AMENDMENTS TO THE
OHIO RULES OF APPELLATE PROCEDURE, THE OHIO RULES OF CIVIL PROCEDURE, THE OHIO RULES OF CRIMINAL PROCEDURE, AND THE OHIO RULES OF JUVENILE PROCEDURE

The Supreme Court of Ohio has adopted the following amendments to the Ohio Rules of Appellate Procedure (3, 9, 11.2, 12, 13 and 43), the Ohio Rules of Civil Procedure (1, 5, 6, 7, 23, 25, 30, 42, 43, 50, 52, 56, 59 and 86), and the Ohio Rules of Juvenile Procedure (41 and 47).

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

Staff Notes: A Staff Note follows each 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 recommend 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 15.

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 as revised.* 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 enact a concurrent resolution of disapproval for all or any portion of a proposed amendment the Supreme Court has proposed. If a concurrent resolution of

disapproval is not enacted by that date, the proposed amendments become effective July 1.

The following is a summary of the 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. 3, App.R. 9, and App.R. 11.2

The amendments make several updates to rules regarding expedited appeals. Expedited appeals exist in several specific types of cases (judicial bypass, parental rights, etc.). This is in contrast to accelerated appeals which generally are cases that are simpler with less briefing and, often, oral argument is waived. The amendment to App.R. 3 will require the appellant in expedited cases to file a docketing statement with the notice of appeal. In some districts there is nothing that alerts the court that there needs to be a priority disposition of the case. The amendment rectifies that problem. The amendment to App.R. 9 recognizes that in an expedited judicial bypass appeal from the juvenile court under App.R. 11.2(B)(3)(b), there is no requirement of a written transcript if there is an audio recording of the trial court proceedings. Finally, the amendment to App.R. 11.2 adds prosecutorial appeals from suppression orders under the Criminal Rules (Crim.R. 12(K)) and the Juvenile Rules (Juv.R. 22(F)) to the list of categories of expedited appeals as those existing rules call for an expedited disposition of appeals in those situations.

App.R. 12

The amendment to App.R. 12(C) addresses manifest-weight challenges in cases tried to a jury. The current rule explains the appellate court's options in the event of a reversal on manifest-weight grounds in a case tried to a judge. The absence of a corresponding provision addressing manifest-weight challenges from jury verdicts has occasionally led to confusion over the availability of such a challenge. The amendment corrects the omission and accounts for the ways in which manifest-weight challenges in jury cases differ from manifest-weight challenges in cases tried to a judge. In addition, the amendment allows an appellate court to reverse a judgment on the manifest-weight of the evidence more than once, as currently provided in the rule.

App.R. 13

The amendments to App.R. 13 correct a typographical error and permit a party to utilize a local court's transmission facilities for service on other parties if so permitted by a local rule. Amendments to division (C) of the rule in 2012 permitted a party to use electronic means to fulfill the obligation to serve all parties but did not authorize the serving party to utilize the local court's electronic filing system to perform that duty despite the fact that the court's system served all parties participating in the electronic filing system. The amendment is the same as a proposed amendment to Civ.R. 5(B)(3), discussed below.

Ohio Rules of Civil Procedure

Civ.R. 1

The amendments to Civ.R. 1 specifically include Revised Code Chapter 3107 adoption proceedings within the exceptions to the application of the rules. The General Assembly enacted S.B. 250 (effective March 23, 2015) which shortens the time within which to challenge an adoption decree to sixty days. Existing Civ.R. 60(B) governs the timing of a motion for relief from final judgment. Under certain circumstances, that rule, if applicable, would allow a challenge for an adoption decree up to one year after the final judgment. Although court decisions indicate that adoption proceedings are special statutory proceedings, the proposed amendment would eliminate any controversy over whether the statutory change is subject to challenge as in conflict with the Rules of Civil Procedure.

Civ.R. 5

The amendment would permit a party to use a court's transmission facilities to serve other parties by electronic means so long as a local rule authorizes that practice. As explained in conjunction with the amendment to App.R. 13, the proposed amendment eliminates a duplication of effort under the current rule that allows a party to electronically serve another party but does not allow the serving party to utilize the court's facilities which serve all parties participating in the electronic filing system. The need for the amendment, which is modeled on a similar provision in the Federal Rules, was overlooked at the time of the 2012 amendments to Civ.R. 5 that permitted the parties to perform service by electronic means.

Civ.R. 6, Civ.R. 7, Civ.R. 25, Civ.R. 50, Civ.R. 56, Civ.R. 59

The amendments address an uncertainty existing under the current rules as to when a response to a motion is due when there is no local rule or court order specifying a time for responding to motions, by specifying, in the absence of a local rule, a timeline after service of the motion within which to serve arguments in response and reply arguments. In addition, the amendments to Civ.R. 6, 7, and 25 eliminate the requirement to serve a "notice of hearing" when serving a motion, recognizing that the requirement is inconsistent with current practice where courts determine motions without oral hearing.

Civ.R. 23, Civ.R. 52

The amendments to Civ.R. 23 conform its provisions to changes made to the Federal Rule. Civ.R. 23 has not been amended since its adoption in 1973; however, the federal rule has seen significant changes to guide courts and parties in the conduct of class actions. The changes include defining the class and appointing class counsel in the certification order; additional detail for the initial notice to Civ.R. 23(B)(3) class members and for the notice of a proposed settlement, voluntary dismissal, or compromise, and new provisions addressing the appointment of class counsel and the

awarding of attorney fees and nontaxable costs. The amendments to Civ.R. 52 conform the provisions of the rule to recognize the amendments to Civ.R. 23 and also change the phrase "conclusions of fact" to "findings of fact" which is the customary phrase used in other parts of the rule and in modern practice.

Civ.R. 30

The amendments, modeled on provisions in the Federal Rules, permit a party other than the one noticing the deposition, at its own expense and with notice to the deponent and other parties, to arrange for an additional method of recording the testimony. In addition, the amendment to division (B)(6) acknowledges advances in technology and allows the parties to stipulate that a deposition may be taken by other remote means, rather than limiting the means to the telephone.

Civ.R. 42

The amendments make no substantive changes to the provisions of the rule. The amendments merely adopt the stylistic changes made to Rule 42 of the Federal Rules of Civil Procedure and also implement the Court's decision in *Havel v. Villa St. Joseph*, 131 Ohio St.3d 235, 2012-Ohio-552 that the trial court does not have discretion to grant or deny bifurcation.

Civ.R. 43

A new rule, modeled on Fed.R.Civ.P. 43, is adopted that will allow live open court testimony from a location outside the courtroom. The new rule is offered in light of 2011 amendments to R.C. 3109.04 and 3109.051 requiring the court to permit a parent who is called to active military service to participate in custody or visitation proceedings and present evidence by electronic means. Similar amendments are adopted for the Ohio Rules of Juvenile Procedure, discussed below.

Ohio Rules of Juvenile Procedure

Juv.R. 41

A new rule of juvenile procedure, similar to the new Civ.R. 43, is adopted to allow for live open court testimony from a location outside the courtroom. Because juvenile proceedings can be quasi-criminal in nature, the amendment does not allow the remote contemporaneous testimony in adjudicatory hearings in delinquency, unruly, and juvenile traffic cases and adult criminal trials, thus avoiding any conflict with the Confrontation Clause.

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 3 Appeal as of right—how taken

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(G) Docketing statement

(1) If a court of appeals has adopted an accelerated calendar by local rule pursuant to Rule 11.1, the appellant shall file a docketing statement with the Clerk of the trial court with the notice of appeal. (See Form 2, Appendix of Forms.)

The purpose of the docketing statement is to determine whether an appeal will be assigned to the accelerated or the regular calendar.

A case may be assigned to the accelerated calendar if any of the following apply:

(a) No transcript is required (e.g., summary judgment or judgment on the pleadings);

(b) The length of the transcript is such that its preparation time will not be a source of delay;

(c) An agreed statement is submitted in lieu of the record;

(d) The record was made in an administrative hearing and filed with the trial court;

(e) All parties to the appeal approve an assignment of the appeal to the accelerated calendar; or

(f) The case has been designated by local rule for the accelerated calendar.

The court of appeals by local rule may assign a case to the accelerated calendar at any stage of the proceeding. The court of appeals may provide by local rule for an oral hearing before a full panel in order to assist it in determining whether the appeal should be assigned to the accelerated calendar.

Upon motion of appellant or appellee for a procedural order pursuant to App.R. 15(B) filed within seven days after the notice of appeal is filed with the clerk of the trial court, a case may be removed for good cause from the accelerated calendar and assigned to the regular calendar. Demonstration of a unique issue of law which will be of substantial precedential value in the determination of similar cases will ordinarily be good cause for transfer to the regular calendar.

(2) If the appeal is expedited under App.R. 11.2, the appellant shall file a docketing statement with the clerk of the trial court with the notice of appeal indicating the category of case under App.R. 11.2 and the need for priority disposition.

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Staff Note (July 1, 2015 amendment)

App.R. 3(G) is amended by adding a new subsection requiring appellants in expedited cases under App.R. 11.2 to file a docketing statement with the notice of appeal, in order to alert the appellate court to the need for priority disposition.

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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) Except as provided in App.R. 11.2(B)(3)(b), it is the obligation of the appellant to ensure that 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).

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Staff Note (July 1, 2015 amendment)

App.R. 9(B)(1) is amended to recognize that in expedited abortion-related appeals from juvenile courts, there is no requirement of a written transcript if there is an audio recording of the trial court proceedings. *See* App.R. 11.2(B)(3)(b).

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RULE 11.2 Expedited appeals

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(D) Prosecutorial appeals from suppression orders; appeals concerning dependent, abused, neglected, unruly, or delinquent children. Prosecutorial appeals under Crim.R. 12(K) and Juv.R. 22(F) and appeals concerning a dependent, abused, neglected, unruly, or delinquent child shall be expedited and given calendar priority over all cases other than those governed by App. R. 11.2(B) and (C).

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Staff Note (July 1, 2015 amendment)

App.R. 11.2 lists various categories of expedited appeals that are entitled to priority over other appeals. The categories are amended to include prosecutorial appeals from suppression orders under Crim.R. 12(K) and Juv.R. 22(F), both of which provide for priority disposition.

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RULE 12. Determination and judgment on appeal

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(C) Judgment in civil action or proceeding when sole prejudicial error found is that judgment of trial court is against the manifest weight of the evidence

(1) In any civil action or proceeding that was tried to the trial court without the intervention of a jury, and when upon appeal a majority of the judges hearing the appeal find that the judgment or final order rendered by the trial court is against the manifest weight of the evidence and have not found any other prejudicial error of the trial court in any of the particulars assigned and argued in the appellant's brief, and have not found that the appellee is entitled to judgment or final order as a matter of law, the court of appeals shall reverse the judgment or final order of the trial court and either weigh the evidence in the record and render the judgment or final order that the trial court should have rendered on that evidence or remand the case to the trial court for further proceedings.

(2) In any civil action or proceeding that was tried to a jury, and when upon appeal all three judges hearing the appeal find that the judgment or final order rendered by the trial court on the jury’s verdict is against the manifest weight of the evidence and have not found any other prejudicial error of the trial court in any of the particulars assigned and argued in the appellant's brief, and have not found that the appellee is entitled to judgment or final order as a matter of law, the court of appeals shall reverse the judgment or final order of the trial court and remand the case to the trial court for further proceedings.

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Staff Note (July 1, 2015 amendment)

App.R. 12(C) is amended to avoid the implication of the former rule that a reversal on the manifest weight of the evidence was not available in civil cases tried to a jury. *See Eastley v. Volkman*, 4th Dist. Scioto Nos. 09CA3308, 09CA3309, 2010-Ohio-4771, ¶ 58 (Kline, J., dissenting), citing Painter & Pollis, Ohio Appellate Practice, Section 7:19 (2009-2010 Ed.), *rev'd*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517. The amendment clarifies that a manifest-weight reversal is available in civil cases tried to a jury, but there are distinctions. In a civil case tried to a court without a jury, a majority of the appellate court may reverse, and it may either remand the case for a new trial or enter judgment for the appellee. By contrast, in a case tried to a jury, a reversal on the manifest weight of the evidence must be unanimous, *see* Ohio Constitution, Article IV, Section 3(B)(3), and the trial court is permitted to reverse and remand, not to enter judgment for the appellee. *See Hanna v. Wagner*, 39 Ohio St.2d 64, 313 N.E.2d 842 (1974). In addition, the amendments remove the restriction in the current rule allowing an appellate court to reverse a judgment based on the manifest weight of the evidence only once in either instance.

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RULE 13. Filing and Service

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(B) Service of all documents required. Copies of all documents filed by any party and not required by these rules to be served by the clerk shall, on or before the day of filing, be served by a party or person acting for the party on all other parties to the appeal as provided in division (C) of this rule, except that in expedited appeals under App.R. 11.2 and in original actions involving election issues, service of all documents (except the complaint filed to institute an original action) shall be in accordance with division (C)(1), (2), (5), or (6) at or before the time of filing. Service on a party represented by counsel shall be made on counsel.

(C) Manner of service. A document is served under this rule by:

(1) handing it to the person;

(2) leaving it:

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

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

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

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

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

(6) sending it by electronic means to the most recent facsimile number or e-mail address listed by the intended recipient on a prior court filing (including a filing in the lower court) in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.

(D) Using court facilities. If a local rule so authorizes, a party may use the court's transmission facilities to make service under App.R. 13(C)(6).

(E) Proof of service. Documents presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Documents filed with the court shall not be considered until proof of service is endorsed on the documents or separately filed.

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Staff Note (July 1, 2015 amendment)

App.R. 13(B) is amended by correcting a typographical error. The reference to App.R. 11.1 has been changed to App.R. 11.2, as the need for immediate service applies in expedited appeals, not accelerated appeals.

App.R. 13 is also amended by adding a new division (D), permitting a party to use a court's transmission facilities to serve other parties by electronic means if so authorized by local rule, and the subsequent division of the rule is re-lettered accordingly. The amendment eliminates a duplication of effort resulting from the 2012 amendments to App.R. 13(C), which permitted a party to use electronic means to fulfill the party's App.R. 13 duty to serve all other parties but did not authorize the party to use the facilities of a local court's electronic filing system to perform that duty—even though, under local rules, the court's facilities nevertheless serve by electronic means all parties participating in the electronic filing system. The new provision is the same as Civ.R. 5(B)(3), as also adopted July 1, 2015.

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RULE 43. Effective Date

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(BB) Effective date of amendments. The amendments to Rules 3, 9, 11.2, 12, 13, and 43 filed by the Supreme Court with the General Assembly on January 15, 2015 and revised and refiled on April 30, 2015 shall take effect on July 1, 2015. 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 1. Scope of Rules: Applicability; Construction; Exceptions

(A) Applicability. These rules prescribe the procedure to be followed in all courts of this state in the exercise of civil jurisdiction at law or in equity, with the exceptions stated in division (C) of this rule.

(B) Construction. These rules shall be construed and applied to effect just results by eliminating delay, unnecessary expense and all other impediments to the expeditious administration of justice.

(C) Exceptions. These rules, to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure (1) upon appeal to review any judgment, order or ruling, (2) in the appropriation of property, (3) in forcible entry and detainer, (4) in small claims matters under Chapter 1925 of the Revised Code, (5) in uniform reciprocal support actions, (6) in the commitment of the mentally ill, (7) in adoption proceedings under Chapter 3107 of the Revised Code, (8) in all other special statutory proceedings; provided, that where any statute provides for procedure by a general or specific reference to all the statutes governing procedure in civil actions such procedure shall be in accordance with these rules.

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Staff Note (July 1, 2015 Amendment)

Division (C) is amended to specifically include, within the exceptions to the application of the Civil Rules, Revised Code Chapter 3107 adoption proceedings, to the extent that the rules would by their nature be clearly inapplicable to those proceedings.

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

(A) Service: when required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. Service is not required on parties in default for failure to appear except that pleadings asserting new or additional claims for relief or for additional

damages against them shall be served upon them in the manner provided for service of summons in Civ. R. 4 through Civ. R. 4.6.

(B) Service: how made.

(1) Serving an attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

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

(a) handing it to the person;

(b) leaving it:

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

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

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

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

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

(f) sending it by electronic means to a facsimile number or e-mail address provided in accordance with Civ.R. 11 by the attorney or party to be served, in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.

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

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

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Staff Note (July 1, 2015 Amendments)

The rule is amended by adding a new division Civ.R. 5(B)(3) permitting a party to use a court's transmission facilities to serve other parties by electronic means if so authorized by local rule, and the subsequent division of the rule is renumbered accordingly.

The amendment eliminates a duplication of effort resulting from the 2012 amendments to Civ.R. 5(B) which permitted a party to use electronic means to fulfill the party's Civ.R. 5 duty to serve all other parties but did not authorize the party to use the facilities of a local court's electronic filing system to perform that duty—even though, under local rules, the court's facilities nevertheless serve by electronic means all parties participating in the electronic filing system. The new provision is virtually identical to Fed.R.Civ.P. 5(b)(3).

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Rule 6. Time

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(C) Time: motion responses and replies to motions generally. Unless otherwise provided by these rules, by local rule, or by order of the court, a response to a written motion, other than a motion that may be heard ex parte, shall be served within fourteen days after service of the motion, and a movant's reply may be served within seven days after service of the response to the motion.

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Staff Note (July 1, 2015 Amendment)

The amendment to Civ.R. 6(C) eliminates the prior requirement to serve a "notice of hearing" when serving a motion, recognizing that the requirement is inconsistent with modern practice where most courts determine motions without oral hearing—a practice permitted by Civ.R. 7(B)(2). The amendment also addresses an uncertainty existing under the prior rule as to when a response to a motion is due when there is no local rule or court order specifying a time for responding to motions, by specifying a fallback time of fourteen days after service of the motion within which to serve arguments in response. In the absence of a local rule or court order addressing replies, the amendment also permits a movant to serve reply arguments within seven days after service of the opposing party's response. The time for filing motion responses and replies is governed by Civ.R. 5(D), again in the absence of a local rule or court order specifying a different time for filing.

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Rule 7. Pleadings and Motions

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(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. A written motion, and any supporting affidavits, shall be served in accordance with Civ.R. 5 unless the motion may be heard ex parte.

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Proposed Staff Note (July 1, 2015 Amendment)

Rule 7(B) is amended by eliminating the reference to a "notice of hearing" which is no longer required by Civ.R. 6(B).

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RULE 23. Class Actions

(A) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable,

(2) there are questions of law or fact common to the class,

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class,

(4) the representative parties will fairly and adequately protect the interests of the class.

(B) Types of class actions. A class action may be maintained if Civ.R. 23(A) is satisfied, and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(a) the class members' interests in individually controlling the prosecution or defense of separate actions;

(b) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(d) the likely difficulties in managing a class action.

(C) Certification order; notice to class members; judgment; issues classes; subclasses.

(1) Certification order

(a) Time to issue. At an early practicable time after a person sues or is sued as a class representative, the court shall determine by order whether to certify the action as a class action.

(b) Defining the class; appointing class counsel. An order that certifies a class action shall define the class and the class claims, issues, or defenses, and shall appoint class counsel under Civ.R. 23(F).

(c) Altering or amending the order. An order that grants or denies class certification may be altered or amended before final judgment.

(2) Notice.

(a) For (B)(1) or (B)(2) classes. For any class certified under Civ.R. 23(B)(1) or (B)(2), the court may direct appropriate notice to the class.

(b) For (B)(3) classes. For any class certified under Civ.R. 23(B)(3), the court shall direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Civ.R. 23(C)(3).

(3) Judgment. Whether or not favorable to the class, the judgment in a class action shall:

(a) for any class certified under Civ.R. 23(B)(1) or (B)(2), include and describe those whom the court finds to be class members: and

(b) for any class certified under Civ.R. 23(B)(3), include and specify or describe those to whom the Civ.R. 23(C)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) Particular issues. When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) Subclasses. When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(D) Conducting the action.

(1) In general. In conducting an action under this rule, the court may issue orders that:

(a) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(b) require to protect class members and fairly conduct the action giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(c) impose conditions on the representative parties or on intervenors;

(d) require that the pleadings be amended to eliminate allegations about representation of absent persons, and that the action proceed accordingly; or

(e) deal with similar procedural matters.

(2) Combining and amending orders. An order under Civ.R. 23(D)(1) may be altered or amended from time to time and may be combined with an order under Civ.R. 16.

(E) Settlement, voluntary dismissal, or compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court shall direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval shall file a statement identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under Civ.R. 23(B)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under this division (E); the objection may be withdrawn only with the court's approval.

(F) Class counsel.

(1) Appointing class counsel. A court that certifies a class shall appoint class counsel. In appointing class counsel, the court:

(a) shall consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(b) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(c) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(d) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Civ.R. 23(G); and

(e) may make further orders in connection with the appointment.

(2) Standard for appointing class counsel. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Civ.R. 23(F)(1) and (4). If more than one adequate applicant seeks appointment, the court shall appoint the applicant best able to represent the interests of the class.

(3) Interim counsel. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) Duty of class counsel. Class counsel shall fairly and adequately represent the interests of the class.

(G) Attorney fees and nontaxable costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award shall be made by motion. Notice of the motion shall be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and shall state in writing the findings of fact found separately from the conclusions of law.

(4) The court may refer issues related to the amount of the award to a magistrate as provided in Civ.R. 53.

(H) Aggregation of claims. The claims of the class shall be aggregated in determining the jurisdiction of the court.

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Staff Note (July 1, 2015 Amendment)

The rule is amended to conform its provisions to the changes made to Federal Rule 23 since the 1970 adoption of the Ohio Rule. While Civ.R. 23 has remained unchanged since its adoption, the Federal rule, upon which the Ohio rule was originally modeled, has undergone significant changes to guide courts and parties in the conduct of class actions, most notably the substantive amendments made to the Federal rule in 1998 and the stylistic changes made in 2007. The changes to the Ohio rule include defining the class and appointing class counsel in the certification order; additional detail for the initial notice to Civ.R. 23(B)(3) class members and for the notice of a proposed settlement, voluntary dismissal, or compromise; and new provisions addressing the appointment of class counsel and the awarding of attorney fees and nontaxable costs.

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RULE 25. Substitution of Parties

(A) Death.

(1) If a party dies and the claim is not thereby extinguished, the court shall, upon motion, order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and shall be served on the parties as provided in Civ.R. 5 and upon persons not parties in the manner provided in Civ.R. 4 through Civ.R. 4.6 for the service of summons. Unless the motion for substitution is made not later than ninety days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(B) Incompetency. If a party is adjudged incompetent, the court upon motion served as provided in division (A) of this rule shall allow the action to be continued by or against the party's representative.

(C) Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in division (A) of this rule.

(D) Public officers; death or separation from office.

(1) When a public officer is a party to an action in the public officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in the public officer's official capacity, the public officer may be described as a party by official title rather than by name. The court however may require the addition of the public officer's name.

(E) Suggestion of death or incompetency Upon the death or incompetency of a party it shall be the duty of the attorney of record for that party to suggest such fact upon the record within fourteen days after the attorney acquires actual knowledge of the death or incompetency of that party. The suggestion of death or incompetency shall be served on all other parties as provided in Civ.R. 5.

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Proposed Staff Note (July 1, 2015 Amendment)

Rule 25(A) is amended by eliminating the reference to a requirement for service of a "notice of hearing" which is no longer required by Civ.R. 6(B).

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RULE 30. Depositions upon oral examination

(A) When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of a witness deponent may be compelled by the use of subpoena as provided by Civ.R. 45. The attendance of a party deponent may be compelled by the use of notice of examination as provided by division (B) of this rule. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

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

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

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

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

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

(5) A party, in the party's notice, may name as the deponent a public or private corporation, a partnership, or an association and designate with reasonable particularity the matters on which examination is requested. The organization so named shall choose one or more of its proper employees, officers, agents, or other persons duly authorized to testify on its behalf. The persons so designated shall testify as to matters known or available to the organization. Division (B)(5) does not preclude taking a deposition by any other procedure authorized in these rules.

(6) The parties may stipulate or the court may upon motion order that a deposition be taken by telephone or other remote means. For purposes of this rule, Civ.R. 28, and Civ.R. 45(C), a deposition taken by telephone is taken in the county and at the place where the deponent answers the questions.

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Staff Note (July 1, 2015 Amendments)

Rule 30(B)(3)

This amendment is modeled on Fed.R.Civ.P. 30(b)(3)(B) and permits a party other than the one noticing the deposition, at its own expense, after notice to the deponent and parties, to arrange for an additional method of recording the testimony, unless the court orders otherwise.

Rule 30(B)(6)

This amendment is modeled on Fed.R.Civ.P. 30(b)(4) and allows the parties to stipulate that a deposition may be taken by other remote means, such as over the Internet or using a satellite, rather than limiting the means of taking to the telephone.

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RULE 42. Consolidation; Separate Trials

(A) Consolidation.

(1) *Generally.* If actions before the court involve a common question of law or fact, the court may:

(a) join for hearing or trial any or all matters at issue in the actions;

(b) consolidate the actions; or

(c) issue any other orders to avoid unnecessary cost or delay.

(2) *Asbestos, silicosis, or mixed dust disease actions.* In tort actions involving an asbestos claim, a silicosis claim, or a mixed dust disease claim, the court may consolidate pending actions for case management purposes. For purposes of trial, the court may consolidate pending actions only with the consent of all parties. Absent the consent of all parties, the court may consolidate, for purposes of trial, only those pending actions relating to the same exposed person and members of the exposed person's household.

(3) As used in division (A)(2) of this rule:

(a) "Asbestos claim" has the same meaning as in R.C. 2307.91;

(b) "Silicosis claim" and "mixed dust disease claim" have the same meaning as in R.C. 2307.84;

(c) In reference to an asbestos claim, "tort action" has the same meaning as in R.C. 2307.91;

(d) In reference to a silicosis claim or a mixed dust disease claim, "tort action" has the same meaning as in R.C. 2307.84.

(B) Separate trials. For convenience, to avoid prejudice, or to expedite or economize, the court may order a separate trial of one or more separate issues, claims, cross-claims, counterclaims, or third-party claims. When ordering a separate trial, the court shall preserve any right to a jury trial.

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Staff Notes (July 1, 2015 Amendments)

Stylistic Changes

The rule is amended to conform the provisions of Civ.R. 42(A)(1) and Civ.R. 42(B) to the 2007 stylistic changes to Federal Rule 42. The amendments are nonsubstantive. Rule 42(A)(2), not found in the federal rule, remains unchanged.

Rule 42(B) R.C. 2315.21(B)(1) Bifurcation

R.C. 2314.21(B)(1) requires a two-stage bifurcation of the trial upon the motion of any party in a tort action that is tried to a jury and in which a plaintiff makes a claim for compensatory damages and a claim for punitive or exemplary damages. In *Havel v. Villa St. Joseph,* 131 Ohio St.3d 235, 2012-Ohio-552, the Ohio Supreme Court held that the statute creates a substantive right and, therefore, takes precedence over the discretion conferred by Civ.R. 42(B) to grant or deny bifurcation. In cases governed by R.C. 2315.21(B), upon the motion of any party the trial court must grant the two-stage bifurcation required by the statute.

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RULE 43. Taking Testimony

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

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

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Staff Note (July 1, 2015 Amendment)

The July 1, 2015 amendment adopts a new rule – Civ.R. 43 – heretofore designated within the Ohio rules as "Reserved". The new rule is modeled on Fed.R.Civ.P. 43. Division (A) recognizes the availability of modern electronic transmission facilities by specifically authorizing live open court testimony from a location outside the courtroom. Consistent with Fed.R.Civ.P. 43(c) division (B) provides that a court may, in its discretion, consider facts presented by affidavit in deciding a motion.

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RULE 50. Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict

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(B) Motion for judgment notwithstanding the verdict. Whether or not a motion to direct a verdict has been made or overruled and not later than twenty-eight days after entry of judgment, a party may serve a motion to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with the party's motion; or if a verdict was not returned such party, within twenty-eight days after the jury has been discharged, may serve a motion for judgment in accordance with the party's motion. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative.

Unless otherwise provided by local rule or by order of the court, arguments in response to the motion shall be served within fourteen days after service of the motion, and a movant's reply may be served within seven days after service of the response to the motion.

If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment. If the judgment is reopened, the court shall either order a new trial or direct the entry of judgment, but no judgment shall be rendered by the court on the ground that the verdict is against the weight of the evidence. If no verdict was returned the court may direct the entry of judgment or may order a new trial.

(C) Conditional rulings on motion for judgment notwithstanding verdict.

(1) If the motion for judgment notwithstanding the verdict, provided for in division (B) of this rule, is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Civ.R. 59 not later than twenty-eight days after entry of the judgment notwithstanding the verdict.

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Staff Note (July 1, 2015 Amendments)

Consistent with the provisions of Civ.R. 59(B) addressing motions for new trial, Civ.R. 50(B) is amended to make clear that the motion must be served within the required time. The time for filing the motion is governed by Civ.R. 5(D).

Consistent with a similar amendment to Civ.R. 6(B), the provisions of Civ.R. 50(B) are also amended to specify, in the absence of a local rule or court order providing a time for responding to a motion for judgment notwithstanding the verdict, a fallback time of fourteen days after service of the motion within which to serve responsive arguments. In the absence of a local rule or court order addressing replies, the amendment also permits the movant to serve reply arguments within seven days after service of the adverse party's response. The time for filing responsive arguments and replies is governed by Civ.R. 5(D), again in the absence of a local rule or order of the court specifying a different time for filing.

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RULE 52. Findings by the Court

When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise before the entry of judgment pursuant to Civ. R. 58, or not later than seven days after the party filing the request has been given notice of the court's announcement of its decision, whichever is later, in which case, the court shall state in writing the findings of fact found separately from the conclusions of law.

When a request for findings of fact and conclusions of law is made, the court, in its discretion, may require any or all of the parties to submit proposed findings of fact and conclusions of law; however, only those findings of fact and conclusions of law made by the court shall form part of the record.

Findings of fact and conclusions of law required by this rule and by Civ.R. 41(B)(2) and Civ.R. 23(G)(3) are unnecessary upon all other motions including those pursuant to Civ.R. 12, Civ.R. 55 and Civ.R. 56.

An opinion or memorandum of decision filed in the action prior to judgment entry and containing findings of fact and conclusions of law stated separately shall be sufficient to satisfy the requirements of this rule and Civ.R. 41(B)(2).

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Staff Note (July 1, 2015 Amendments)

The rule is amended to (1) replace "conclusions of fact" with "findings of fact" in the first paragraph of the rule and (2) include a reference to the findings of fact and conclusions of law required by Civ.R. 23(G)(3).

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RULE 56. Summary Judgment

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(C) Motion and proceedings. The motion shall be served in accordance with Civ.R. 5. Unless otherwise provided by local rule or by order of the court, the adverse party may serve responsive arguments and opposing affidavits within twenty-eight days after service of the motion, and the movant may serve reply arguments within fourteen days after service of the adverse party's response. Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

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Staff Note (July 1, 2015 Amendment)

Consistent with a similar amendment to Civ.R. 6(C), the amendment to Civ.R. 56(C) deletes the reference in the prior rule to "the time fixed for hearing." The amendment also specifies, in the absence of a local rule or court order specifying a time for responding to a motion for summary judgment, a fallback time of twenty-eight days after service of the motion within which to serve responsive arguments and opposing affidavits. In the absence of a local rule or court order addressing replies, the amendment also permits the movant to serve reply arguments within fourteen days after service of the adverse party's response. The time for filing the motion, responses, and replies is governed by Civ.R. 5(D), again in the absence of a local rule or court order specifying a different time for filing. The rule applies only in the absence of a local rule or court order providing times for briefing motions, whether or not the rule or order specifically addresses summary judgment motions, and does not supersede or affect the application of local rules or orders addressing briefing on motions.

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RULE 59. New Trials

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(B) Time for motion, responsive arguments, and replies. A motion for a new trial shall be served not later than twenty-eight days after the entry of the judgment. Unless otherwise provided by local rule or by order of the court, arguments in response to the motion shall be served within fourteen days after service of the motion, and a

movant's reply may be served within seven days after service of the response to the motion.

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Staff Notes (July 1, 2015 Amendments)

Consistent with a similar amendment to Civ.R. 6(B), the amendment to Civ.R. 59(B) specifies, in the absence of a local rule or court order specifying a time for responding to a motion for new trial, a fallback time of fourteen days after service of the motion within which to serve responsive arguments. In the absence of a local rule or court order addressing replies, the amendment also permits the movant to serve reply arguments within seven days after service of the adverse party's response. The time for filing responsive arguments and replies is governed by Civ.R. 5(D), again in the absence of a local rule or order of the court specifying a different time for filing.

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RULE 86. Effective Date

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(NN) Effective date of amendments. The amendments to Civil Rules 1, 5, 6, 7, 23, 25, 30, 42, 43, 50, 52, 56, 59, and 86 filed by the Supreme Court with the General Assembly on January 15, 2015 and refiled on April 30, 2015 shall take effect on July 1, 2015. 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 JUVENILE PROCEDURE

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RULE 41. Taking Testimony

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

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RULE 47. Effective Date

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(X) Effective date of amendments. The amendments to Juvenile Rules 41 and 47 filed by the Supreme Court with the General Assembly on January 15, 2015 and refiled on April 30, 2015 shall take effect on July 1, 2015. 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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