

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

**Comments requested:** The Supreme Court of Ohio will accept public comments until March 4, 2015 on the following proposed amendments to the Ohio Rules of Appellate Procedure (3, 9, 11.2, 12, 13, 16, and 43), the Ohio Rules of Civil Procedure (1, 5, 6, 7, 10, 23, 25, 30, 42, 43, 50, 52, 56, 59, and 86), and the Ohio Rules of Juvenile Procedure (41 and 47).

Comments on the proposed amendments must be submitted in writing to Jo Ellen Cline, Criminal Justice Counsel, Supreme Court of Ohio, 65 South Front Street, 7<sup>th</sup> Floor, Columbus, Ohio 43215-3431 or [j.cline@sc.ohio.gov](mailto:j.cline@sc.ohio.gov) and received no later than March 4, 2015. Please include your full name and regular mailing address in any comment submitted by e-mail. Copies of all comments submitted will be provided to each member of the Commission on the Rules of Practice and Procedure and each Justice of the Supreme Court.

The proposed amendments were recommended to the Supreme Court by the Supreme Court Commission on the Rules of Practice and Procedure and initially were published for comment on September 15, 2014. After reviewing the comments received, the Commission recommended further revisions to the previously published amendments. After considering the written comments and the recommendations of the Commission, the Supreme Court adopted the proposed amendments as revised and directed that the amendments be filed with the General Assembly and republished for public comment.

Pursuant to Article IV, Section 5(B) of the Ohio Constitution, the proposed amendments were filed with the General Assembly on January 15, 2015. The Commission on the Rules of Practice and Procedure and the Supreme Court will consider all comments received during this second comment period, and the Court may modify or withdraw proposed amendments prior to May 1, 2015. The amendments filed with the General Assembly and not withdrawn prior to May 1, 2015 will take effect on July 1, 2015, unless prior to that date the General Assembly adopts a concurrent resolution of disapproval.

A Staff Note prepared by the Commission on the Rules of Practice and Procedure follows each amendment. Although the Supreme Court uses the Staff Notes during its consideration of proposed amendments, the Staff Notes are not adopted by the 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 comment and are made available to the public and to legislative committees.

## **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 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.* 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. 3, App.R. 9, and App.R. 11.2*

The proposed 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 proposed 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 proposed amendment rectifies that problem. The proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed amendment is the same as a proposed amendment to Civ.R. 5(B)(3), discussed below.

## *App.R. 16*

The proposed amendments to App.R. 16 model its provisions on the Federal Rules of Appellate Procedure. The federal rules allow for a combined statement of the case and facts. In addition, the proposed amendments now specifically allow for an introduction in briefs. The proposed amendments also clarify that an appellee does not need to restate the assignments of error so as to avoid the appearance that the appellee is endorsing the appellant's assignments of error.

## **Ohio Rules of Civil Procedure**

### *Civ.R. 1*

The proposed amendments to Civ.R. 1 specifically include Revised Code Chapter 3107 adoption proceedings within the exceptions to the application of the rules. Legislation enacted during the 130<sup>th</sup> General Assembly (SB 250) 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 proposed 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 proposed 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 proposed 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 proposed 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. 10*

The proposed amendments to Civ.R. 10 clarify that the application of the rule is not confined to complaints and applies to any pleading or amended pleading containing a medical, dental, optometric, and chiropractic claim. The proposed amendment also differentiates between the qualifications for an affiant for a medical claim against a physician, podiatrist, or hospital to which both Evid.R. 601(D) and Evid.R. 702 apply and the qualifications of the affiant for all other medical, dental, optometric, and chiropractic claims to which only Evid.R. 702 applies.

### *Civ.R. 23, Civ.R. 52*

The proposed 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 proposed 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 proposed amendments to Civ.R. 52 conform the provisions of the rule to recognize the proposed 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 proposed 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 proposed 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 proposed amendments make no substantive changes to the provisions of the rule. The proposed amendments merely adopt the stylistic changes made to Rule 42 of the Federal Rules of Civil Procedure.

### *Civ.R. 43*

A new rule, modeled on Fed.R.Civ.P. 43, is proposed that will allow live open court testimony from a location outside the courtroom. The proposed 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 proposed 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 proposed to allow for live open court testimony from a location outside the courtroom. Because juvenile proceedings can be quasi-criminal in nature, the proposed 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.

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

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4                   **FILED BY THE SUPREME COURT OF OHIO**  
5                   **PURSUANT TO ARTICLE IV, SECTION 5 OF THE OHIO CONSTITUTION**  
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9                   **OHIO RULES OF APPELLATE PROCEDURE**

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13       **RULE 3           Appeal as of right—how taken**

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17       **(G)       Docketing statement**

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19       (1)       If a court of appeals has adopted an accelerated calendar by local rule pursuant to  
20       Rule 11.1, the appellant shall file a docketing statement ~~shall be filed~~ with the Clerk of  
21       the trial court with the notice of appeal. (See Form 2, Appendix of Forms.)  
22

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

25  
26       A case may be assigned to the accelerated calendar if any of the following apply:

27  
28       ~~(1)~~ (a) No transcript is required (e.g., summary judgment or judgment on the pleadings);

29  
30       ~~(2)~~ (b) The length of the transcript is such that its preparation time will not be a source of  
31       delay;

32  
33       ~~(3)~~ (c) An agreed statement is submitted in lieu of the record;

34  
35       ~~(4)~~ (d) The record was made in an administrative hearing and filed with the trial court;

36  
37       ~~(5)~~ (e) All parties to the appeal approve an assignment of the appeal to the accelerated  
38       calendar; or

39  
40       ~~(6)~~ (f) The case has been designated by local rule for the accelerated calendar.

41  
42       The court of appeals by local rule may assign a case to the accelerated calendar at  
43       any stage of the proceeding. The court of appeals may provide by local rule for an oral  
44       hearing before a full panel in order to assist it in determining whether the appeal should  
45       be assigned to the accelerated calendar.  
46



91 **RULE 11.2 Expedited appeals**

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95 **(D) Prosecutorial appeals from suppression orders; appeals concerning**  
96 **Dependent dependent, abused, neglected, unruly, or delinquent children. child**  
97 **appeals** Prosecutorial appeals under Crim.R. 12(K) and Juv.R. 22(F) and appeals  
98 Appeals concerning a dependent, abused, neglected, unruly, or delinquent child shall be  
99 expedited and given calendar priority over all cases other than those governed by App. R.  
100 11.2(B) and (C).

101 \*\*\*

102  
103 **Staff Note (July 1, 2015 amendment)**

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105  
106 App.R. 11.2 lists various categories of expedited appeals that are entitled to priority over  
107 other appeals. The categories are amended to include prosecutorial appeals from suppression  
108 orders under Crim.R. 12(K) and Juv.R. 22(F), both of which provide for priority disposition.

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112 **RULE 12 Determination and judgment on appeal**

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

118  
119 (1) In any civil action or proceeding that which was tried to the trial court without the  
120 intervention of a jury, and when upon appeal a majority of the judges hearing the appeal  
121 find that the judgment or final order rendered by the trial court is against the manifest  
122 weight of the evidence and ~~do not find~~ have not found any other prejudicial error of the  
123 trial court in any of the particulars assigned and argued in the appellant's brief, and ~~do not~~  
124 ~~find~~ have not found that the appellee is entitled to judgment or final order as a matter of  
125 law, the court of appeals shall reverse the judgment or final order of the trial court and  
126 either weigh the evidence in the record and render the judgment or final order that the  
127 trial court should have rendered on that evidence or remand the case to the trial court for  
128 further proceedings;.

129  
130 (2) In any civil action or proceeding that was tried to a jury, and when upon appeal all  
131 three judges hearing the appeal find that the judgment or final order rendered by the trial  
132 court on the jury's verdict is against the manifest weight of the evidence and have not  
133 found any other prejudicial error of the trial court in any of the particulars assigned and  
134 argued in the appellant's brief, and have not found that the appellee is entitled to  
135 judgment or final order as a matter of law, the court of appeals shall reverse the judgment  
136 or final order of the trial court and remand the case to the trial court for further

137 ~~proceedings. provided further that a judgment shall be reversed only once on the manifest~~  
138 ~~weight of the evidence.~~

139  
140 \*\*\*

141  
142 **Staff Note (July 1, 2015 amendment)**

143  
144 App.R. 12(C) is amended to avoid the implication of the former rule that a reversal on the  
145 manifest weight of the evidence was not available in civil cases tried to a jury. See *Eastley v.*  
146 *Volkman*, 4th Dist. Scioto Nos. 09CA3308, 09CA3309, 2010-Ohio-4771, ¶ 58 (Kline, J.,  
147 dissenting), citing Painter & Pollis, Ohio Appellate Practice, Section 7:19 (2009-2010 Ed.), *rev'd*,  
148 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517. The amendment clarifies that a manifest-  
149 weight reversal is available in civil cases tried to a jury, but there are distinctions. In a civil case  
150 tried to a court without a jury, a majority of the appellate court may reverse, and it may either  
151 remand the case for a new trial or enter judgment for the appellee. By contrast, in a case tried to  
152 a jury, a reversal on the manifest weight of the evidence must be unanimous, see Ohio  
153 Constitution, Article IV, Section 3(B)(3), and the trial court is permitted to reverse and remand, not  
154 to enter judgment for the appellee. See *Hanna v. Wagner*, 39 Ohio St.2d 64, 313 N.E.2d 842  
155 (1974). In addition, the amendments remove the restriction in the current rule allowing an  
156 appellate court to reverse a judgment based on the manifest weight of the evidence only once in  
157 either instance.

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161 **RULE 13. Filing and Service**

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165 **(B) Service of all documents required.** Copies of all documents filed by any party  
166 and not required by these rules to be served by the clerk shall, on or before the day of  
167 filing, be served by a party or person acting for the party on all other parties to the appeal  
168 as provided in division (C) of this rule, except that in expedited appeals under App.R.  
169 ~~11.1~~ 11.2 and in original actions involving election issues, service of all documents  
170 (except the complaint filed to institute an original action) shall be in accordance with  
171 division (C)(1), (2), (5), or (6) at or before the time of filing. Service on a party  
172 represented by counsel shall be made on counsel.

173  
174 **(C) Manner of service.** A document is served under this rule by:

- 175  
176 (1) handing it to the person;  
177  
178 (2) leaving it:  
179  
180 (a) at the person's office with a clerk or other person in charge or, if no one is  
181 in charge, in a conspicuous place in the office; or  
182  
183 (b) if the person has no office or the office is closed, at the person's dwelling  
184 or usual place of abode with someone of suitable age and discretion who  
185 resides there;

- 186  
187 (3) mailing it to the person's last known address by United States mail, in which  
188 event service is complete upon mailing;  
189  
190 (4) delivering it to a commercial carrier service for delivery to the person's last  
191 known address within three calendar days, in which event service is complete  
192 upon delivery to the carrier;  
193  
194 (5) leaving it with the clerk of court if the person has no known address; or  
195  
196 (6) sending it by electronic means to the most recent facsimile number or e-mail  
197 address listed by the intended recipient on a prior court filing (including a filing  
198 in the lower court) in which event service is complete upon transmission, but is  
199 not effective if the serving party learns that it did not reach the person served.  
200

201 **(D) Using Court Facilities.** If a local rule so authorizes, a party may use the court's  
202 transmission facilities to make service under App.R. 13(C)(6).  
203

204 **(E) Proof of service.** Documents presented for filing shall contain an  
205 acknowledgment of service by the person served or proof of service in the form of a  
206 statement of the date and manner of service and of the names of the persons served,  
207 certified by the person who made service. Documents filed with the court shall not be  
208 considered until proof of service is endorsed on the documents or separately filed.  
209

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211  
212 **Staff Note (July 1, 2015 amendment)**  
213

214 App.R. 13(B) is amended by correcting a typographical error. The reference to  
215 App.R. 11.1 has been changed to App.R. 11.2, as the need for immediate service applies in  
216 expedited appeals, not accelerated appeals.  
217

218 App.R. 13 is also amended by adding a new division (D), permitting a party to use a  
219 court's transmission facilities to serve other parties by electronic means if so authorized by local  
220 rule, and the subsequent division of the rule is re-lettered accordingly. The amendment eliminates  
221 a duplication of effort resulting from the 2012 amendments to App.R. 13(C), which permitted a  
222 party to use electronic means to fulfill the party's App.R. 13 duty to serve all other parties but did  
223 not authorize the party to use the facilities of a local court's electronic filing system to perform that  
224 duty—even though, under local rules, the court's facilities nevertheless serve by electronic means  
225 all parties participating in the electronic filing system. The new provision is the same as  
226 Civ.R. 5(B)(3), as also adopted July 1, 2015.  
227

228 \*\*\*

229  
230 **RULE 16. Briefs**  
231

232 **(A) Brief of the appellant.** The appellant shall include in its brief, under the headings  
233 and in the order indicated, all of the following:  
234

- 235 (1) A table of contents, with page references.  
236  
237 (2) A table of cases alphabetically arranged, statutes, and other authorities cited, with  
238 references to the pages of the brief where cited.  
239  
240 (3) A statement of the assignments of error presented for review, with reference to the  
241 place in the record where each error is reflected.  
242  
243 (4) A statement of the issues presented for review, with references to the assignments  
244 of error to which each issue relates.  
245  
246 (5) A concise statement of the case setting out the facts relevant to the assignments of  
247 error submitted for review, describing the relevant procedural history, and identifying the  
248 rulings briefly describing the nature of the case, the course of proceedings, and the  
249 disposition in the court below.~~(6) A statement of facts relevant to the assignments of error~~  
250 presented for review, with appropriate references to the record in accordance with  
251 division (D) of this rule.  
252  
253 ~~(7)~~ (6) An argument containing the contentions of the appellant with respect to each  
254 assignment of error presented for review and the reasons in support of the contentions,  
255 with citations to the authorities, statutes, and parts of the record on which appellant relies.  
256 The argument may be preceded by a summary.  
257  
258 ~~(8)~~ (7) A conclusion briefly stating the precise relief sought.

259  
260 The brief may also include an introduction that summarizes the arguments on  
261 appeal.  
262

## 263 (B) Brief of the appellee

264

265 The brief of the appellee shall conform to the requirements of ~~divisions~~ division (A)~~(1) to~~  
266 ~~(A)(8)~~ of this rule, except that: (1) the appellee need not repeat the appellant's  
267 assignments of error; and (2) the appellee need not include a statement of the case and or  
268 of the facts relevant to the assignments of error need not be made unless the appellee is  
269 dissatisfied with the statement of the appellant.  
270

271 \*\*\*

### 272 Staff Note (July 1, 2015 amendment)

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274  
275 App.R. 16(A) is amended in two ways. First, App.R. 16(A)(5) now requires a combined  
276 statement of the case and facts, modeled after a similar amendment to the corresponding federal  
277 rule, Fed.R.App.P. 28(a)(6). Second, the rule now explicitly permits an introduction.  
278

279 App.R. 16(B) is amended to clarify that the appellee need not repeat the appellant's  
280 assignment of error in the appellee's brief. The amendment avoids placing the appellee in the  
281 position of appearing to endorse the appellant's assignments of error, rephrasing them in the  
282 negative, or identifying them as the appellant's assignments. But the amendment does not

283 change the obligation of an appellee who is also a cross-appellant from identifying the  
284 assignments of error on cross-appeal.

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288 **RULE 43. Effective Date**

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**(BB) Effective date of amendments.** The amendments to Rules 3, 9, 11.2, 12, 13, 16, and 43 filed by the Supreme Court with the General Assembly on January 15, 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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302 **OHIO RULES OF CIVIL PROCEDURE**

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305  
306 **RULE 1. Scope of Rules: Applicability; Construction; Exceptions**

307  
308 (A) **Applicability.** These rules prescribe the procedure to be followed in all  
309 courts of this state in the exercise of civil jurisdiction at law or in equity, with the  
310 exceptions stated in ~~subdivision~~ division (C) of this rule.

311  
312 (B) **Construction.** These rules shall be construed and applied to effect just  
313 results by eliminating delay, unnecessary expense and all other impediments to the  
314 expeditious administration of justice.

315  
316 (C) **Exceptions.** These rules, to the extent that they would by their nature be  
317 clearly inapplicable, shall not apply to procedure (1) upon appeal to review any judgment,  
318 order or ruling, (2) in the appropriation of property, (3) in forcible entry and detainer, (4)  
319 in small claims matters under Chapter 1925, of the Revised Code, (5) in uniform  
320 reciprocal support actions, (6) in the commitment of the mentally ill, (7) in adoption  
321 proceedings under Chapter 3107 of the Revised Code, (8) in all other special statutory  
322 proceedings; provided, that where any statute provides for procedure by a general or  
323 specific reference to all the statutes governing procedure in civil actions such procedure  
324 shall be in accordance with these rules.

325  
326 \*\*\*

327  
328 **Staff Note (July 1, 2015 Amendment)**

329  
330 Division (C) is amended to specifically include, within the exceptions to the application of  
331 the Civil Rules, Revised Code Chapter 3107 adoption proceedings, to the extent that the rules  
332 would by their nature be clearly inapplicable to those proceedings.

333  
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336  
337 **RULE 5. Service and Filing of Pleadings and Other Papers Subsequent to the**  
338 **Original Complaint**

339  
340 (A) **Service: When Required.** Except as otherwise provided in these rules, every  
341 order required by its terms to be served, every pleading subsequent to the original  
342 complaint unless the court otherwise orders because of numerous defendants, every paper  
343 relating to discovery required to be served upon a party unless the court otherwise orders,  
344 every written motion other than one which may be heard ex parte, and every written  
345 notice, appearance, demand, offer of judgment, and similar paper shall be served upon  
346 each of the parties. Service is not required on parties in default for failure to appear  
347 except that pleadings asserting new or additional claims for relief or for additional

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

350

351 **(B) Service: how made.**

352

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

355

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

357

358 (a) handing it to the person;

359

360 (b) leaving it:

361

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

364

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

368

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

371

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

375

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

377

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

382

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

385

386 ~~(3)~~ **(4) Proof of service.** The served document shall be accompanied by a  
387 completed proof of service which shall state the date and manner of service, specifically  
388 identify the division of Civ.R. 5(B)(2) by which the service was made, and be signed in  
389 accordance with Civ.R. 11. Documents filed with the court shall not be considered until  
390 proof of service is endorsed thereon or separately filed.

391

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393

394

395 **Staff Note (July 1, 2015 Amendments)**

396  
397 The rule is amended by adding a new division Civ.R. 5(B)(3) permitting a party to use a  
398 court's transmission facilities to serve other parties by electronic means if so authorized by local  
399 rule, and the subsequent division of the rule is renumbered accordingly.

400  
401 The amendment eliminates a duplication of effort resulting from the 2012 amendments to  
402 Civ.R. 5(B) which permitted a party to use electronic means to fulfill the party's Civ.R. 5 duty to  
403 serve all other parties but did not authorize the party to use the facilities of a local court's  
404 electronic filing system to perform that duty—even though, under local rules, the court's facilities  
405 nevertheless serve by electronic means all parties participating in the electronic filing system. The  
406 new provision is virtually identical to Fed.R.Civ.P. 5(b)(3).

407  
408 \*\*\*

409  
410 **Rule 6. Time**

411  
412 \*\*\*

413  
414 (C) **Time: ~~motions~~ motion responses and replies to motions generally.** A written  
415 ~~motion, other than one which may be heard ex parte, and notice of the hearing thereof~~  
416 ~~shall be served not later than seven days before the time fixed for the hearing, unless a~~  
417 ~~different period is fixed by these rules or by order of the court. Such an order may for~~  
418 ~~cause shown be made on ex parte application. When a motion is supported by affidavit,~~  
419 ~~the affidavit shall be served with the motion; and, except as otherwise provided in Civ.R.~~  
420 ~~59(C), opposing affidavits may be served not later than one day before the hearing, unless~~  
421 ~~the court permits them to be served at some other time. Unless otherwise provided by~~  
422 ~~these rules, by local rule, or by order of the court, a response to a written motion, other~~  
423 ~~than a motion that may be heard ex parte, shall be served within fourteen days after~~  
424 ~~service of the motion, and a movant's reply may be served within seven days after service~~  
425 ~~of the response to the motion.~~

426 \*\*\*

427  
428 **Staff Note (July 1, 2015 Amendment)**

429  
430 The amendment to Civ.R. 6(C) eliminates the prior requirement to serve a "notice of  
431 hearing" when serving a motion, recognizing that the requirement is inconsistent with modern  
432 practice where most courts determine motions without oral hearing—a practice permitted by  
433 Civ.R. 7(B)(2). The amendment also addresses an uncertainty existing under the prior rule as to  
434 when a response to a motion is due when there is no local rule or court order specifying a time for  
435 responding to motions, by specifying a fallback time of fourteen days after service of the motion  
436 within which to serve arguments in response. In the absence of a local rule or court order  
437 addressing replies, the amendment also permits a movant to serve reply arguments within seven  
438 days after service of the opposing party's response. The time for filing motion responses and  
439 replies is governed by Civ.R. 5(D), again in the absence of a local rule or court order specifying a  
440 different time for filing.

441 \*\*\*

442



489 (b) Except as provided in division (D)(2)(d) of this rule, a dental claim, optometric  
490 claim or chiropractic claim, as defined in R.C. 2305.113, asserted in a pleading or  
491 amended pleading, including pleadings containing counterclaims or cross-claims and  
492 third-party complaints, shall be accompanied by one or more affidavits of merit relative  
493 to each defending party named in the claim when expert testimony is necessary to  
494 establish liability. Affidavits of merit under this division shall be provided by an expert  
495 witness meeting the requirements of Evid.R. 702.

496  
497 (c) Affidavits of merit shall include all of the following:

- 498  
499 (i) A statement that the affiant has reviewed all medical records reasonably  
500 available to the plaintiff party asserting the claim concerning the  
501 allegations contained in the complaint claim;  
502  
503 (ii) A statement that the affiant is familiar with the applicable standard of care;  
504  
505 (iii) The opinion of the affiant that the standard of care was breached by one or  
506 more of the defendants to the action defending parties against whom the  
507 affidavit is offered, and that the breach caused injury to the plaintiff party  
508 asserting the claim.

509  
510 ~~(b)~~ (d) The plaintiff party asserting the claim may file a motion to extend the period of  
511 time to file an affidavit of merit. The motion and the claim shall be filed by the plaintiff  
512 with the complaint together. For good cause shown and in accordance with division ~~(c)~~  
513 (e) of this rule, the court shall grant the plaintiff party asserting the claim a reasonable  
514 period of time to file an affidavit of merit, not to exceed ninety days, except the time may  
515 be extended beyond ninety days if the court determines that a defendant defending party  
516 or a non-party has failed to cooperate with discovery or that other circumstances warrant  
517 extension.

518  
519 ~~(c)~~ (e) In determining whether good cause exists to extend the period of time to file an  
520 affidavit of merit, the court shall consider the following:

- 521  
522 (i) A description of any information necessary in order to obtain an affidavit  
523 of merit;  
524  
525 (ii) Whether the information is in the possession or control of a defendant  
526 defending party or a third party;  
527  
528 (iii) The scope and type of discovery necessary to obtain the information;  
529  
530 (iv) What efforts, if any, were taken to obtain the information;  
531  
532 (v) Any other facts or circumstances relevant to the ability of the plaintiff  
533 party asserting the claim to obtain an affidavit of merit.

534

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

539

540 ~~(e)~~ (g) If an affidavit of merit as required by this rule has been filed as to any ~~defendant~~  
541 defending party along with the complaint pleading or amended complaint pleading,  
542 including pleadings containing counterclaims or cross-claims and third-party complaints  
543 in which claims requiring an affidavit of merit are first asserted against that ~~defendant~~  
544 party, and the affidavit of merit is determined by the court to be defective pursuant to the  
545 provisions of ~~division~~ divisions (D)(2)(a) or (b) of this rule, the court shall grant the  
546 plaintiff party asserting the claim a reasonable time, not to exceed sixty days, to file an  
547 affidavit of merit intended to cure the defect.

548

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550

### 551 **Staff Notes (July 1, 2015 Amendments)**

552

553 Rule 10(D)(2) applies to medical, dental, optometric, and chiropractic claims, as defined  
554 by R.C. 2305.113, and was adopted in 2005 to require that, at the time of the filing of a pleading  
555 asserting any such claims, the pleading must be accompanied by certificates of expert review.  
556 The rule is amended (1) to clarify that its application is not confined to complaints and applies to  
557 any pleading or amended pleading asserting such a claim, including pleadings containing  
558 counterclaims or cross-claims and third-party complaints, and (2) to correct inaccuracies in the  
559 current rule by correctly differentiating between the qualifications of the affiant for a medical claim  
560 (to which Evid.R. 702 applies and, in some instances, to which Evid.R. 601(D) also applies), and  
561 the qualifications of the affiant for dental, optometric, and chiropractic claims (to which only  
562 Evid.R. 702 applies). The requirement for accompanying affidavits of merit applies only to a  
563 pleading (as defined by Civ.R. 7(A) ) asserting a claim for relief defined by R.C. 2305.113 as a  
564 medical, dental, optometric, or chiropractic claim.

565

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567

### 568 **RULE 23. Class Actions**

569

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

572

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

574

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

576

577 (3) the claims or defenses of the representative parties are typical of the  
578 claims or defenses of the class, and class.

579

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

582

583 ~~(B) Class actions maintainable~~ **Types of class actions.** An A class action may be  
584 maintained as a class action if the prerequisites of subdivision Civ.R. 23(A) are is  
585 satisfied, and ~~in addition~~ if:

586  
587 (1) ~~the prosecution of~~ prosecuting separate actions by or against  
588 individual class members ~~of the class~~ would create a risk of:

589  
590 (a) inconsistent or varying adjudications with respect to individual class  
591 members ~~of the class which~~ that would establish incompatible  
592 standards of conduct for the party opposing the class; or

593  
594 (b) adjudications with respect to individual class members ~~of the class~~  
595 ~~which would~~ that, as a practical matter, would be dispositive of the  
596 interests of the other members not parties to the individual  
597 adjudications or would substantially impair or impede their ability to  
598 protect their interests; or

599  
600 (2) the party opposing the class has acted or refused to act on grounds  
601 that apply generally ~~applicable~~ to the class, ~~thereby making appropriate so that~~ final  
602 injunctive relief or corresponding declaratory relief ~~with respect to~~ is appropriate  
603 respecting the class as a whole; or

604  
605 (3) the court finds that the questions of law or fact common to ~~the class~~  
606 members ~~of the class~~ predominate over any questions affecting only individual  
607 members, and that a class action is superior to other available methods for ~~the fair~~  
608 fairly and efficiently ~~efficiently~~ adjudication of adjudicating the controversy. The matters  
609 pertinent to ~~the~~ these findings include:

610  
611 (a) ~~the interest of members of the class~~ members' interests in individually  
612 controlling the prosecution or defense of separate actions;

613  
614 (b) the extent and nature of any litigation concerning the controversy already  
615 ~~commenced~~ begun by or against class members ~~of the class~~;

616  
617 (c) the desirability or undesirability of concentrating the litigation of the  
618 claims in the particular forum; and

619  
620 (d) the likely difficulties ~~likely to be encountered in the management of~~ in  
621 managing a class action.

622  
623 ~~(C) Determination by~~ **Certification** order ~~whether class action to be~~  
624 ~~maintained; notice to class members; judgment; actions conducted partially as~~  
625 ~~class actions~~ issues classes; subclasses.

626  
627 (1) Certification order

628

629 (a) Time to issue. As soon as practicable after the commencement of an  
630 action brought as a class action At an early practicable time after a person sues  
631 or is sued as a class representative, the court shall determine by order whether  
632 it is to be so maintained to certify the action as a class action.

633  
634 (b) Defining the class; appointing class counsel. An order that certifies a class  
635 action shall define the class and the class claims, issues, or defenses, and shall  
636 appoint class counsel under Civ.R. 23(F).

637  
638 (c) Altering or amending the order. An order under this subdivision that  
639 grants or denies class certification may be conditional, and may be altered or  
640 amended before the decision on the merits final judgment.

641  
642 (2) Notice.

643  
644 (a) For (B)(1) or (B)(2) classes. For any class certified under Civ.R.  
645 23(B)(1) or (B)(2), the court may direct appropriate notice to the class.

646  
647 (b) For (B)(3) classes. In any class action maintained under subdivision  
648 For any class certified under Civ.R. 23(B)(3), the court shall direct to the  
649 members of the class members the best notice that is practicable under the  
650 circumstances, including individual notice to all members who can be identified  
651 through reasonable effort. The notice shall advise each member that (a) the  
652 court will exclude him from the class if he so requests by a specified date;  
653 (b) the judgment, whether favorable or not, will include all members who  
654 do not request exclusion; and (c) any member who does not request  
655 exclusion may, if he desires, enter an appearance through his counsel.  
656 clearly and concisely state in plain, easily understood language:

657  
658 (i) the nature of the action;

659  
660 (ii) the definition of the class certified;

661  
662 (iii) the class claims, issues, or defenses;

663  
664 (iv) that a class member may enter an appearance through an  
665 attorney if the member so desires;

666  
667 (v) that the court will exclude from the class any member who  
668 requests exclusion;

669  
670 (vi) the time and manner for requesting exclusion; and

671  
672 (vii) the binding effect of a class judgment on members under Civ.R.  
673 23(C)(3).

674

675 (3) Judgment. ~~The judgment in an action maintained as a class action~~  
676 ~~under subdivision (B)(1) or (B)(2), whether Whether~~ or not favorable to the class,  
677 the judgment in a class action shall:

678  
679 (a) for any class certified under Civ.R. 23(B)(1) or (B)(2), include and  
680 describe those whom the court finds to be class members of the class; and

681  
682 (b) ~~The judgment in an action maintained as a class action under subdivision~~  
683 for any class certified under Civ.R. 23(B)(3), whether or not favorable to the  
684 class, shall include and specify or describe those to whom the Civ.R.  
685 23(C)(2) notice provided in subdivision (C)(2) was directed, and who have  
686 not requested exclusion, and whom the court finds to be class members of the  
687 class.

688  
689 (4) Particular issues. When appropriate, ~~(a)~~ an action may be brought or  
690 maintained as a class action with respect to particular issues.

691  
692 (5) Subclasses. ~~, or (b) When appropriate, a class may be divided into~~  
693 subclasses and each subclass that are each treated as a class, and the provisions of  
694 under this rule shall then be construed and applied accordingly.

695  
696 **(D) Orders in conduct of actions Conducting the action.**

697  
698 (1) In general. ~~In the conduct of actions to which this rules applies~~  
699 conducting an action under this rule, the court may make appropriate issue orders that:

700  
701 ~~(1)(a) determining determine~~ the course of proceedings or ~~prescribing prescribe~~  
702 measures to prevent undue repetition or complication in the presentation of  
703 presenting evidence or argument;

704  
705 ~~(2)(b) requiring, require~~ ~~for the protection of the~~ to protect class members of  
706 the class or otherwise for the fair and fairly conduct of the action, that giving  
707 appropriate notice be given in such manner as the court may direct to some or all  
708 of the class members of:

709  
710 (i) any step in the action, ~~or;~~

711  
712 (ii) of the proposed extent of the judgment; ~~;~~ or

713  
714 (iii) of the members' opportunity ~~of members~~ to signify whether  
715 they consider the representation fair and adequate, to intervene and  
716 present claims or defenses, or to otherwise ~~to~~ come into the action;

717  
718 ~~(3)(c) imposing impose~~ conditions on the representative parties or on  
719 intervenors;

720

721 ~~(4)(d) requiring~~ require that the pleadings be amended to eliminate ~~therefrom~~  
722 ~~allegations as to~~ about representation of absent persons, and that the action  
723 proceed accordingly; or

724

725 ~~(5)(e) dealing~~ deal with similar procedural matters.

726

727 (2) Combining and amending orders. The orders may be combined with  
728 an order under Rule 16, and may be altered or amended as may be desirable from  
729 time to time. An order under Civ.R. 23(D)(1) may be altered or amended from time to  
730 time and may be combined with an order under Civ.R. 16.

731

732 (E) **Dismissal Settlement, voluntary dismissal, or compromise.** The  
733 claims, issues, or defenses of a certified A-class action shall not may be settled,  
734 voluntarily dismissed, or compromised without the only with the court's approval of  
735 the court, and. The following procedures apply to a proposed settlement, voluntary  
736 dismissal, or compromise:

737

738 (1) The court shall direct notice of the proposed dismissal or compromise  
739 shall be given in a reasonable manner to all class members of the class in such  
740 manner as the court directs who would be bound by the proposal.

741

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

744

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

747

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

752

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

756

757 (F) **Class counsel.**

758

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

761

762 (a) shall consider:

763

764

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

767  
768           (ii) counsel's experience in handling class actions, other complex  
769           litigation, and the types of claims asserted in the action;  
770  
771           (iii) counsel's knowledge of the applicable law; and  
772  
773           (iv) the resources that counsel will commit to representing the class;  
774  
775       (b) may consider any other matter pertinent to counsel's ability to fairly and  
776       adequately represent the interests of the class;  
777  
778       (c) may order potential class counsel to provide information on any subject  
779       pertinent to the appointment and to propose terms for attorney's fees and  
780       nontaxable costs;  
781  
782       (d) may include in the appointing order provisions about the award of  
783       attorney's fees or nontaxable costs under Civ.R. 23(G); and  
784  
785       (e) may make further orders in connection with the appointment.  
786  
787       (2) Standard for appointing class counsel. When one applicant seeks  
788       appointment as class counsel, the court may appoint that applicant only if the applicant  
789       is adequate under Civ.R. 23(F)(1) and (4). If more than one adequate applicant seeks  
790       appointment, the court shall appoint the applicant best able to represent the interests of  
791       the class.  
792  
793       (3) Interim counsel. The court may designate interim counsel to act on  
794       behalf of a putative class before determining whether to certify the action as a class  
795       action.  
796  
797       (4) Duty of class counsel. Class counsel shall fairly and adequately  
798       represent the interests of the class.  
799  
800       **(G) Attorney fees and nontaxable costs. In a certified class action, the court**  
801       may award reasonable attorney's fees and nontaxable costs that are authorized by  
802       law or by the parties' agreement. The following procedures apply:  
803  
804           (1) A claim for an award shall be made by motion. Notice of the motion  
805           shall be served on all parties and, for motions by class counsel, directed to class  
806           members in a reasonable manner.  
807  
808           (2) A class member, or a party from whom payment is sought, may object to  
809           the motion.  
810  
811           (3) The court may hold a hearing and shall state in writing the findings of  
812           fact found separately from the conclusions of law.

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(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.

**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.

\*\*\*

**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, ~~together with the notice of hearing,~~ shall be served on the parties as provided in ~~Rule~~ Civ.R. 5 and upon persons not parties in the manner provided in ~~Rule~~ Civ.R. 4 through ~~Rule~~ 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 ~~subdivision~~ division (A) of this rule shall allow the action to be continued by or against ~~his~~ 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

861 to whom the interest is transferred to be substituted in the action or joined with the  
862 original party. Service of the motion shall be made as provided in ~~subdivision~~ division  
863 (A) of this rule.

864  
865 **(D) Public officers; death or separation from office.**

866  
867 (1) When a public officer is a party to an action in ~~his~~ the public officer's  
868 official capacity and during its pendency dies, resigns, or otherwise ceases to hold office,  
869 the action does not abate and ~~his~~ the public officer's successor is automatically  
870 substituted as a party. Proceedings following the substitution shall be in the name of the  
871 substituted party, but any misnomer not affecting the substantial rights of the parties shall  
872 be disregarded. An order of substitution may be entered at any time, but the omission to  
873 enter such an order shall not affect the substitution.

874  
875 (2) When a public officer sues or is sued in ~~his~~ the public officer's official  
876 capacity, ~~he~~ the public officer may be described as a party by ~~his~~ official title rather than  
877 by name. The court however may require the addition of ~~his~~ the public officer's name.

878  
879 **(E) Suggestion of death or incompetency** Upon the death or incompetency  
880 of a party it shall be the duty of the attorney of record for that party to suggest such fact  
881 upon the record within fourteen days after ~~he~~ the attorney acquires actual knowledge of  
882 the death or incompetency of that party. The suggestion of death or incompetency shall  
883 be served on all other parties as provided in ~~Rule~~ Civ.R. 5.

884  
885 \*\*\*

886  
887 **Proposed Staff Note (July 1, 2015 Amendment)**

888  
889 Rule 25(A) is amended by eliminating the reference to a requirement for service of a  
890 "notice of hearing" which is no longer required by Civ.R. 6(B).

891  
892 \*\*\*

893  
894 **RULE 30. Depositions upon oral examination**

895  
896 **(A) When depositions may be taken.** After commencement of the action,  
897 any party may take the testimony of any person, including a party, by deposition upon  
898 oral examination. The attendance of a witness deponent may be compelled by the use of  
899 subpoena as provided by Civ.R. 45. The attendance of a party deponent may be  
900 compelled by the use of notice of examination as provided by division (B) of this rule.  
901 The deposition of a person confined in prison may be taken only by leave of court on  
902 such terms as the court prescribes.

903  
904 **(B) Notice of Examination; General Requirements; Nonstenographic**  
905 **Recording; Production of Documents and Things; Deposition of Organization;**  
906 **Deposition by Telephone or Other Means.**

907

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

916  
917 (2) If any party shows that when the party was served with notice the party  
918 was unable, through the exercise of diligence, to obtain counsel to represent the party at  
919 the taking of the deposition, the deposition may not be used against the party.

920  
921 (3) If a party taking a deposition wishes to have the testimony recorded by  
922 other than stenographic means, the notice shall specify the manner of recording,  
923 preserving, and filing the deposition. The court may require stenographic taking or make  
924 any other order to ensure that the recorded testimony will be accurate and trustworthy.  
925 With prior notice to the deponent and other parties, any party may designate another  
926 method for recording the testimony in addition to that specified in the original notice.  
927 That party bears the expense of the additional record or transcript unless the court orders  
928 otherwise.

929  
930 (4) The notice to a party deponent may be accompanied by a request made in  
931 compliance with Civ.R. 34 for the production of documents and tangible things at the  
932 taking of the deposition.

933  
934 (5) A party, in the party's notice, may name as the deponent a public or  
935 private corporation, a partnership, or an association and designate with reasonable  
936 particularity the matters on which examination is requested. The organization so named  
937 shall choose one or more of its proper employees, officers, agents, or other persons duly  
938 authorized to testify on its behalf. The persons so designated shall testify as to matters  
939 known or available to the organization. Division (B)(5) does not preclude taking a  
940 deposition by any other procedure authorized in these rules.

941  
942 (6) The parties may stipulate ~~in writing~~ or the court may upon motion order  
943 that a deposition be taken by telephone or other remote means. For purposes of this rule,  
944 Civ.R. 28, and Civ.R. 45(C), a deposition taken by telephone is taken in the county and at  
945 the place where the deponent answers the questions ~~is to answer questions propounded to~~  
946 ~~the deponent.~~

947  
948  
949  
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952  
953

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**Staff Note (July 1, 2015 Amendments)**

Rule 30(B)(3)

954  
955  
956  
957  
958

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.

959 Rule 30(B)(6)

960

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

964

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966

967 **RULE 42. Consolidation; Separate Trials**

968

969 **(A) Consolidation.**

970

971 (1) *Generally.* ~~When actions involving a common question of law or fact are~~  
972 ~~pending before a court, that court after a hearing may order a joint hearing or trial of any~~  
973 ~~or all the matters in issue in the actions; it may order some or all of the actions~~  
974 ~~consolidated; and it may make such orders concerning proceedings therein as may tend to~~  
975 ~~avoid unnecessary costs or delay. If actions before the court involve a common question~~  
976 ~~of law or fact, the court may:~~

977

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

979

980 (b) consolidate the actions; or

981

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

983

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

991

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

993

994 (a) "Asbestos claim" has the same meaning as in ~~section~~ R.C. 2307.91 ~~of the~~  
995 ~~Revised Code;~~

996

997 (b) "Silicosis claim" and "mixed dust disease claim" have the same meaning  
998 as in ~~section~~ R.C. 2307.84 ~~of the Revised Code;~~

999

1000 (c) In reference to an asbestos claim, "tort action" has the same meaning as in  
1001 ~~section~~ R.C. 2307.91 ~~of the Revised Code;~~

1002

1003 (d) In reference to a silicosis claim or a mixed dust disease claim, "tort action"  
1004 has the same meaning as in ~~section~~ R.C. 2307.84 ~~of the Revised Code.~~

1005

1006 (B) **Separate trials.** ~~The court, after a hearing, in furtherance of For~~  
1007 ~~convenience, or to avoid prejudice, or when separate trials will be conducive to~~  
1008 ~~expedition and economy expedite or economize, the court~~ may order a separate trial of  
1009 ~~any one or more separate issues, claim claims, cross-claim cross-claims, counterclaim~~  
1010 ~~counterclaims, or third-party claim claims,; or of any separate issue or of any number of~~  
1011 ~~claims, cross-claims, counterclaims, or third party claims, or issues, always preserving~~  
1012 ~~inviolate~~ When ordering a separate trial, the court shall preserve the any right to a jury  
1013 trial by jury.

1014 \*\*\*

1015  
1016 **Staff Notes (July 1, 2015 Amendments)**

1017  
1018  
1019 **Stylistic Changes**

1020  
1021 The rule is amended to conform the provisions of Civ.R. 42(A)(1) and Civ.R. 42(B) to the  
1022 2007 stylistic changes to Federal Rule 42. The amendments are nonsubstantive. Rule 42(A)(2),  
1023 not found in the federal rule, remains unchanged.

1024  
1025 **Rule 42(B) R.C. 2315.21(B)(1) Bifurcation**

1026  
1027 R.C. 2314.21(B)(1) requires a two-stage bifurcation of the trial upon the motion of any  
1028 party in a tort action that is tried to a jury and in which a plaintiff makes a claim for compensatory  
1029 damages and a claim for punitive or exemplary damages. In *Havel v. Villa St. Joseph*, 131 Ohio  
1030 St.3d 235, 2012-Ohio-552, the Ohio Supreme Court held that the statute creates a substantive  
1031 right and, therefore, takes precedence over the discretion conferred by Civ.R. 42(B) to grant or  
1032 deny bifurcation. In cases governed by R.C. 2315.21(B), upon the motion of any party the trial  
1033 court must grant the two-stage bifurcation required by the statute.

1034 \*\*\*

1035  
1036  
1037 **RULE 43. Taking Testimony**

1038  
1039 **(A) In Open Court.** At trial or hearing, the witnesses' testimony shall be taken in  
1040 open court unless a statute, the Rules of Evidence, these rules, or other rules adopted by  
1041 the Supreme Court provide otherwise. For good cause in compelling circumstances and  
1042 with appropriate safeguards, the court may permit testimony in open court by  
1043 contemporaneous transmission from a different location.

1044  
1045 **(B) Evidence on a Motion.** When a motion relies on facts outside the record, the  
1046 court may hear the matter on affidavits or may hear it wholly or partly on oral testimony  
1047 or on depositions.

1048 \*\*\*

1049  
1050  
1051 **Staff Note (July 1, 2015 Amendment)**

1052  
1053  
1054 The July 1, 2015 amendment adopts a new rule – Civ.R. 43 – heretofore designated  
1055 within the Ohio rules as “Reserved”. The new rule is modeled on Fed.R.Civ.P. 43. Division (A)

1056 recognizes the availability of modern electronic transmission facilities by specifically authorizing  
1057 live open court testimony from a location outside the courtroom. Consistent with Fed.R.Civ.P.  
1058 43(c) division (B) provides that a court may, in its discretion, consider facts presented by affidavit  
1059 in deciding a motion.

1060  
1061 \*\*\*

1062  
1063 **RULE 50. Motion for a Directed Verdict and for Judgment Notwithstanding the**  
1064 **Verdict**

1065  
1066 \*\*\*

1067  
1068 **(B) Motion for judgment notwithstanding the verdict.** Whether or not a  
1069 motion to direct a verdict has been made or overruled and not later than twenty-eight days  
1070 after entry of judgment, a party may ~~move~~ serve a motion to have the verdict and any  
1071 judgment entered thereon set aside and to have judgment entered in accordance with the  
1072 party's motion; or if a verdict was not returned such party, within twenty-eight days after  
1073 the jury has been discharged, may ~~move~~ serve a motion for judgment in accordance with  
1074 the party's motion. A motion for a new trial may be joined with this motion, or a new  
1075 trial may be prayed for in the alternative.

1076  
1077 Unless otherwise provided by local rule or by order of the court, arguments in response to  
1078 the motion shall be served within fourteen days after service of the motion, and a  
1079 movant's reply may be served within seven days after service of the response to the  
1080 motion.

1081  
1082 If a verdict was returned, the court may allow the judgment to stand or may reopen the  
1083 judgment. If the judgment is reopened, the court shall either order a new trial or direct  
1084 the entry of judgment, but no judgment shall be rendered by the court on the ground that  
1085 the verdict is against the weight of the evidence. If no verdict was returned the court may  
1086 direct the entry of judgment or may order a new trial.

1087  
1088 **(C) Conditional rulings on motion for judgment notwithstanding verdict.**

1089  
1090 (1) If the motion for judgment notwithstanding the verdict, provided for in  
1091 division (B) of this rule, is granted, the court shall also rule on the motion for a new trial,  
1092 if any, by determining whether it should be granted if the judgment is thereafter vacated  
1093 or reversed. If the motion for a new trial is thus conditionally granted, the order thereon  
1094 does not affect the finality of the judgment. In case the motion for a new trial has been  
1095 conditionally granted and the judgment is reversed on appeal, the new trial shall proceed  
1096 unless the appellate court has otherwise ordered. In case the motion for a new trial has  
1097 been conditionally denied, the appellee on appeal may assert error in that denial; and if  
1098 the judgment is reversed on appeal, subsequent proceedings shall be in accordance with  
1099 the order of the appellate court.

1100

1101 (2) The party whose verdict has been set aside on motion for judgment  
1102 notwithstanding the verdict may serve a motion for a new trial pursuant to ~~Rule~~ Civ.R. 59  
1103 not later than twenty-eight days after entry of the judgment notwithstanding the verdict.

1104 \*\*\*

1105  
1106  
1107 **Staff Note (July 1, 2015 Amendments)**  
1108

1109 Consistent with the provisions of Civ.R. 59(B) addressing motions for new trial, Civ.R.  
1110 50(B) is amended to make clear that the motion must be served within the required time. The time  
1111 for filing the motion is governed by Civ.R. 5(D).  
1112

1113 Consistent with a similar amendment to Civ.R. 6(B), the provisions of Civ.R. 50(B) are  
1114 also amended to specify, in the absence of a local rule or court order providing a time for  
1115 responding to a motion for judgment notwithstanding the verdict, a fallback time of fourteen days  
1116 after service of the motion within which to serve responsive arguments. In the absence of a local  
1117 rule or court order addressing replies, the amendment also permits the movant to serve reply  
1118 arguments within seven days after service of the adverse party's response. The time for filing  
1119 responsive arguments and replies is governed by Civ.R. 5(D), again in the absence of a local rule  
1120 or order of the court specifying a different time for filing.

1121 \*\*\*

1122  
1123  
1124 **RULE 52. Findings by the Court**  
1125

1126 When questions of fact are tried by the court without a jury, judgment may be  
1127 general for the prevailing party unless one of the parties in writing requests otherwise  
1128 before the entry of judgment pursuant to Civ. R. 58, or not later than seven days after the  
1129 party filing the request has been given notice of the court's announcement of its decision,  
1130 whichever is later, in which case, the court shall state in writing the ~~conclusions~~ findings  
1131 of fact found separately from the conclusions of law.

1132  
1133 When a request for findings of fact and conclusions of law is made, the court, in  
1134 its discretion, may require any or all of the parties to submit proposed findings of fact and  
1135 conclusions of law; however, only those findings of fact and conclusions of law made by  
1136 the court shall form part of the record.

1137  
1138 Findings of fact and conclusions of law required by this rule and by ~~Rule~~ Civ.R.  
1139 41(B)(2) and Civ.R. 23(G)(3) are unnecessary upon all other motions including those  
1140 pursuant to ~~Rule~~ Civ.R. 12, ~~Rule~~ Civ.R. 55 and ~~Rule~~ Civ.R. 56.

1141  
1142 An opinion or memorandum of decision filed in the action prior to judgment entry  
1143 and containing findings of fact and conclusions of law stated separately shall be sufficient  
1144 to satisfy the requirements of this rule and ~~Rule~~ Civ.R. 41(B)(2).

1145 \*\*\*  
1146  
1147  
1148

1149 **Staff Note (July 1, 2015 Amendments)**

1150  
1151 The rule is amended to (1) replace “conclusions of fact” with “findings of fact” in the first  
1152 paragraph of the rule and (2) include a reference to the findings of fact and conclusions of law  
1153 required by Civ.R. 23(G)(3).

1154  
1155 \*\*\*

1156  
1157 **RULE 56. Summary Judgment**

1158  
1159 \*\*\*

1160  
1161 **(C) Motion and proceedings.** The motion shall be served ~~at least fourteen~~  
1162 ~~days before the time fixed for hearing~~ in accordance with Civ.R. 5. Unless otherwise  
1163 provided by local rule or by order of the court, The the adverse party, prior to the day of  
1164 hearing, may serve and file responsive arguments and opposing affidavits within twenty-  
1165 eight days after service of the motion, and the movant may serve reply arguments within  
1166 fourteen days after service of the adverse party’s response. Summary judgment shall be  
1167 rendered forthwith if the pleadings, depositions, answers to interrogatories, written  
1168 admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any,  
1169 timely filed in the action, show that there is no genuine issue as to any material fact and  
1170 that the moving party is entitled to judgment as a matter of law. No evidence or  
1171 stipulation may be considered except as stated in this rule. A summary judgment shall  
1172 not be rendered unless it appears from the evidence or stipulation, and only from the  
1173 evidence or stipulation, that reasonable minds can come to but one conclusion and that  
1174 conclusion is adverse to the party against whom the motion for summary judgment is  
1175 made, that party being entitled to have the evidence or stipulation construed most strongly  
1176 in the party’s favor. A summary judgment, interlocutory in character, may be rendered  
1177 on the issue of liability alone although there is a genuine issue as to the amount of  
1178 damages.

1179  
1180 \*\*\*

1181 **Staff Note (July 1, 2015 Amendment)**

1182  
1183 Consistent with a similar amendment to Civ.R. 6(C), the amendment to Civ.R. 56(C)  
1184 deletes the reference in the prior rule to “the time fixed for hearing.” The amendment also  
1185 specifies, in the absence of a local rule or court order specifying a time for responding to a motion  
1186 for summary judgment, a fallback time of twenty-eight days after service of the motion within  
1187 which to serve responsive arguments and opposing affidavits. In the absence of a local rule or  
1188 court order addressing replies, the amendment also permits the movant to serve reply arguments  
1189 within fourteen days after service of the adverse party’s response. The time for filing the motion,  
1190 responses, and replies is governed by Civ.R. 5(D), again in the absence of a local rule or court  
1191 order specifying a different time for filing. The rule applies only in the absence of a local rule or  
1192 court order providing times for briefing motions, whether or not the rule or order specifically  
1193 addresses summary judgment motions, and does not supersede or affect the application of local  
1194 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, 10, 23, 25, 30, 42, 43, 50, 52, 56, 59, and 86 filed by the Supreme Court with the General Assembly on January 15, 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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**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 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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