is no need to use both terms, since every judgment is also a final order. *See*, *e.g.*, Civ.R. 54(A); R.C. 2505.02(B)(1). The amendments also contain stylistic, non-substantive changes to accommodate the already-existing provision that extends the time to appeal when the clerk fails to complete service in a civil case under Civ.R. 58(B); that provision is now found in App.R. 4(A)(3).

The amendments to App.R. 4(B)(2)(e) and 4(B)(2)(f) clarify that a timely and appropriate motion for attorney fees or prejudgment interest suspends the time to appeal. The Supreme Court has held that the pendency of such a motion deprives a trial-court judgment of finality. *See Miller v. First Intl. Fid. & Trust Bldg., Ltd.*, 113 Ohio St.3d 474, 2007-Ohio-2457, 866 N.E.2d 1059 (prejudgment interest); *Intl. Bhd. of Elec. Workers, Loc. Union No. 8 v. Vaughn Indus., L.L.C.*, 116 Ohio St.3d 335, 2007-Ohio-6439, 879 N.E.2d 187 (attorney fees). But trial courts often enter judgment before parties file these types of post-trial motions, and during the window of time between the entry of that judgment and the filing of one of these motions, one of the parties may choose to appeal from an order that appears to be final at the time it was entered. The current amendments are designed to avoid the jurisdictional and procedural uncertainty that results from this situation. Now, the appellate court has the authority to remand the matter for a ruling on the post-judgment motion, rather than dismissing the appeal. Also, the reference to R.C. 2323.42 was deleted from App.R. 4(B)(2)(3); that reference suggested that only motions for attorney fees made under that statute suspend the time to appeal. The current amendment provides that any timely and appropriate motion for attorney fees and prejudgment interest suspends the time to appeal, regardless of the legal authority for the motion.

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**RULE 9. The Record on Appeal**

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**(B) The transcript of proceedings; discretion of trial court to select transcriber; duty of appellant to order; notice to appellee if partial transcript is ordered.**

(1) It is the obligation of the appellant to ~~ensure that~~ make reasonable arrangements to have the proceedings the appellant considers necessary for inclusion in the record, however those proceedings were recorded, are transcribed in a form that meets the specifications of App. R. 9(B)(6).

(2) Any stenographic/shorthand reporter selected by the trial court to record the proceedings may also serve as the official transcriber of those proceedings without prior trial court approval. Otherwise, the transcriber of the proceedings must be approved by the trial court. A party may move to appoint a particular transcriber or the trial court may appoint a transcriber sua sponte; in either case, the selection of the transcriber is within the sound discretion of the trial court, so long as the trial court has a reasonable basis for determining that the transcriber has the necessary qualifications and training to produce a reliable transcript that conforms to the requirements of App. R. 9(B)(6).

(3) The appellant shall order the transcript in writing and shall file a copy of the transcript order with the clerk of the trial court.

(4) If no recording was made, or when a recording was made but is no longer available for transcription, App. R. 9(C) or 9(D) may be utilized. If the appellant intends to present an assignment of error on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence, the appellant shall include in the record a transcript of proceedings that includes all evidence relevant to the findings or conclusion.

(5) Unless the entire transcript of proceedings is to be included in the record, the appellant shall file with the notice of appeal a statement, as follows:

1. If the proceedings were recorded by a stenographic/shorthand reporter, the statement shall list the assignments of error the appellant intends to present on the appeal and shall either describe the parts of the transcript that the appellant intends to include in the record or shall indicate that the appellant believes that no transcript is necessary.
2. If the proceedings were not recorded by any means, or if the proceedings were recorded by non-stenographic means but the recording is no longer available for transcription, or if the stenographic record has become unavailable, then the statement shall list the assignments of error the appellant intends to present on appeal and shall indicate that a statement under App. R. 9(C) or 9(D) will be submitted.

The appellant shall file this statement with the clerk of the trial court and serve the statement on the appellee.

If the appellee considers a transcript of other parts of the proceedings necessary, the appellee, within ten days after the service of the statement of the appellant, shall file and serve on the appellant a designation of additional parts to be included. The clerk of the trial court shall forward a copy of this designation to the clerk of the court of appeals.

If the appellant refuses or fails, within ten days after service on the appellant of appellee's designation, to order transcription of the additional parts, the appellee, within five days thereafter, shall either order the parts in writing from the reporter or apply to the court of appeals for an order requiring the appellant to do so. At the time of ordering, the party ordering the transcript of proceedings shall arrange for the payment to the transcriber of the cost of the transcript of proceedings.

(6) A transcript of proceedings under this rule shall be in the following form:

(a) The transcript of proceedings shall include a front and back cover; the front cover shall bear the title and number of the case and the name of the court in which the proceedings occurred;

(b) The transcript of proceedings shall be firmly bound on the left side;

(c) The first page inside the front cover shall set forth the nature of the proceedings, the date or dates of the proceedings, and the judge or judges who presided;

(d) The transcript of proceedings shall be prepared on white paper eight and one-half inches by eleven inches in size with the lines of each page numbered and the pages sequentially numbered;

(e) An index of witnesses shall be included in the front of the transcript of proceedings and shall contain page and line references to direct, cross, re-direct, and re-cross examination;

(f) An index to exhibits, whether admitted or rejected, briefly identifying each exhibit, shall be included following the index to witnesses reflecting the page and line references where the exhibit was identified and offered into evidence, was admitted or rejected, and if any objection was interposed;

(g) Exhibits such as papers, maps, photographs, and similar items that were admitted shall be firmly attached, either directly or in an envelope to the inside rear cover, except as to exhibits whose size or bulk makes attachment impractical; documentary exhibits offered at trial whose admission was denied shall be included in a separate envelope with a notation that they were not admitted and also attached to the inside rear cover unless attachment is impractical;

(h) No volume of a transcript of proceedings shall exceed two hundred and fifty pages in length, except it may be enlarged to three hundred pages, if necessary, to complete a part of the voir dire, opening statements, closing arguments, or jury instructions; when it is necessary to prepare more than one volume, each volume shall contain the number and name of the case and be sequentially numbered, and the separate volumes shall be approximately equal in length;

(i) An electronic copy of the written transcript of proceedings should be included if it is available;

(j) The transcriber shall certify the transcript of proceedings as correct and shall state whether it is a complete or partial transcript of proceedings, and, if partial, indicate the parts included and the parts excluded.

(7) The record is complete for the purposes of appeal when the last part of the record is filed with the clerk of the trial court under App. R. 10(A).

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**Staff Note (July 1, 2014 amendment)**

App.R. 9(B)(1) is amended to clarify that the appellant’s duty is to make reasonable arrangements for the transcription of recorded proceedings and that the appellant does not have the ability, and thus does not have the duty, to ensure that a court reporter or other transcriber meets his or her transcription obligations. That is not to suggest that an appellate court may reverse a judgment without a proper record; it simply clarifies that the appellant should not be penalized for failing to produce a timely transcript if the deficiency is outside the appellant’s control. *See*, *e.g.*, *Camp-Out, Inc. v. Adkins*, 6th Dist. No. WD-06-057, 2007-Ohio-447 (denying motion to dismiss based on missing transcript). The amendment is necessary to avoid dismissals under App.R. 11(C) arising from the failure to produce a timely transcript if the dismissal is not of the appellant’s making. *Cf. In re Efford*, 8th Dist. No. 77747, 2000 WL 1514100, \*1 (Oct. 12, 2000) (“Appellant has the duty to ensure that the record or any portions thereof that are necessary to determine the appeal are filed with the reviewing court.”).

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**RULE 10. Transmission of the Record**

**(A) Time for transmission; duty of appellant.** The record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the clerk of the court of appeals when the record is complete for the purposes of appeal, or when forty days, which is reduced to twenty days for an accelerated calendar case, have elapsed after the filing of the notice of appeal and no order extending time has been granted under subdivision (C). After filing the notice of appeal the appellant shall comply with the provisions of Rule 9(B) and shall take any other action reasonably necessary to enable the clerk to assemble and transmit the record. If more than one appeal is taken, each appellant shall comply with the provisions of Rule 9(B) and this subdivision, and a single record shall be transmitted when forty days have elapsed after the filing of the final notice of appeal. If the appellant has complied with the duty to make reasonable arrangements for transcription of the recorded proceedings under App.R. 9(B) and the duty to make reasonable arrangements to enable the clerk to assemble and transmit the record under this division, then the appellant is not responsible for any delay or failure to transmit the record.

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**(C) Extension of time for transmission of the record; reduction of time.** Except as may be otherwise provided by local rule adopted by the court of appeals pursuant to Rule ~~30~~ 41, the trial court for cause shown set forth in the order may extend the time for transmitting the record. The clerk shall certify the order of extension to the court of appeals. A request for extension to the trial court and a ruling by the trial court must be made within the time originally prescribed or within an extension previously granted. If the trial court is without authority to grant the relief sought, by operation of this rule or local rule, or has denied a request therefor, the court of appeals may on motion for cause shown extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given. The court of appeals may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor. An appellant who moves under this division for an extension of time to transmit the record has good cause to do so if the appellant has reasonably complied with all applicable requirements of App.R. 9(B) and division (A) of this rule.

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**Staff Note (July 1, 2014 amendment)**

App.R. 10(A) is amended to clarify that the appellant’s duty is to make reasonable arrangements for the timely transmission of the record and that the appellant does not have the ability, and thus does not have the duty, to ensure that the record is transmitted once those reasonable arrangements have been made. That is not to suggest that an appellate court may reverse a judgment without a proper record; it simply clarifies that the appellant should not be penalized for any failure in transmitting the record (including any delay in producing a transcript of proceedings) if the deficiency is outside the appellant’s control. *See*, *e.g.*, *Camp-Out, Inc. v. Adkins*, 6th Dist. No. WD-06-057, 2007-Ohio-447 (denying motion to dismiss based on missing transcript). *Cf. In re Efford*, 8th Dist. No. 77747, 2000 WL 1514100, \*1 (Oct. 12, 2000) (dismissing appeal because of appellant’s failure to ensure timely transmission of complete record).

Similarly, App.R. 10(C) is amended to clarify that an appellant will presumably have the requisite good cause for extending the time to transmit the record if the appellant has complied with all applicable requirements to arrange for both the transcribing of the recorded proceedings and transmission of the record. The reference in App.R. 10(C) to App.R. 30 is also corrected to App.R. 41.

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**RULE 11. Docketing the Appeal; Filing of the Record**

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**(C) Dismissal for failure of appellant to cause timely transmission of record.** If the appellant fails to make reasonable arrangements to transmit the record ~~cause~~ timely ~~transmission of the record~~, any appellee may file a motion in the court of appeals to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the trial court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, the expiration date of any order extending the time for transmitting the record, and by proof of service. The appellant may respond within ten days of such service.

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**Staff Note (July 1, 2014 amendment)**

App.R. 11(C) is amended to clarify that the appellant’s duty is to make reasonable arrangements for the timely transmission of the record and that the appellant does not have the ability, and thus does not have the duty, to ensure that the record is transmitted once those reasonable arrangements have been made. That is not to suggest that an appellate court may reverse a judgment without a proper record; it simply clarifies that the appellant should not be penalized for any failure in transmitting the record (including any delay in producing a transcript of proceedings) if the deficiency is outside the appellant’s control. *See*, *e.g.*, *Camp-Out, Inc. v. Adkins*, 6th Dist. No. WD-06-057, 2007-Ohio-447 (denying motion to dismiss based on missing transcript). *Cf. In re Efford*, 8th Dist. No. 77747, 2000 WL 1514100, \*1 (Oct. 12, 2000) (dismissing appeal because of appellant’s failure to ensure timely transmission of record).

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**RULE 43. Effective Date**

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**(AA)** **Effective date of amendments.** The amendments to Rules 4, 9, 10, and 11, and 43 filed by the Supreme Court with the General Assembly on [enter date] shall take effect on July 1, 2014. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**OHIO RULES OF CIVIL PROCEDURE**

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**RULE 4.3 Process: Out-of-State Service**

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**(B) Methods of service.**

**(1) Service by clerk.** The clerk may make service of process or other documents to be served outside the state in the same manner as provided in Civ.R. 4.1(A)(1) through Civ.R. 4.1(A)(3).

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

Proof of service may be made as prescribed by Civ.R. 4.1 (B) or by order of the court. Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service.

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**Staff Note (July 1, 2014 Amendments)**

Rule 4.3(B)(2) is amended to be consistent with the provisions of Civ.R. 4.1(B) relating to personal service within the state which specify, “The person serving process shall locate the person to be served and shall tender a copy of the process and accompanying documents to the person to be served” and “Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service.”

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

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**(C) Return.** Proof of service may be made as prescribed by Civ. R. 4.1(B), or by the law of the foreign country, or by order of the court. Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service.

When delivery is made pursuant to division (B)(5) of this rule, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

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**Staff Note (July 1, 2014 Amendments)**

Rule 4.5(C) is amended to be consistent with the provision of Civ.R. 4.1(B) relating to personal service within the state which specifies, “Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service.”

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

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

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**RULE 7. Pleadings and Motions**

**(A) Pleadings.** There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

**(B) Motions.**

(1) An application to the court for an order shall be by motion which, unless made during a hearing or a trial, shall be made in writing. A motion, whether written or oral, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

(3) The rules applicable to captions, signing, and other matters of form of pleading apply to all motions and other papers provided for by these rules.

(4) All motions shall be signed in accordance with Rule 11.

**~~(C) Demurrers abolished.~~** ~~Demurrers shall not be used.~~

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**Staff Note (July 1, 2014 Amendments)**

Rule 7(C) abolishing demurrers is deleted, corresponding to the 2007 deletion of former Federal Rule 7(c). Demurrers are unknown in Ohio modern practice, having been replaced in 1970 by Civ.R. 12(B)(6) with the adoption of the Ohio Rules of Civil Procedure. As the 2007 Federal Advisory Committee Note stated: “Former Rule 7(c) is deleted because it has done its work.”

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**RULE 10. Form of Pleadings**

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**(D) Attachments to pleadings.**

(1) *Account or written instrument.* When any claim or defense is founded on an account or other written instrument, a copy of the account or written instrument must be attached to the pleading. If the account or written instrument is not attached, the reason for the omission must be stated in the pleading.

(2)  *Affidavit of merit; medical liability claim*.

(a) Except as provided in division (D)(2)~~(b)~~ (d) of this rule, ~~a complaint that contains~~ a medical claim~~, dental claim, optometric claim, or chiropractic claim,~~ as defined in section 2305.113 of the Revised Code, asserted in any civil action against a physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist shall ~~include~~ be accompanied by one or more affidavits of merit relative to each defendant named in the ~~complaint for whom~~ claim when expert testimony is necessary to establish liability. Affidavits of merit under this division shall be provided by an expert witness ~~pursuant to~~ meeting the requirements of Rules 601(D) and 702 of the Ohio Rules of Evidence. ~~Affidavits of merit shall include all of the following:~~

(b) Except as provided in division (D)(2)(d) of this rule, a claim asserted in any civil action that is a medical claim not included within division (D)(2)(a) of this rule, or a dental claim, optometric claim, or chiropractic claim, as defined in section 2305.113 of the Revised Code, shall be accompanied by one or more affidavits of merit relative to each defendant named in the claim when expert testimony is necessary to establish liability. Affidavits of merit under this division shall be provided by an expert witness meeting the requirements of Rule 702 of the Ohio Rules of Evidence.

(c) When an affidavit of merit is required by this rule, a separate affidavit shall be provided relative to each defendant named in the claim for which expert testimony is necessary to establish liability. When the same expert witness is providing an affidavit of merit relative to more than one defendant, consolidation of the affidavits is permitted. Affidavits of merit shall include all of the following:

(i) A statement that the affiant has reviewed all medical or otherwise relevant records reasonably available to the ~~plaintiff~~ party asserting the claim concerning the allegations contained in the ~~complaint~~ claim. The statement shall identify the medical or otherwise relevant records reviewed, including the source of the records and the date(s) of service;

(ii) A statement establishing the affiant’s qualifications under Evid.R. 601(D), if applicable, and Evid.R. 702, and that the affiant is familiar with the ~~applicable~~ standard of care applicable to the specialty of the named defendant(s) against whom the affidavit is offered;

(iii) The opinion of the affiant that the standard of care was breached by ~~one or~~

~~more of~~ the ~~defendants~~ named defendant(s) to the action against whom the affidavit is offered, and that the breach proximately caused injury to the ~~plaintiff~~ party asserting the claim. The affiant shall include the name of each individual defendant to whom the affiant’s opinion applies. An affidavit of merit from more than one expert may be used to satisfy the requirements of this division.

~~(b)~~ (d) The ~~plaintiff~~ party asserting the claim may file a motion to extend the period of time to file an affidavit of merit. The motion shall be filed ~~by the plaintiff~~ with the ~~complaint~~ filing of the claim. For good cause shown and in accordance with division ~~(c)~~ (e) of this rule, the court shall grant the ~~plaintiff~~ party asserting the claim a reasonable period of time to file an affidavit of merit, not to exceed ninety days, except the time may be extended beyond ninety days if the court determines that a defendant or non-party has failed to cooperate with discoveryor that other circumstances warrant extension.

~~(c)~~ (e) In determining whether good cause exists to extend the period of time to file an affidavit of merit, the court shall consider the following:

(i) A description of any information necessary in order to obtain an affidavit of merit;

(ii) **Whether the information is in the possession or control of a defendant or third party;**

(iii)The scope and type of discovery necessary to obtain the information;

(iv)What efforts, if any, were taken to obtain the information;

(v)Any other facts or circumstances relevant to the ability of the ~~plaintiff~~ party asserting the claim to obtain an affidavit of merit.

~~(d)~~(f)An affidavit of merit is required to establish the adequacy of the ~~complaint~~ claim and shall not otherwise be admissible as evidence or used for purposes of impeachment. Any dismissal for the failure to comply with this rule shall operate as a failure otherwise than on the merits.

~~(e)~~ (g) If an affidavit of merit as required by this rule has been filed as to any defendant along with the ~~complaint~~ pleading or amended ~~complaint~~ pleading in which claims requiring an affidavit of merit are first asserted against that defendant, and the affidavit of merit is determined by the court to be defective pursuant to the provisions of division (D)(2)(a) or (b) of this rule, the court shall grant the ~~plaintiff~~ party asserting the claim a reasonable time, not to exceed sixty days, to file an affidavit of merit intended to cure the defect.

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**Staff Notes (July 1, 2014 Amendments)**

Rule 10(D)(2) applies to medical, dental, optometric, and chiropractic claims, as defined by R.C. 2305.113, and was adopted in 2005 to require that, at the time of filing, such claims be accompanied by certificates of expert review. The rule is amended to clarify that its application is not confined to complaints, and applies to any pleading or amended pleading containing such a claim, and to differentiate between the qualifications of the affiant for claims to which Evid.R. 601(D) applies and affiant’s qualifications to make an affidavit for the other claims covered by the rule. The amendment also specifies that affidavits of merit must separately name and address each defendant against whom the affidavit is offered, identify the records reviewed by the expert, and establish the affiant’s qualifications under the applicable Rules of Evidence.

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**RULE 33. Interrogatories to Parties**

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

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

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

(3) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The party upon whom the interrogatories have been served shall quote each interrogatory immediately preceding the corresponding answer or objection. When the number of interrogatories exceeds forty without leave of court, the party upon whom the interrogatories have been served need only answer or object to the first forty interrogatories. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections within a period designated by the party submitting the interrogatories, not less than twenty-eight days after the service of ~~a printed copy of~~ the interrogatories or within such shorter or longer time as the court may allow.

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**Staff Note (July 1, 2014 Amendments)**

Rule 33(A)(3) is amended to correct an oversight in the final publication of the 2012 amendments to the rule. Those prior amendments intended that interrogatories be served by electronic means making separate service of a printed copy unnecessary except for unusual circumstances. The final publication of the 2012 amendment inadvertently retained language form the prior rule stating that the designated time for responses runs from service of “a printed copy of” the interrogatories. The quoted words were not intended to be included and are stricken. A similar correction is made to Civ.R. 36 with respect to requests for admission.

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**RULE 36. Requests for Admission**

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

(1) Each matter of which an admission is requested shall be separately set forth. The party to whom the requests for admissions have been directed shall quote each request for admission immediately preceding the corresponding answer or objection. The matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service of ~~a printed copy of~~ the request or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party’s attorney.

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

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

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**Staff Note (July 1, 2014 Amendments)**

Rule 36(A)(1) is amended to correct an oversight in the final publication of the 2012 amendments to the rule. Those prior amendments intended that requests for admission be served by electronic means making separate service of a printed copy unnecessary except for unusual circumstances. The final publication of the 2012 amendment inadvertently retained language from the prior rule stating that the designated time for responses runs from service of “a printed copy of” the requests. The quoted words were not intended to be included and are stricken. A similar correction is made to Civ.R. 33 with respect to interrogatories.

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**RULE 37. Failure to Make Discovery: Sanctions**

**(A) Motion for an order compelling discovery.** ~~Upon reasonable notice to other parties and all persons affected thereby, a party may move for an order compelling discovery as follows:~~

**(1) In General.** On notice to other parties and all affected persons, a party may move for an order compelling discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make discovery in an effort to obtain it without court action.

**(2) Appropriate court.** A motion for an order to a party or a deponent shall be made to the court ~~in which~~ where the action is pending.

**~~(2)~~ (3) ~~Motion~~ Specific Motions.**

(a) To Compel a Discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) ~~If~~ a deponent fails to answer a question ~~propounded or submitted~~ asked under ~~Rule~~ Civ.R. 30 or ~~Rule~~ Civ.R. 31~~,~~ ;

(ii) a corporation or other entity fails to make a designation under Civ.R. 30(B)(5) or Civ.R. 31(A);

(iii) ~~or~~ a party fails to answer an interrogatory submitted under ~~Rule~~ Civ.R. 33~~,~~ ;

(iv) ~~or if~~ a party~~, in response to a request for inspection submitted under Rule 34,~~ fails to respond that inspection will be permitted, or fails to permit inspection, as requested ~~or fails to permit inspection as requested,~~ under Civ.R. 34 ~~the discovering party may move for an order compelling an answer or an order compelling inspection in accordance with the request~~.

(b) ~~On matters relating~~ Related to a ~~deposition~~ Deposition. ~~on oral examination~~ When taking an oral deposition, the ~~proponent of the~~ party asking a question may complete or adjourn the examination before ~~he applies~~ moving for an order.

**~~(3)~~ (4) Evasive or incomplete answer, or response.** For purposes of ~~this subdivision~~ division (A), an evasive or incomplete answer or response shall be treated as ~~is~~ a failure to answer or respond.

**~~(4)~~ (5) ~~Award of expenses of motion~~ Payment of expenses; Protective orders.**

(a) If the Motion is Granted. If the motion is granted, the court shall, after ~~opportunity for hearing~~ giving an opportunity to be heard, require the party or deponent ~~who opposed~~ whose conduct necessitated the motion ~~or~~ , the party or attorney advising ~~such~~ that conduct or both ~~of them~~ to pay ~~to~~ the ~~moving~~ ~~party~~ movant for its preparation and presentation of the motion, ~~the reasonable expenses incurred in obtaining the order,~~ including the reasonable value of the time spent by the attorney, whether or not the party actually paid or is obligated to pay the attorney for such time. ~~attorney's fees, unless the court finds that~~ But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the discovery without court action;

(ii) the ~~opposition to the motion~~ opposing party’s response or objection was substantially justified; or

(iii) ~~that~~ other circumstances make an award of expenses unjust.

(b) If the Motion is Denied. If the motion is denied, the court may issue any protective order authorized under Civ.R. 26(C) and shall, after ~~opportunity for hearing~~ giving an opportunity to be heard, require the ~~moving party~~ movant, ~~or~~ the attorney ~~advising~~ filing the motion, or both ~~of them~~ to pay ~~to~~ the party or deponent who opposed the motion ~~the reasonable expenses incurred in opposing the motion,~~ for its preparation and presentation of the opposition to the motion, including the reasonable value of the time spent by the attorney, whether or not the party actually paid or is obligated to pay the attorney for such time. ~~attorney's fees,~~ But the court shall not order this payment if ~~unless the court finds that the making of~~ the motion was substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

(c) If the Motion is Granted in Part and Denied in Part. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Civ.R. 26(C) and may, after giving an opportunity to be heard, apportion ~~the~~ reasonable expenses ~~incurred in relation to the motion among the parties and persons in a just manner~~ for the motion.

**(B) Failure to comply with order; Sanctions.**

(1) For Not Obeying a Discovery Order. ~~If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of that court.~~

~~(2)~~ If ~~any~~ a party or ~~an~~ a party’s officer, director, or managing agent ~~of a party~~ or a ~~person~~ witness designated under ~~Rule~~ Civ.R. 30(B)(5) or ~~Rule~~ Civ.R. 31(A) ~~to testify on behalf of a party~~ fails to obey an order to provide or permit discovery, including an order made under ~~subdivision (A) of this rule and Rule~~ Civ.R. 35 or Civ.R. 37(A), the court ~~in which the action is pending~~ may ~~make such~~ issue further just orders. ~~in regard to the failure as are just, and among others~~ They may include the following:

(a) ~~An order that the matters regarding which the order was made or any~~ directing that the matters embraced in the order or other designated facts shall be taken ~~to be~~ as established for ~~the~~ purposes of the action ~~in accordance with the claim of the party obtaining the order~~ as the prevailing party claims;

(b) ~~An order refusing to allow~~ prohibiting the disobedient party ~~to support or oppose~~ from supporting or opposing designated claims or defenses, or ~~prohibiting him~~ from introducing designated matters in evidence;

(c) ~~An order striking out pleadings or parts thereof,~~ striking pleadings in whole or in part;

(d) ~~or~~ staying further proceedings until the order is obeyed~~,~~;

(e) ~~or~~ dismissing the action or proceeding ~~or any part thereof~~ in whole or in part~~,~~;

(f) ~~or~~ rendering a default judgment ~~by default~~ against the disobedient party; or

~~(d)~~(g) ~~In lieu of any of the foregoing orders or in addition thereto, an order~~ treating as ~~a~~ contempt of court the failure to obey any ~~orders~~ order except an order to submit to a physical or mental examination~~;~~.

~~(e)~~(2) For Not Producing a Person for Examination. ~~Where~~ If a party ~~has failed~~ fails to comply with an order under ~~Rule~~ Civ.R. 35(A) requiring ~~him~~ the party to produce another person for examination, ~~such orders as are~~ the court may issue any of the orders listed in ~~subsections~~ Civ.R. 37(B)(1)(a)~~, (b),~~ ~~and~~ through ~~(c)~~ (f) ~~of this subdivision~~, unless the disobedient party ~~failing to comply~~ shows that ~~he is unable~~ ~~to~~ it cannot produce ~~such~~ the other person ~~for examination~~.

(3) Payment of Expenses. ~~In lieu of any of the foregoing orders or in addition thereto~~ Instead of or in addition to the orders above, the court shall ~~require the party failing to obey the~~ order the disobedient party, ~~or~~ the attorney advising ~~him~~ that party or both to pay the opposing party reasonable expenses resulting from the failure, including the reasonable value of the time spent by the opposing party’s attorney, whether or not the party actually paid or is obligated to pay the attorney for such time, ~~attorney's fees, caused by the failure,~~ unless ~~the court expressly finds that~~ the failure was substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

**(C) Failure to Supplement an Earlier Response, or to Admit.**

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

(a) may order payment to the opposing party of reasonable expenses resulting from the failure, including the reasonable value of the time spent by the opposing party’s attorney, whether or not the party actually paid or is obligated to pay the attorney for such time;

(b) may inform the jury of the party’s failure; and

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

(2) **~~Expenses on failure to admit~~** Failure to Admit. If a party~~, after being served with a request for admission under Rule 36,~~ fails to admit ~~the genuineness of any documents or the truth of any matter as~~ what is requested under Civ.R. 36, and if the ~~party~~ requesting ~~the admissions thereafter~~ party later proves ~~the genuineness of the~~ a document to be genuine or ~~the truth of~~ the matter true, ~~he~~ the requesting party may ~~apply to the court for an order requiring the other~~ move that the party who failed to admit ~~to~~ pay ~~him~~ the requesting party ~~the~~ reasonable expenses ~~incurred in~~ for making that proof, including ~~reasonable attorney's fees~~ the reasonable value of the time spent by the requesting party’s attorney, whether or not the party actually paid or is obligated to pay the attorney for such time. The court shall so order unless:

(a) ~~Unless~~ the request ~~had been~~ was held objectionable under ~~Rule~~ Civ.R. 36(A);

(b) ~~or the court finds that there was good reason for the failure to admit or that~~ the admission sought was of no substantial importance~~,~~;

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

(d) there was other good reason for the failure to admit. ~~the order shall be made.~~

**(D) Party’s Failure ~~of party~~ to attend ~~at~~ its own deposition, ~~or~~ serve answers to interrogatories, or respond to a request for inspection.**

(1) In General.

(a) Motion; Grounds for Sanctions. The court may, on motion, order sanctions if:

(i) ~~If~~ a party or ~~an~~ a party’s officer, director, or a managing agent ~~of a party~~ or a person designated under ~~Rule~~ Civ.R. 30(B)(5) or ~~Rule~~ Civ.R. 31(A) ~~to testify on behalf of a party~~ fails ~~(1) to appear before the officer who is to take his deposition~~, after being served with a proper notice, to appear for that person’s deposition; or

~~(2)~~ (ii) ~~to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request,~~ a party, after being properly served with interrogatories under Civ.R. 33 or a request for inspection under Civ.R. 34, fails to serve its answers, objections, or written response.

(b) Certification. A motion for sanctions for failing to answer or respond shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) Unacceptable excuse for failing to act. A failure described in Civ.R. 37(D)(1)(a) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Civ.R. 26(C).

(3) Types of sanctions. ~~the court in which the action is pending on motion and notice may make such orders in regard to the failure as are just, and among others it may take any action authorized under subsections (a), (b), and (c) of subdivision (B)(2) of this rule.~~ Sanctions may include any of the orders listed in Civ.R. 37(B)(1)(a) through (f). ~~In lieu of any order or in addition thereto~~ Instead of or in addition to these sanctions, the court shall require the party failing to act, ~~or~~ the attorney advising ~~him~~ that party, or both to pay the opposing party reasonable expenses resulting from the failure, including ~~attorney's fees, caused by the failure,~~ the reasonable value of the time spent by the opposing party’s attorney, whether or not the party actually paid or is obligated to pay the attorney for such time, unless ~~the court expressly finds that~~ the failure was substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

~~The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(C).~~

(E) ~~Before filing a motion authorized by this rule, the party shall make a reasonable effort to resolve the matter through discussion with the attorney, unrepresented party, or person from whom discovery is sought. The motion shall be accompanied by a statement reciting the efforts made to resolve the matter in accordance with this section.~~

# Failure to Provide Electronically Stored Information. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system. The court may consider the following factors in determining whether to impose sanctions under this division:

(1) Whether and when any obligation to preserve the information was triggered;

(2) Whether the information was lost as a result of the routine alteration or deletion of information that attends the ordinary use of the system in issue;

(3) Whether the party intervened in a timely fashion to prevent the loss of information;

(4) Any steps taken to comply with any court order or party agreement requiring preservation of specific information;

(5) Any other facts relevant to its determination under this division.

**\*\*\***

**Staff Notes (July 1, 2014 Amendments)**

The rule is amended to (1) adopt the 2007 stylistic changes to Federal Rule 37 and (2) specifically include within the attorney fees recoverable under the rule, the reasonable value of time spent by an attorney whether or not the party actually paid or is obligated to pay the attorney for such time. In adopting the stylistic changes to the federal rule, the amendment also adds the following substantive changes to existing Ohio Rule 37:

(1) Including within the scope of amended Civ.R. 37(A)(3), “a corporation or other entity fails to make a designation under Civ.R. 30(B)(5) or Civ.R. 31(A)”;

(2) Adding to the exceptions to amended Civ.R. 37(A)(5), “the movant filed the motion before attempting in good faith to obtain the discovery without court action”;

(3) Adding to the remedies available under amended Civ.R. 37(A)(5)(b) and Civ.R. 37(A)(5)(c), “the court may issue any protective order authorized under Civ.R. 26(C)”; and

(4) Adding amended Civ.R. 37(C)(1) addressing failure to supplement an earlier response.

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**RULE 41. Dismissal of Actions**

**(A) Voluntary dismissal: effect thereof.**

**(1) By plaintiff; by stipulation.** Subject to the provisions of Civ.R. 23(E), Civ.R. 23.1, and Civ.R. 66, a plaintiff, without order of court, may dismiss all claims asserted by that plaintiff against a defendant by doing either of the following:

(a) filing a notice of dismissal at any time before the court’s announcement on the record of, or the filing of, an order granting a motion for summary judgment or no less than ten days before the commencement of trial, whichever is earlier. A notice may not be filed under this division if ~~unless~~ a counterclaim which cannot remain pending for independent adjudication by the court has been served by that defendant; or

(b) filing a stipulation of dismissal signed by all parties who have appeared in the action.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits of any claim that the plaintiff has once dismissed in any court.

**(2) By order of court.** Except as provided in division (A)(1) of this rule, a claim shall not be dismissed at the plaintiff's instance except upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon that defendant of the plaintiff's motion to dismiss, a claim shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under division (A)(2) of this rule is without prejudice.

**(B) Involuntary dismissal: effect thereof.**

**(1) Failure to prosecute.** Where the plaintiff fails to prosecute, or comply with these rules or any court order, the court upon motion of a defendant or on its own motion may, after notice to the plaintiff's counsel, dismiss an action or claim.

**(2) Dismissal; non-jury action.** After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff’s evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Civ.R. 52 if requested to do so by any party.

**(3) Adjudication on the merits; exception.** A dismissal under division (B) of this rule and any dismissal not provided for in this rule, except as provided in division (B)(4) of this rule, operates as an adjudication upon the merits unless the court, in its order for dismissal, otherwise specifies.

**(4) Failure other than on the merits.** A dismissal for either of the following reasons shall operate as a failure otherwise than on the merits:

(a) lack of jurisdiction over the person or the subject matter;

(b) failure to join a party under Civ.R. 19 or Civ.R. 19.1.

**(C) Dismissal of counterclaim, cross-claim, or third-party claim.** The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to division (A)(1) of this rule shall be made before the commencement of trial.

**(D) Costs of previously dismissed action.** If a plaintiff who has once dismissed a claim in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the claim previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

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**Staff Note (July 1, 2014 Amendments)**

The rule is amended to protect the rights of plaintiffs to voluntarily dismiss complaints under Rule 41(A)(1)(a), while addressing inefficiencies associated with the former rule. One such inefficiency results when a voluntary dismissal nullifies a trial court’s dispositive ruling after announcement or prior to entry of a final judgment that satisfies Civ.R. 54(B). To address this concern, the rule is amended to require an application to the court for an order of dismissal without prejudice pursuant to Civ.R. 41(A)(2) once the court has announced its ruling on the record or has filed an order granting summary judgment.

Similarly, inefficiency results when a voluntary dismissal is filed after the parties have made substantial preparations for a pending trial. To address this concern, the rule is amended to require an application to the court for an order of dismissal without prejudice pursuant to Civ.R. 41(A)(2) when dismissal is sought less than 10 days before trial.

Consistent with current practice, the Court may grant the plaintiff’s request for dismissal without prejudice whenever it deems it proper to do so. The requirement of an application under Civ.R. 41(A)(2) more closely tracks the way these inefficiencies are addressed under the Federal Rules.

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**RULE 45. Subpoena**

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

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

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

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

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

(a) Fails to allow reasonable time to comply;

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

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)~~(4)~~(5), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

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

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

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**Staff Note (July 1, 2014 Amendments)**

Rule 45(C)(3)(c) is amended to account for the 2008 renumbering of Civ.R. 26(B) which changed the section of that rule addressing experts from Civ.R. 26(B)(4) to Civ.R. 26(B)(5).

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**RULE 53. Magistrates**

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**(C) Authority.**

(1) *Scope.* To assist courts of record and pursuant to reference under Civ.R. 53(D)~~(1)~~, magistrates are authorized, subject to the terms of the relevant reference, to do any of the following:

(a) Determine any motion in any case;

(b) Conduct the trial of any case that will not be tried to a jury;

(c) Upon unanimous written consent of the parties, preside over the trial of any case that will be tried to a jury;

(d) Conduct proceedings upon application for the issuance of a temporary protection order as authorized by law;

(e) Exercise any other authority specifically vested in magistrates by statute and consistent with this rule.

(2) *Regulation of proceedings*. In performing the responsibilities described in Civ.R. 53(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate all proceedings as if by the court and to do everything necessary for the efficient performance of those responsibilities, including but not limited to, the following:

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

(b) Ruling upon the admissibility of evidence;

(c) Putting witnesses under oath and examining them;

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

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

(f) Imposing, subject to Civ.R. 53~~(D)(8)~~ (I), appropriate sanctions for civil or criminal contempt committed in the presence of the magistrate.

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

~~(1)~~**Reference by court of record.**

~~(a)~~ (1) *Purpose and method.* A court of record may, for one or more of the purposes described in Civ.R. 53(C)(1), refer a particular case or matter or a category of cases or matters to a magistrate by a specific or general order of reference or by rule.

~~(b)~~ (2) *Limitation.* A court of record may limit a reference by specifying or limiting the magistrate’s powers, including but not limited to, directing the magistrate to determine only particular issues, directing the magistrate to perform particular responsibilities, directing the magistrate to receive and report evidence only, fixing the time and place for beginning and closing any hearings, or fixing the time for filing any magistrate’s decision on the matter or matters referred.

**(E) Proceedings in Matters Referred to Magistrates other than jury trials.** Unless provided otherwise by these rules, the following provisions shall apply to matters referred to a magistrate for any purpose other than when a matter is referred to a magistrate upon unanimous written consent of the parties to preside over a case that will be tried to a jury.

~~(2)~~ (1) *Magistrate’s order; motion to set aside magistrate’s order.*

(a) *Magistrate’s order.*

(i) *Nature of order.* Subject to the terms of the relevant reference, a magistrate may enter orders without judicial approval if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party.

(ii) *Form, filing, and service of magistrate’s order.* A magistrate’s order shall be in writing, identified as a magistrate’s order in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys.

(b) *Motion to set aside magistrate’s order.* Any party may file a motion with the court to set aside a magistrate’s order. The motion shall state the moving party’s reasons with particularity and shall be filed not later than ten days after the magistrate’s order is filed. The pendency of a motion to set aside does not stay the effectiveness of the magistrate’s order, though the magistrate or the court may by order stay the effectiveness of a magistrate’s order.

~~(3)~~ (2) *Magistrate’s decision; objections to magistrate’s decision*.

(a) *Magistrate’s decision.*

(i) *When required.* Subject to the terms of the relevant reference, a magistrate shall prepare a magistrate’s decision respecting any matter referred under Civ.R. 53(D)~~(1)~~.

(ii) *Findings of fact and conclusions of law*. Subject to the terms of the relevant reference, a magistrate’s decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law. A request for findings of fact and conclusions of law shall be made before the entry of a magistrate’s decision or within seven days after the filing of a magistrate’s decision. If a request for findings of fact and conclusions of law is timely made, the magistrate may require any or all of the parties to submit proposed findings of fact and conclusions of law.

(iii) *Form; filing, and service of magistrate’s decision.* A magistrate’s decision shall be in writing, identified as a magistrate’s decision in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys no later than three days after the decision is filed. A magistrate’s decision shall indicate conspicuously that a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under ~~Civ. R. 53(D)(3)(a)(ii)~~ Civ.R. 53(E)(2)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by ~~Civ. R. 53(D)(3)(b)~~ Civ.R. 53(E)(2)(b).

(b) *Objections to magistrate’s decision.*

*(i) Time for filing.* A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by ~~Civ. R. 53(D)(4)(e)(i)~~ Civ.R. 53(E)(3)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

*(ii) Specificity of objection.* An objection to a magistrate’s decision shall be specific and state with particularity all grounds for objection.

*(iii) Objection to magistrate’s factual finding; transcript or affidavit.* An objection to a factual finding, whether or not specifically designated as a finding of fact under ~~Civ. R. 53(D)(3)(a)(ii)~~ Civ.R. 53(E)(2)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

*(iv) Waiver of right to assign adoption by court as error on appeal.* Except for a claim of plain error, a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under ~~Civ. R. 53(D)(3)(a)(ii)~~ Civ.R. 53(E)(2)(a)(ii) , unless the party has objected to that finding or conclusion as required by ~~Civ. R. 53(D)(3)(b)~~ Civ.R. 53(E)(2)(b).

~~(4)~~ (3) *Action of court on magistrate’s decision and on any objections to magistrate’s decision; entry of judgment or interim order by court.*

(a) *Action of court required.* A magistrate’s decision is not effective unless adopted by the court.

(b) *Action on magistrate’s decision.* Whether or not objections are timely filed, a court may adopt or reject a magistrate’s decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate.

(c) *If no objections are filed*. If no timely objections are filed, the court may adopt a magistrate’s decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate’s decision.

(d) *Action on objections.* If one or more objections to a magistrate’s decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.

(e) *Entry of judgment or interim order by court*. A court that adopts, rejects, or modifies a magistrate’s decision shall also enter a judgment or interim order.

(i) *Judgment.* The court may enter a judgment either during the fourteen days permitted by ~~Civ. R. 53(D)(3)(b)(i)~~ Civ.R. 53(E)(2)(b)(i) for the filing of objections to a magistrate’s decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by ~~Civ. R. 53(D)(3)(b)(i)~~ Civ.R. 53(E)(2)(b)(i) for the filing of objections, the timely filing of objections to the magistrate’s decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.

(ii) *Interim order.* The court may enter an interim order on the basis of a magistrate’s decision without waiting for or ruling on timely objections by the parties where immediate relief is justified. The timely filing of objections does not stay the execution of an interim order, but an interim order shall not extend more than twenty-eight days from the date of entry, subject to extension by the court in increments of twenty-eight additional days for good cause shown. An interim order shall comply with Civ. R. 54(A), be journalized pursuant to Civ. R. 58(A), and be served pursuant to Civ. R. 58(B).

~~(5)~~(4) *Extension of time.* For good cause shown, the court shall allow a reasonable extension of time for a party to file a motion to set aside a magistrate’s order or file objections to a magistrate’s decision. “Good cause” includes, but is not limited to, a failure by the clerk to timely serve the party seeking the extension with the magistrate’s order or decision.

**(F) Proceedings in Jury Trials Referred to Magistrates Upon Unanimous Consent of the Parties.** Unless otherwise specified or limited by the court in the order of reference, the following provisions shall apply when a matter is referred to a magistrate upon unanimous written consent of the parties to preside over a case that will be tried to a jury:

(1) The magistrate shall conduct the trial as if by the court and do everything necessary for the efficient performance of those responsibilities.

(2) *Recommendations upon Conclusion of Trial.*

(a) Upon conclusion of the trial, the magistrate shall file, and cause to be served in accordance with Civ.R. 5(B), a Recommended Entry of Judgment, designated as such and prepared in accordance with Civ.R. 58(A).

(b) The provisions of Civ.R. 52 relating to requests for findings of fact and conclusions of law shall apply to a Recommended Entry of Judgment that is not an entry of judgment upon the jury’s verdict. Any such requests shall be submitted to the magistrate who shall thereupon file, and cause to be served in accordance with Civ.R. 5(B), Recommended Findings of Fact and Conclusions of Law, designated as such.

(3) *Recommendations regarding Post-Trial Motions.*

(a) All post-trial motions, including motions for judgment notwithstanding the verdict, new trial, and pre-judgment interest shall also be submitted to the magistrate.

(b) Upon consideration of any post-trial motion, the magistrate shall file, and cause to be served in accordance with Civ.R. 5(B), a Recommended Entry of Judgment with respect to the post-trial motion, designated as such and prepared in accordance with Civ.R. 58(A).

(4) *Action of Court on Magistrate’s Recommendations.*

(a) The court shall promptly review the magistrate’s recommendations filed under Civ.R. 53(F)(2) and (3), and shall adopt and file such recommendations as entries of the court unless it determines that there is an error of law or other defect evident on the face of the recommendations.

(b) If the court determines that there is an error of law or other defect evident on the face of a recommendation, the court may modify the recommendation to correct the error or defect and enter judgment accordingly, refer the matter to the magistrate to address the error or defect, or terminate the reference and conduct appropriate further proceedings in the matter.

(c) In accordance with Civ.R. 58(A), any entry of judgment by the court shall be effective when entered by the clerk upon the journal.

~~(6)~~ **(G)** **Disqualification of a magistrate.** Disqualification of a magistrate for bias or other cause is within the discretion of the court and may be sought by motion filed with the court.

~~(7)~~ **(H)****Recording of proceedings before a magistrate.** Except as otherwise provided by law, all proceedings before a magistrate shall be recorded in accordance with procedures established by the court.

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

~~(a)~~ (1) *Contempt order.* Contempt sanctions under Civ. R. 53(C)(2)(f) may be imposed only by a written order that recites the facts and certifies that the magistrate saw or heard the conduct constituting contempt.

~~(b)~~ (2) *Filing and provision of copies of contempt order.* A contempt order shall be filed and copies provided forthwith by the clerk to the appropriate judge of the court and to the subject of the order.

~~(c)~~ (3) *Review of contempt order by court; bail.* The subject of a contempt order may by motion obtain immediate review by a judge. A judge or the magistrate entering the contempt order may set bail pending judicial review of the order.

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**Staff Note (July 1, 2014 Amendments)**

The amendments to the rule address references to magistrates, upon the unanimous consent of the parties, to preside over the trial of a case that will be tried to a jury as authorized by Civ.R. 53(C)(1)(c). The provisions are amended, reorganized, and renumbered to (1) exempt magistrate jury trials from the application of the rule’s provisions relating to magistrate’s orders, decisions, and objections thereto (Civ.R. 53(E)) and (2) provide for trial of such matters as if by the court and the issuance of magistrates’ recommended entries reviewed by the court for error of law or other defect evident upon the face of the recommended entries.

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

**(A) Applicability.** The Rules of Civil Procedure shall apply in actions for divorce, annulment, legal separation, and related proceedings, with the modifications or exceptions set forth in this rule.

**(B) Joinder of parties.** Civ. R. 14, 19, 19.1, and 24 shall not apply in divorce, annulment, or legal separation actions, however:

(1) A person or corporation having possession of, control of, or claiming an interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support, may be made a party defendant;

(2) When it is essential to protect the interests of a child, the court may join the child of the parties as a party defendant and appoint a guardian ad litem and legal counsel, if necessary, for the child and tax the costs;

(3) The court may make any person or agency claiming to have an interest in or rights to a child by rule or statute, including but not limited to R.C. 3109.04 and R.C. 3109.051, a party defendant;

(4) When child support is ordered, the court, on its own motion or that of an interested person, after notice to the party ordered to pay child support and to his or her employer, may make the employer a party defendant.

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**Staff Note (July 1, 2014 Amendments)**

The rule is amended by inserting a new Civ.R. 75(B)(3) and renumbering the following provision. The new provision expressly grants courts the authority and discretion to join persons or agencies claiming to have an interest in or rights with respect to a child. This would include agencies such as child support enforcement and children services boards. This would also include third parties seeking the designation of residential parent or being granted parenting time rights.

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**RULE 86. Effective Date**

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**(MM)** **Effective date of amendments.** The amendments to Civil Rules 4.3, 4.5, 4.6, 7, 10, 33, 36, 37, 41, 45, 53, 75, and 86 filed by the Supreme Court with the General Assembly on [enter date] shall take effect on July 1, 2014. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**OHIO RULES OF CRIMINAL PROCEDURE**

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**RULE 5. Initial Appearance, Preliminary Hearing**

**(A) Procedure upon initial appearance.** When a defendant first appears before a judge or magistrate, the judge or magistrate shall permit the accused or ~~his~~ the accused’s counsel to read the complaint or a copy thereof, and shall inform the defendant:

(1) Of the nature of the charge against ~~him~~ the defendant;

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

(3) That ~~he~~ the defendant need make no statement and any statement made may be used against ~~him~~ the defendant;

(4) Of ~~his~~ the right to a preliminary hearing in a felony case, when ~~his~~ the defendant’s initial appearance is not pursuant to indictment;

(5) Of ~~his~~ the right, where appropriate, to jury trial and the necessity to make demand therefor in petty offense cases.

In addition, if the defendant has not been admitted to bail for a bailable offense, the judge or magistrate shall admit the defendant to bail as provided in these rules.

In felony cases the defendant shall not be called upon to plead either at the initial appearance or at a preliminary hearing.

In misdemeanor cases the defendant may be called upon to plead at the initial appearance. Where the defendant enters a plea the procedure established by Crim.R. 10 and Crim.R. 11 applies.

**(B) Preliminary hearing in felony cases; procedure.**

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

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

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

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

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

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

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

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

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

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

(c) Order the accused discharged.

(d) Except upon good cause shown, any misdemeanor, other than a minor misdemeanor, arising from the same act or transaction involving a felony shall be bound over or transferred with the felony case.

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

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

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

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

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**RULE 41. Search and Seizure**

**(A) Authority to issue warrant.** Upon the request of a prosecuting attorney or a law enforcement officer:

(1) A search warrant authorized by this rule may be issued by a judge of a court of record to search and seize property located within the court's territorial jurisdiction~~,~~; and, ~~upon the request of a prosecuting attorney or a law enforcement officer.~~

(2) A tracking device warrant authorized by this rule may be issued by a judge of a court of record to install a tracking device within the court’s territorial jurisdiction. The warrant may authorize use of the device to track the movement of a person or property within or outside of the court’s territorial jurisdiction, or both.

**(B) Property which may be seized with a search warrant.** A search warrant may be issued under this rule to search for and seize any: (1) evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

**(C) Issuance and contents.**

(1) A warrant shall issue on either an affidavit or affidavits sworn to before a judge of a court of record or an affidavit or affidavits communicated to the judge by reliable electronic means establishing the grounds for issuing the warrant. In the case of a search warrant, ~~The~~ the affidavit shall name or describe the person to be searched or particularly describe the place to be searched, name or describe the property to be searched for and seized, state substantially the offense in relation thereto, and state the factual basis for the affiant's belief that such property is there located. In the case of a tracking device warrant, the affidavit shall name or describe the person to be tracked or particularly describe the property to be tracked, and state substantially the offense in relation thereto, state the factual basis for the affiant’s belief that the tracking will yield evidence of the offense. If the affidavit is provided by reliable electronic means, the applicant communicating the affidavit shall be placed under oath and shall swear to or affirm the affidavit communicated.

(2) If the judge is satisfied that probable cause ~~for the search~~ exists, the judge shall issue a warrant identifying the property and naming or describing the person or place to be searched or tracked. The warrant may be issued to the requesting prosecuting attorney or other law enforcement officer through reliable electronic means. The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the judge may require the affiant to appear personally, and may examine under oath the affiant and any witnesses the affiant may produce. Such testimony shall be admissible at a hearing on a motion to suppress if taken down by a court reporter or recording equipment, transcribed, and made part of the affidavit. The warrant shall be directed to a law enforcement officer. ~~It~~ A search warrant shall command the officer to search, within three days, the person or place named for the property specified. A tracking device warrant shall command the officer to complete any installation authorized by the warrant within a specified time no longer than 10 days, and shall specify the time that the device may be used, not to exceed 45 days. The court may, for good cause shown, grant one or more extensions of time that the device may be used, for a reasonable period not to exceed 45 days each. The warrant shall be ~~served~~ executed in the daytime, unless the issuing court, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. The warrant shall provide that the warrant shall be returned to a ~~designate a~~ designated judge or clerk of court ~~to whom it shall be returned~~.

**(D) Execution and return ~~with inventory~~ of the warrant.**

(1) *Search warrant.* The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant. Property seized under a warrant shall be kept for use as evidence by the court which issued the warrant or by the law enforcement agency which executed the warrant.

(2) *Tracking Device warrant.* The officer executing a tracking device warrant shall enter onto it the exact date and time the device was installed and the period during which it was used. The return shall be made promptly after the use of the tracking device has ended. Within 10 days after the use of the tracking device has ended, the officer executing a tracking device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person’s residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person’s last known address. Upon the request of a prosecuting attorney or a law enforcement officer, and for good cause shown, the court may authorize notice to be delayed for a reasonable period.

**(E) Return of papers to clerk.** The ~~judge before whom the warrant is returned~~ law enforcement officer shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and shall file them with the clerk or the judge, if the warrant so requires.

**(F) Definition of property and daytime.** The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 7:00 a.m. to 8:00 p.m.

**(G) Definition of tracking device.** The term “tracking device” means an electronic or mechanical device which permits the tracking of the movement of a person or object.

**\*\*\***

**RULE 59. Effective Date**

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**(CC) Effective date of amendments.** The amendments to Criminal Rule 4, 41, and 59 filed by the Supreme Court with the General Assembly on [enter date] shall take effect on July 1, 2014. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

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**OHIO RULES OF JUVENILE PROCEDURE**

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**RULE 40. Magistrates**

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**(C) Authority**

(1) *Scope.* To assist juvenile courts of record and pursuant to reference under Juv. R. 40(D)(1), magistrates are authorized, subject to the terms of the relevant reference, to do any of the following:

(a) Determine any motion in any case, except a case involving the determination of a child’s status as a serious youthful offender;

(b) Conduct the trial of any case that will not be tried to a jury, except the adjudication of a case against an alleged serious youthful offender;

(c) ~~Upon unanimous written consent of the parties, preside over the trial of any case that will be tried to a jury; except the adjudication of a case against an alleged serious youthful offender;~~

~~(d)~~ Exercise any other authority specifically vested in magistrates by statute and consistent with this rule.

(2) *Regulation of proceedings*. In performing the responsibilities described in Juv. R. 40(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate all proceedings as if by the court and to do everything necessary for the efficient performance of those responsibilities, including but not limited to, the following:

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

(b) Ruling upon the admissibility of evidence;

(c) Putting witnesses under oath and examining them;

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

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

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

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**Staff Note (July 1, 2014 Amendments)**

The amendment to Juv.R. 40(C) eliminates any perceived authority for a magistrate to preside over a jury trial in juvenile court. The amendment resulted from the Commission’s review and revision of the procedures under which magistrates conduct civil jury trials under Civ.R. 53 which largely parallels Juv.R. 40. That review concluded that jury trials in juvenile court are extremely rare and occur only in cases of “serious youthful offenders” and of adult defendants charged with child endangering and/or contributing to the delinquency of minors. Since the rule as previously written excluded magistrates from conducting jury trials for “serious youthful offenders”, and since all trials of adult offenders are governed by the Ohio Rules of Criminal Procedure, which expressly exclude magistrates from hearing jury trials under Crim.R. 19(C)(1)(h), the Commission decided to simply eliminate the provision for jury trials under Juv.R. 40.

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**RULE 47. Effective Date**

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**(W) Effective date of amendments.** The amendments to Juvenile Rules 40 and 47 filed by the Supreme Court with the General Assembly on [enter date] shall take effect on July 1, 2014. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**OHIO RULES OF EVIDENCE**

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**RULE 601. General Rule of Competency**

Every person is competent to be a witness except:

(A) Those of unsound mind, and children under ten years of age, who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly.

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

(1) a crime against the testifying spouse or a child of either spouse is charged;

(2) the testifying spouse elects to testify.

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

(D) A person giving expert testimony on the issue of liability in ~~any~~ a medical claim asserted in any civil action against a physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist, unless the person testifying is licensed to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery by the state medical board or by the licensing authority of any state, and unless, at the time of the occurrence of the events giving rise to the claim, the person ~~devotes~~ devoted at least ~~one-half~~ three-quarters of ~~his or her~~ the person’s professional time to the active clinical practice ~~in his or her field of licensure,~~ of medicine, ~~or~~ to its instruction in an accredited medical school, or to research in a field related to the claim, provided that no less than one-half of the person’s total professional time was devoted to the active clinical practice of medicine. This division shall not prohibit other medical professionals who otherwise are competent to testify under these rules from giving expert testimony on the appropriate standard of care in their own profession in any claim asserted in any civil action against a physician, podiatrist, medical professional, or hospital arising out of the diagnosis, care, or treatment of any person.

(E) As otherwise provided in these rules.

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**Staff Notes (July 1, 2014 Amendments)**

Rule 601(D) applies to medical claims, as defined by R.C. 2305.113(E)(3) (formerly R.C. 2305.11(D)(3)) and was adopted in 1980 to specify qualifications to testify as an expert witness on the issue of liability for medical claims asserted against physicians, podiatrists and hospitals. The provisions of Evid.R. 601(D) continue to supersede any inconsistent provisions of R.C. 2743.43. See 1980 Staff Note and Ohio Constitution, Article IV, Section 5(B). The rule is amended (1) to require the witness to have met the qualifications at the time of the occurrence of the events giving rise to the claim and (2) to change the qualification relating to professional time to the devotion of at least three-quarters of that time to any combination of the active clinical practice of medicine, instruction in a accredited medical research school, and research in a field related to the claim, provided that no less than one-half of the total professional time of the witness was devoted to the active clinical practice of medicine.

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**RULE 1102. Effective Date**

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**(R) Effective date of amendments.** The amendments to the Rules of Evidence filed by the Supreme Court with the General Assembly on [enter date] shall take effect on July 1, 2014. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**APPENDIX OF FORMS**

**Form \_\_\_\_. Notice, Consent, and Reference of a Civil Jury Trial to a Magistrate**

IN THE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COURT

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, OHIO

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) CASE NO. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

)

PLAINTIFF )

) NOTICE, CONSENT, AND REFERENCE OF A CIVIL JURY TRIAL TO A MAGISTRATE

VS )

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)

DEFENDANT )

This case was assigned by Judge \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to Magistrate \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Pursuant to Rule 53(C)(1)(c) of the Ohio Rules of Civil Procedure, the parties and counsel listed below give their unanimous consent for the magistrate to conduct a jury trial in this case. Pursuant to Rule 53(F) of the Ohio Rules of Civil Procedure, the magistrate shall conduct the trial as if by the court and do everything necessary for the efficient performance of those responsibilities.

The parties and counsel acknowledge that upon the conclusion of the trial, the magistrate shall file, and cause to be served in accordance with Rule 5(B) of the Ohio Rules of Civil Procedure, a Recommended Entry of Judgment, designated as such and prepared in accordance with Rule 58(A) of the Ohio Rules of Civil Procedure, reviewed by the court for error of law or other defect evident on the face of the recommended entry. The magistrate shall also conduct all post-trial proceedings:

Printed names of parties & counsel Signatures of parties and counsel Date  
  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_  
  
REFERENCE ORDER

IT IS ORERED: This case is referred to Magistrate \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_to conduct all proceedings and issue a Recommended Entry of Judgment in accordance with Rule 53(F)(2)(a) of the Ohio Rules of Civil Procedure.  
  
DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ JUDGE

**Form\_\_\_. Magistrate’s Recommended Entry of Judgment**

IN THE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COURT

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, OHIO

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) CASE NO. \_\_\_\_\_\_\_\_\_\_\_

)

PLAINTIFF )

)

) MAGISTRATE’S RECOMMENDED ENTRY OF JUDGMENT

)

VS )

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

)

DEFENDANT

This action came on for jury trial on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ before Magistrate \_\_\_\_\_\_\_\_\_\_\_\_\_\_ the parties having signed the requisite waiver pursuant to Rule 53(C)(1)(c) of the Ohio Rules of Civil Procedure. After voir dire, a jury of eight was impaneled and sworn, with one alternate. At the conclusion of trial but before the jury began deliberations, the alternate was excused. The jury returned a verdict for plaintiff/defendant in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The Magistrate recommends that the court enter judgment upon the jury verdict in accordance with Rule 53(F)(2)(a) of the Ohio Rules of Civil Procedure.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

MAGISTRATE

JUDGMENT ENTRY

Upon review of the Magistrate’s Recommended Entry of Judgment, the court finds that there is no error of law or other defect evident on the face of the Recommended Entry. Therefore, and in accordance with Rules 53(F)(4) and 58(A) of the Ohio Rules of Civil Procedure, the court adopts said Recommended Entry of Judgment and grants judgment in favor of plaintiff/defendant in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with interest thereon at the rate of \_\_\_\_\_ percent as provided by law.

Costs assessed to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

IT IS SO ORDERED this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ JUDGE