

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

Comments requested: The Supreme Court of Ohio will accept public comments until February 18, 2016 on the following proposed amendments to the Ohio Rules of Civil Procedure (4.1, 4.2, 4.4, 5, 10, 19.1, 37, 54, and 65.1), the Ohio Rules of Criminal Procedure (16), the Ohio Rules of Evidence (601 and 803), and the Ohio Rules of Juvenile Procedure (20).

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

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

Comment Contact: Comments on the proposed amendments must be submitted in writing to Michael Farley, Judicial & Legislative Affairs Counsel, Supreme Court of Ohio, 65 South Front Street, 7th Floor, Columbus, Ohio 43215-3431 or Michael.Farley@sc.ohio.gov and received no later than February 18, 2016. Please include your full name and regular mailing address in any comment submitted by e-mail. Copies of all comments submitted will be provided to each member of the Commission on the Rules of Practice and Procedure and each Justice of the Supreme Court.

Comment Deadline: Comments must be submitted no later than February 18, 2016.

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

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

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

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

In the fall of each year, the Commission submits to the Supreme Court proposed amendments to the rules of practice and procedure that it recommends take effect the following July 1. The Supreme Court then authorizes the publication of the rules for public comment. The authorization by the Court of the publication of the proposed amendments is neither an endorsement of, nor a declaration of, intent to approve the proposed amendments. It is an invitation to the judiciary, the practicing bar, and the public at large to provide thoughtful and meaningful feedback on the legal and practical effect of the proposed amendments. The public comments are reviewed by the Commission which may withdraw, amend, or resubmit all or any provision of the proposed amendments to the Supreme Court. Pursuant to Article IV, Section 5(B), if the proposed amendments are to take effect by July 1, the Supreme Court is required to file the proposed amendments with the General Assembly by January 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 concurrent resolution of disapproval for all or any portion of a proposed amendment the Supreme Court has proposed. If a concurrent resolution of disapproval is not issued by that date, the proposed amendments become effective July 1.

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.

SUMMARY

Ohio Rules of Civil Procedure

Civ.R. 4.1—Commercial Carrier Service

The Commission recommends an amendment to Civ.R. 4.1. Civ.R. 4.1(A)(1)(b) was adopted in 2012 to provide the clerk with an option to make service of process by a commercial carrier service as an alternative to service by United States certified or express mail. The proposed amendment permits the serving party to provide written instruction to the clerk that service be made by United States certified or express mail pursuant to Civ.R. 4.1(A)(1)(a). When the serving party provides such instruction, the commercial carrier option is not available to the clerk for the initial attempt to make service of process in that case.

Civ.R. 4.2, Civ.R. 19.1—Gender Neutral Changes

The Commission recommends amendments to Civ.R. 4.2 and Civ.R. 19.1 be amended as gender neutral where appropriate to comply with the decision of U.S. Supreme Court in *Obergefell v. Hodges*, 576 U.S. ___, 135 S.Ct. 2584 (2015). The proposed changes are limited to making the rules gender neutral, with the exception of non-substantive stylistic changes in Civ.R. 19.1

Civ.R. 4.4—Publication Service of Process

The Commission recommends amendments to Civ.R. 4.4 to provide that publication by posting service of process is an appropriate method of service in Civ.R. 65.1 civil protection order proceedings, under certain conditions described in that division of the rule. As stated in division (A)(2) of the rule, a petitioner who is proceeding in forma pauperis and who requests publication by posting service of process must file an affidavit with the court containing the same averments required by division (A)(1) of the rule, i.e., that service of summons cannot be made because the residence of the defendant is unknown to the affiant, all of the efforts made on behalf of the party to ascertain the residence of the defendant, and that the residence of the defendant cannot be ascertained with reasonable diligence. However, the alternative method of posting on the website of the clerk of courts is not available for service of protection orders issued pursuant to Civ.R. 65.1.

Civ.R. 5—Service and Filing of Papers

The Commission recommends amendments to Civ.R. 5 to conform to the stylistic changes made to the Federal Rules of Civil Procedure in 2007. Civ.R. 5(D) is the general rule providing the time for filing; the recommended amendments make this general rule subject to, and superseded by, any provisions in other civil rules, local rules, or orders of court that set a different time for filing, e.g., a local rule or case management order setting the time for filing briefs in connection with a motion. The recommended amendments to Civ.R. 5 maintain the current requirement that any “paper” (restyled from “documents” in the current rule) “be filed within three days after service,” as opposed to the corresponding Federal Rule which requires only that the paper be “filed within a reasonable time after service.” The Commission also recommends an

amendment to Juv.R. 20, discussed below, that substantially conforms that rule to the proposed changes in Civ.R. 5.

Civ.R. 10—Affidavit of Merit and Interaction with Rules of Evidence

The Commission recommends amendments to Civ.R.10 that correct an inaccuracy in the prior rule which indicated that Evid.R. 601(D) applies to the qualification of an affiant for all medical, dental, optometric, and chiropractic claims. While Evid.R. 702 applies to all of those claims, Evid.R. 601(D) only applies to the qualifications of an affiant for certain medical claims.

Civ.R. 37—Failure to Make Discovery, Sanctions

The Commission recommends amendments to Civ.R. 37 which adopt the 2007 stylistic changes to Fed. R. Civ. P. 37 and also include four additions to the Ohio rule, described in the Staff Notes to the amendments, which were added to the Federal rule after the adoption of the current Ohio rule.

Civ.R. 54—Judgments, Costs, Availability of Award of Attorney Fees

The Commission recommends an amendment to Civ.R. 54. A new division (E) is added to supersede any application of the decision in *State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 116 Ohio St.3d 88, 2007–Ohio–5542 to an award of attorney fees authorized by the civil rules. The amendment specifies that when any provision of the rules authorizes an award of attorney fees, the court may award the reasonable value of the services performed by the attorney, whether or not the party actually paid or is obligated to pay the attorney for such services.

Civ.R. 65.1—Civil Protection Order Proceedings

The Commission recommends amendments to Civ.R. 65.1(C) to provide the method for service of process of motions for modifications, contempt, renewal, or termination of civil protection orders or consent agreements. The Staff Notes to the amendments also reiterate the method for initial service of process and for subsequent service in Civil Protection Order proceedings.

Amendments to Civ.R. 65.1(F)(3) apply the provisions of that division to motions for modifications, contempt, renewal, or termination of civil protection orders or consent agreements.

Finally, amendments to Civ.R. 65.1(G) require a party to file objections to court orders entered in matters referred to magistrates prior to appealing those court orders.

Ohio Rules of Criminal Procedure

Crim.R. 16—Discovery: Right to Copy or Photograph

The Commission recommends an amendment to Crim.R. 16 to put into effect the rule announced in *State v. Athon*, 2013-Ohio-1956, where the Court addressed the question of when a

request for discovery by a criminal defendant triggers reciprocal discovery obligations under Crim.R. 16(H). The amendment establishes a standard designed to allow defense counsel to determine, at the time of filing a public records request, whether that request would trigger reciprocal discovery.

Ohio Rules of Evidence

Evid.R. 601—General Rules of Competency, Medical Malpractice Claims

The Commission recommends amendments to Evid.R. 601(D) to clarify the application of the rule and to incorporate the substance of the provisions of R.C. 2743.43 to the extent those provisions are not inconsistent with the rule.

The amendments make clear that Evid.R. 601(D) applies only to expert testimony as to liability in a medical claim, as defined by R.C. 2305.113, asserted against a physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist. The rule does not apply to expert testimony for any other medical claims, or for any dental, optometric, or chiropractic claims, as defined by R.C. 2305.113.

The structure of Evid.R. 601(D) is also revised to more-closely resemble the structure of R.C. 2743.43, now superseded by the rule which continues to require that the person devote at least one half of his or her professional time to the active clinical practice in his or her field of licensure, or to its instruction in an accredited school.

Evid.R. 803—Hearsay; Absence of a Public Record or Entry, Testimonial Documents and Notice

The Commission proposes amendments to Evid.R. 803(10) to adopt the 2011 federal stylistic changes as well as add 803(10)(b) which is modeled upon amendments made to the Fed.R.Evid. 803(10) after the United States Supreme Court released their ruling in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009). The recommended amendment would require a prosecutor, in a criminal case, to provide written notice to the defense that the prosecutor intends to offer a testimonial certification stating the absence of a public record. The defense would be afforded the opportunity to object in writing within seven days of receiving the notice (the court would have flexibility in establishing other timelines). *Melendez-Diaz* expressly allows for the admission of a testimonial certificate provided the defense is provided notice and does not timely demand the presence of the person who prepared the certificate.

Ohio Rules of Juvenile Procedure

Juv.R. 20—Service and Filing of Papers

The Commission recommends amendment of Juv.R. 20 to harmonize the rule with Civ.R. 5(D). The current Juvenile rule provides that “(a)ll papers required to be served upon a party shall be filed *simultaneously with or immediately after service*” (emphasis added). The proposed amendments to Juv.R. 20 adopt the "within three-days after service" requirement Civ.R. 5(D). This

amendment also harmonizes the rule with the proposed amendments to Civ.R. 5(D) by making this general rule for the time of filing subject to, and superseded by, any provision in other juvenile rules, local rules, or orders of court that set a different time for filing.

97 be contained in a newspaper publication. The notice shall be posted in the required locations for
98 six successive weeks.
99

100 The clerk shall also cause the complaint and summons to be mailed by United States
101 ordinary mail, address correction requested, to the defendant's last known address. The clerk shall
102 obtain a certificate of mailing from the United States Postal Service. If the clerk is notified of a
103 corrected or forwarding address of the defendant within the six-week period that notice is posted
104 pursuant to division (A)(2) of this rule, the clerk shall cause the complaint and summons to be
105 mailed to the corrected or forwarding address. The clerk shall note the name, address, and date of
106 each mailing on the docket.
107

108 After the last week of posting, the clerk shall note on the docket where and when notice
109 was posted. Service shall be complete upon the entry of posting.
110

111 **[Existing language unaffected by the amendments is omitted to conserve space]**
112

113
114 **Staff Note (July 1, 2016 Amendment)**
115

116 **Division (A): Residence unknown.**
117

118 Division (A)(2) is amended to provide that publication by posting service of process is an
119 appropriate method of service in Civ.R. 65.1 civil protection order proceedings under the conditions
120 described in that division of the rule. As stated in division (A)(2) of the rule, a petitioner who is proceeding
121 in forma pauperis and who requests publication by posting service of process must file an affidavit with the
122 court containing the same averments required by division (A)(1) of the rule, i.e., that service of summons
123 cannot be made because the residence of the defendant is unknown to the affiant, all of the efforts made
124 on behalf of the party to ascertain the residence of the defendant, and that the residence of the defendant
125 cannot be ascertained with reasonable diligence.
126

127 The service of process by publication by way of posting of a civil protection order shall not impact
128 the prompt entry of such an order into the protection order file of the National Crime Information Center. It
129 is to be noted that the alternative method of posting on the website of the clerk of courts is not available for
130 service of protection orders issued pursuant to Civ.R. 65.1.
131

132
133
134 **RULE 5. Service and Filing of Pleadings and Other Papers Subsequent to the**
135 **Original Complaint**
136

137 **[Existing language unaffected by the amendments is omitted to conserve space]**
138

139 **(D) Filing.** ~~All documents, Unless otherwise provided by these rules, by local rule, or~~
140 ~~by order of the court, any paper after the original complaint, that is required to be served upon a~~
141 ~~party shall be filed with the court within three days after service, but. The following discovery~~
142 ~~requests and responses shall not be filed until they are used in the proceeding or the court orders~~
143 ~~filing; depositions upon oral examination, interrogatories, requests for documents or tangible~~
144 ~~things or to permit entry on land, and requests for admission, and answers and responses thereto~~
145 ~~shall not be filed unless on order of the court or for use as evidence or for consideration of a motion~~

146 ~~in the proceeding.~~

147

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

149

150

151

152

Staff Note (July 1, 2016 Amendments)

153 Division 5(D), the general rule for the time for filing, is amended to conform the language to the
154 2007 stylistic changes to Fed.R.Civ.P. 5(d) to the extent that the substance of the Ohio and Federal Rules
155 are the same, and to make this general rule for the time for filing subject to, and superseded by, any
156 provision in other civil rules, local rules, or orders of court that set a different time for filing.

157

158

159

160 **RULE 10. Form of Pleadings**

161

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

163

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

165

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

170

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

173

174 (a) Except as provided in division (D)(2)(b) of this rule, a complaint that
175 contains a medical claim, dental claim, optometric claim, or chiropractic claim, as defined
176 in ~~section R.C. 2305.113 of the Revised Code~~, shall ~~include~~ be accompanied by one or
177 more affidavits of merit relative to each defendant named in the complaint for whom expert
178 testimony is necessary to establish liability. Affidavits of merit shall be provided by an
179 expert witness ~~pursuant to Rules 601(D) and~~ meeting the requirements of Evid.R. 702 of
180 ~~the Ohio Rules of Evidence~~ and, if applicable, also meeting the requirements of Evid.R.
181 601(D). Affidavits of merit shall include all of the following:

182

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

186

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

189

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

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

194
195 **Staff Notes (July 1, 2016 Amendments)**
196

197 Rule 10(D)(2) applies to medical, dental, optometric, and chiropractic claims, as defined by R.C.
198 2305.113, and was adopted in 2005 to require that, at the time of the filing of a complaint asserting any
199 such claims, the complaint must be accompanied by certificates of expert review. The rule is amended to
200 remedy an inaccuracy in the prior rule which incorrectly indicated that Evid.R. 601(D) applies to the
201 qualifications of an affiant for all medical, dental, optometric, and chiropractic claims. While Evid.R. 702
202 applies to the qualifications of an affiant for all medical, dental, optometric, and chiropractic claims, Evid.R.
203 601(D) applies only to the qualifications of an affiant for certain medical claims. See Evid.R. 601(D).
204
205
206

207 **RULE 19.1 Compulsory Joinder**
208

209 (A) **Persons to be joined.** A person who is subject to service of process shall be joined
210 as a party in the action, except as provided in ~~subdivision~~ division (B) of this rule, if the person
211 has an interest in or a claim arising out of the following situations:
212

213 (1) Personal injury or property damage to the person or property of the decedent which
214 survives the decedent's death and a claim for wrongful death to the same decedent if caused by the
215 same wrongful act;
216

217 (2) Personal injury or property damage to a ~~husband or wife~~ spouse and a claim of the
218 other spouse for loss of consortium or expenses or property damage if caused by the same wrongful
219 act;
220

221 (3) Personal injury or property damage to a minor and a claim of the parent or guardian
222 of the minor for loss of consortium or expenses or property damage if caused by the same wrongful
223 act;
224

225 (4) Personal injury or property damage to an employee or agent and a claim of the
226 employer or principal for property damage if caused by the same wrongful act.
227

228 If ~~he~~ the person has not been so joined, the court, subject to ~~subdivision~~ division (B) ~~hereof~~
229 of this rule, shall order that ~~he~~ the person be made a party upon timely assertion of the defense of
230 failure to join a party as provided in ~~Rule~~ Civ.R. 12(B)(7). If the defense is not timely asserted,
231 waiver is applicable as provided in ~~Rule~~ Civ.R. 12(G) and (H). If ~~he~~ the person should join as a
232 plaintiff but refuses to do so, ~~he~~ the person may be made a defendant, or, in a proper case, an
233 involuntary plaintiff. In the event that such joinder causes the relief sought to exceed the
234 jurisdiction of the court, the court shall certify the proceedings in the action to the court of common
235 pleas.
236

237 (B) **Exception to compulsory joinder.** If a party to the action or a person described in
238 ~~subdivision~~ division (A) shows good cause why that person should not be joined, the court shall
239 proceed without requiring joinder.
240

241 (C) **Pleading reasons for nonjoinder.** A pleading asserting a claim for relief shall
242 state the names, if known to the pleader, of any persons as described in ~~subdivision~~ divisions
243 (A)(1), (2), (3), or (4) ~~hereof~~ of this rule who are not joined, and the reasons why they are not
244 joined.

245
246 (D) **Exception of class actions.** This rule is subject to the provisions of Rule 23.
247

248
249 **Staff Note (July 1, 2016 Amendments)**
250

251 The rule is amended to make gender neutral language changes, including at division 19.1(A)(2) where
252 "spouse " is substituted for "husband or wife" as a person to be joined in particular actions. The
253 amendments are made accordance with the July 26, 2015 Administrative Action of the Ohio Supreme Court,
254 06/26/2015 Administrative Actions, 2015-Ohio-2568, which ordered that the Ohio Rules of Civil Procedure
255 be construed and amended as gender neutral where appropriate to comply with the decision of U.S.
256 Supreme Court in *Obergefell v. Hodges*, 576 U.S. _____, 135 S.Ct. 2584 (2015). The amendments also
257 make non-substantive stylistic changes to the rule.
258

259
260
261 **RULE 37. Failure to Make Discovery; Sanctions**
262

263 (A) **Motion for an order compelling discovery.** ~~Upon reasonable notice to other~~
264 ~~parties and all persons affected thereby, a party may move for an order compelling discovery as~~
265 ~~follows:~~
266

267 (1) **In general.** On notice to other parties and all affected persons, a party may move
268 for an order compelling discovery. The motion shall include a certification that the movant has in
269 good faith conferred or attempted to confer with the person or party failing to make discovery in
270 an effort to obtain it without court action.
271

272 (2) **Appropriate court.** A motion for an order to a party or a deponent shall be made
273 to the court ~~in which~~ where the action is pending.
274

275 (2) ~~Motion~~ (3) **Specific motions.**
276

277 (a) **To compel a discovery response.** A party seeking discovery may move for an
278 order compelling an answer, designation, production, or inspection. This motion may be made if:
279

280 (i) ~~If a~~ A deponent fails to answer a question ~~propounded or submitted~~ asked under
281 Rule Civ.R. 30 or Rule Civ.R. 31, or a;
282

283 (ii) A corporation or other entity fails to make a designation under Civ.R. 30(B)(5) or
284 Civ.R. 31(A);
285

286 (iii) A party fails to answer an interrogatory submitted under ~~Rule Civ.R. 33, or if a;~~
287

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

292
293 (b) ~~On matters relating~~ **Related to a deposition** ~~on oral examination. When taking an~~
294 ~~oral deposition, the proponent of the party asking a question may complete or adjourn the~~
295 ~~examination before he applies~~ moving for an order.

296
297 ~~(3)(4)~~ **Evasive or incomplete answer or response.** For purposes of ~~this subdivision~~
298 ~~division (A), an evasive or incomplete answer is~~ or response shall be treated as a failure to answer
299 or respond.

300
301 ~~(4) Award~~ **(5) Payment of expenses of motion; protective orders.**

302
303 (a) **If the motion is granted.** If the motion is granted, the court shall, after opportunity
304 ~~for hearing giving an opportunity to be heard, require the party or deponent who opposed whose~~
305 ~~conduct necessitated the motion or, the party or attorney advising such that conduct, or both of~~
306 ~~them to pay to the moving party the movant's reasonable expenses incurred in obtaining the order~~
307 ~~making the motion, including attorney's fees, unless the court finds that the opposition to the~~
308 ~~motion. But the court shall not order this payment if:~~

309
310 (i) The movant filed the motion before attempting in good faith to obtain the discovery
311 without court action;

312
313 (ii) The opposing party's response or objection was substantially justified; or that other

314
315 (iii) Other circumstances make an award of expenses unjust.

316
317 (b) **If the motion is denied.** If the motion is denied, the court may issue any protective
318 order authorized under Civ.R. 26(C) and shall, after giving an opportunity for hearing to be heard,
319 ~~require the moving party or movant, the attorney advising filing the motion, or both of them to pay~~
320 ~~to the party or deponent who opposed the motion the its reasonable expenses incurred in opposing~~
321 ~~the motion, including attorney's fees, unless the court finds that the making of. But the court shall~~
322 not order this payment if the motion was substantially justified or that other circumstances make
323 an award of expenses unjust.

324
325 (c) **If the motion is granted in part and denied in part.** If the motion is granted in
326 part and denied in part, the court may issue any protective order authorized under Civ.R. 26(C)
327 and may, after giving an opportunity to be heard, apportion the reasonable expenses incurred in
328 relation to the motion among the parties and persons in a just manner for the motion.

329
330 **(B) Failure to comply with order; sanctions.**

331
332 (1) ~~If a deponent fails to be sworn or to answer a question after being directed to do so~~
333 ~~by the court, the failure may be considered a contempt of that court.~~

334 ~~(2)~~**(1) For not obeying a discovery order.** If ~~any~~ a party or ~~an~~ a party's officer, director,
335 or managing agent of a party or a ~~person~~ witness designated under Rule Civ.R. 30(B)(5) or Rule
336 Civ.R. 31(A) to testify on behalf of a party fails to obey an order to provide or permit discovery,
337 including an order made under ~~subdivision (A) of this rule and Rule Civ.R. 35 or Civ.R. 37(A),~~
338 the court ~~in which the action is pending~~ may ~~make such issue further just orders in regard to the~~
339 ~~failure as are just, and among others.~~ They may include the following:

340
341 (a) ~~An order that the matters regarding which the order was made or any~~ Directing that
342 the matters embraced in the order or other designated facts shall be taken to be as established for
343 the purposes of the action in accordance with the claim of the party obtaining the order as the
344 prevailing party claims;

345
346 (b) ~~An order refusing to allow~~ Prohibiting the disobedient party to support or oppose
347 from supporting or opposing designated claims or defenses, or ~~prohibiting him~~ from introducing
348 designated matters in evidence;

349
350 (c) ~~An order striking out pleadings or parts thereof~~ Striking pleadings in whole or in
351 part; or staying

352
353 (d) Staying further proceedings until the order is obeyed, ~~or dismissing;~~

354
355 (e) Dismissing the action or proceeding ~~or any part thereof in whole or in part, or~~
356 rendering;

357
358 (f) Rendering a default judgment by default against the disobedient party; or

359
360 (d) ~~In lieu of any of the foregoing orders or in addition thereto, an order treating (g)~~
361 Treating as a contempt of court the failure to obey any orders except an order to submit to a
362 physical or mental examination;

363
364 ~~(e)~~**(2) For not producing a person for examination.** ~~Where~~ If a party ~~has failed~~ fails to
365 comply with an order under Rule Civ.R. 35(A) requiring him it to produce another person for
366 examination, such the court may issue any of the orders as are listed in subsections(a), (b), and (e)
367 of this subdivision Civ.R. 37(B)(1), unless the disobedient party failing to comply shows that he
368 is unable to it cannot produce such the other person for examination.

369
370 ~~In lieu of any of the foregoing orders~~ **(3) Payment of expenses.** Instead of or in
371 addition thereto to the orders above, the court shall ~~require the party failing to obey the order or~~
372 the disobedient party, the attorney advising ~~him~~ that party, or both to pay the reasonable expenses,
373 including attorney's fees, caused by the failure, unless ~~the court expressly finds that~~ the failure was
374 substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

375
376 (C) **Failure to supplement an earlier response or to admit.**

377
378 **(1) Failure to supplement.** If a party fails to provide information or identify a witness
379 as required by Civ.R. 26(E), the party is not allowed to use that information or witness to supply

380 evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is
381 harmless. In addition to or instead of this sanction, the court, on motion and after giving an
382 opportunity to be heard:

383
384 (a) May order payment of the reasonable expenses, including attorney's fees, caused
385 by the failure;

386
387 (b) May inform the jury of the party's failure; and

388
389 (c) May impose other appropriate sanctions, including any of the orders listed in Civ.R.
390 37(B)(1)(a) through (f).

391
392 ~~Expenses on failure to admit~~ **(2) Failure to admit.** ~~If a party, after being served~~
393 ~~with a request for admission under Rule 36, fails to admit the genuineness of any documents or~~
394 ~~the truth of any matter as what is requested under Civ.R. 36, and if the party requesting the~~
395 ~~admissions thereafter party later proves the genuineness of the a document to be genuine or the~~
396 ~~truth of the matter he true, the requesting party may apply to the court for an order requiring the~~
397 ~~other move that the party who failed to admit to pay him the reasonable expenses, including~~
398 ~~attorney's fees, incurred in making that proof, including reasonable attorney's fees. Unless the The~~
399 ~~court shall so order unless:~~

400
401 (a) ~~The request had been~~ was held objectionable under Rule Civ.R. 36(A);

402
403 (b) ~~or the court finds that there was good reason for the failure to admit or that the The~~
404 ~~admission sought was of no substantial importance, the order shall be made.;~~

405
406 (c) The party failing to admit had a reasonable ground to believe that it might prevail
407 on the matter; or

408
409 (d) There was other good reason for the failure to admit.

410
411 **(D) ~~Failure of party~~ Party's failure to attend at its own deposition ~~or~~, serve**
412 **answers to interrogatories, or respond to a request for inspection.**

413
414 **If (1) In general.**

415
416 **(a) Motion; grounds for sanctions. The court may, on motion, order sanctions if:**

417
418 (i) If a party or an a party's officer, director, or a managing agent of a party or a person
419 designated under Rule Civ.R. 30(B)(5) or Rule Civ.R. 31(A) to testify on behalf of a party fails
420 (1) to appear before the officer who is to take his deposition, after being served with a proper
421 notice, to appear for that person's deposition; or

422
423 (2) to serve answers or objections to interrogatories submitted under Rule 33, after
424 proper service of the interrogatories, or (3) to serve a written response to a request for inspection
425 submitted under Rule 34, after proper service of the request, the court in which the action is

426 ~~pending on motion and notice may make such orders in regard to the failure as are just, and among~~
427 ~~others it may take any action authorized under subsections (a), (b), and (c) of subdivision (B)(2)~~
428 ~~of this rule (ii) A party, after being properly served with interrogatories under Civ.R. 33 or a~~
429 ~~request for inspection under Civ.R. 34, fails to serve its answers, objections, or written response.~~

430
431 **(b) Certification.** A motion for sanctions for failing to answer or respond shall include
432 a certification that the movant has in good faith conferred or attempted to confer with the party
433 failing to act in an effort to obtain the answer or response without court action.

434
435 **(2) Unacceptable excuse for failing to act.** A failure described in Civ.R. 37(D)(1)(a)
436 is not excused on the ground that the discovery sought was objectionable, unless the party failing
437 to act has a pending motion for a protective order under Civ.R. 26(C).

438
439 **(3) Types of sanctions.** Sanctions may include any of the orders listed in Civ.R.
440 37(B)(1)(a) through (f). In lieu of any order or in addition thereto to these sanctions, the
441 court shall require the party failing to act or, the attorney advising him that party, or both to pay
442 the reasonable expenses, including attorney's fees, caused by the failure, unless the court expressly
443 finds that the failure was substantially justified or that other circumstances make an award of
444 expenses unjust.

445
446 ~~The failure to act described in this subdivision may not be excused on the ground that the~~
447 ~~discovery sought is objectionable unless the party failing to act has applied for a protective order~~
448 ~~as provided by Rule 26(C).~~

449
450 ~~**(E)** Before filing a motion authorized by this rule, the party shall make a reasonable~~
451 ~~effort to resolve the matter through discussion with the attorney, unrepresented party, or person~~
452 ~~from whom discovery is sought. The motion shall be accompanied by a statement reciting the~~
453 ~~efforts made to resolve the matter in accordance with this section.~~

454
455 ~~**(F) Electronically (E) Failure to provide electronically stored information.**~~ Absent
456 ~~exceptional circumstances, a court may not impose sanctions under these rules on a party for failing~~
457 ~~to provide electronically stored information lost as a result of the routine, good-faith operation of~~
458 ~~an electronic information system. The court may consider the following factors in determining~~
459 ~~whether to impose sanctions under this division:~~

460
461 (1) Whether and when any obligation to preserve the information was triggered;

462
463 (2) Whether the information was lost as a result of the routine alteration or deletion of
464 information that attends the ordinary use of the system in issue;

465
466 (3) Whether the party intervened in a timely fashion to prevent the loss of information;

467
468 (4) Any steps taken to comply with any court order or party agreement requiring
469 preservation of specific information;

470
471 (5) Any other facts relevant to its determination under this division.
472

473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523

Staff Notes (July 1, 2016 Amendments)

The rule is amended to adopt the 2007 stylistic changes to Fed.R.Civ.P. 37. In adopting those federal stylistic changes, the amendments also add provisions of the Federal rule that make the following substantive changes to existing Civ.R. 37:

1. Including within the scope of amended Civ.R. 37(A)(3), "a corporation or other entity fails to make a designation under Civ.R. 30(B)(5) or Civ.R. 31(A)";
2. Adding to the exceptions to amended Civ.R. 37(A)(5), "the movant filed the motion before attempting in good faith to obtain the discovery without court action";
3. Adding to the remedies available under amended Civ.R. 37(A)(5)(b) and Civ.R. 37(A)(5)(c), "the court may issue any protective order authorized under Rule 26(C)"; and
4. Adding amended Civ.R. 37(C)(1) addressing failure to supplement an earlier response.

The 2016 amendments to the Ohio rule do not incorporate the 2015 changes made to Fed.R.Civ.P. 37.

RULE 54. Judgments; Costs; Attorney Fees

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

(E) Attorney Fees. Whenever a provision of these rules authorizes a court to award attorney fees, including attorney fees described in the provision as "caused" or "incurred," the court may award the reasonable value of the services performed by the attorney, whether or not the party represented by that attorney actually paid or is obligated to pay the attorney for such time.

Staff Notes (July 1, 2016 Amendment)

A new division (E) is added to supersede any application of the decision in *State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 116 Ohio St.3d 88, 2007–Ohio–5542 to an award of attorney fees by specifying that when any provision of the rules authorizes an award of attorney fees, the court may award the reasonable value of the services performed by the attorney, whether or not the party actually paid or is obligated to pay the attorney for such services.

RULE 65.1. Civil Protection Orders

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

(C) Service.

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

524 (2) **Initial service.** Initial service, and service of any ex parte protection order that is
525 entered, shall be made in accordance with the provisions for personal service of process within the
526 state under Civ. R. 4.1(B) or outside the state under Civ. R. 4.3(B)(2). Upon failure of such
527 personal service, or in addition to such personal service, service may be made in accordance with
528 any applicable provision of Civ. R. 4 through Civ. R. 4.6.

529
530 (3) **Subsequent service.** After service has been made in accordance with division
531 (C)(2) of this rule, any additional service required to be made during the course of the proceedings
532 on Respondent and, if applicable, on the parent, guardian, or legal custodian of Respondent, shall
533 be made in accordance with the provisions of Civ.R. 5(B).

534
535 (4) **Modification; contempt; renewal; termination.**

536
537 (a) Service of a motion for modification, contempt, renewal, or termination of a civil
538 protection order issued after a full hearing or an approved consent agreement shall be made in the
539 manner provided for service of process under Civ. R. 4 through Civ. R. 4.6.

540
541 (b) After service has been made in accordance with division (C)(4)(a) of this rule, any
542 additional service required to be made on the Respondent and, if applicable, on the parent,
543 guardian, or legal custodian of the Respondent, shall be made in accordance with provisions of
544 Civ. R. 5(B).

545
546 (5) **Confidentiality.** Upon request of the Petitioner, any method of service provided
547 by Civ. R. 4 through 4.6 or by Civ. R. 5(B) may be limited or modified by the court to protect the
548 confidentiality of the Petitioner’s address in making service under this division.

549
550 [Existing language unaffected by the amendments is omitted to conserve space]

551
552 (F) **Proceedings in matters referred to magistrates.**

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

555
556 (3) **Full hearing proceedings.** The following shall apply when these special statutory
557 proceedings are referred to a magistrate for full hearing and determination:

558
559 [Existing language unaffected by the amendments is omitted to conserve space]

560
561 (e) **Motions for modification, contempt, renewal, or termination of civil protection**
562 **orders.** When a motion for modification, contempt, renewal, or termination of a civil protection
563 order is referred to a magistrate for determination, the provisions of this division (F)(3) relating to
564 full hearing proceedings shall apply unless such provisions would by their nature be clearly
565 inapplicable.

566
567 (G) **Final order; objections prior to appeal; stay of appeal.** Notwithstanding the
568 provisions of any other rule, an order entered by the court under division (F)(3)(c) or division
569 (F)(3)(e) of this rule, with or without the subsequent filing of objections, is a final, appealable

570 order ~~that can be appealed upon issuance of the order. The timely filing of~~ However, a party must
571 timely file objections to such an order under division (F)(3)(d) of this rule prior to filing an appeal,
572 and the timely filing of such objections shall stay the running of the time for appeal until the filing
573 of the court's ruling on the objections.

574
575
576 **Staff Notes (July 1, 2016 Amendment)**

577
578 **Division (C): Service**

579
580 It is well-established that all proceedings under R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214
581 must follow the Rules of Civil Procedure. See, e.g., *State v. Smith*, 136 Ohio St. 3d 1, 2013-Ohio-1698 at
582 ¶21. Accordingly, division (C) provides clear direction regarding the methods of service in civil protection
583 order proceedings. Division (C)(2) directs the clerk of court to cause the first attempt at initial service in
584 these proceedings, including service of a copy of the petition and an ex parte order, by personal service of
585 process. This method of service provides the respondent expeditious notice consistent with the urgent
586 nature of these proceedings. Notwithstanding, division (C)(2) also recognizes, only upon failure of personal
587 service, the other methods of service of process in the Rules of Civil Procedure, i.e., Civ R. 4 through 4.6,
588 provide similar reliable form of notice for the initial service.

589
590 The plain language of division (C)(3) indicates that subsequent service in civil protection order
591 proceedings after the petition and ex parte order has been served, including service of a protection order
592 entered after full hearing, must follow Civ.R. 5(B). In following the authority of Civ.R. 5(B), division (C)(3)
593 fosters consistency regarding service subsequent to the original complaint, provides a clear direction and
594 discretion regarding the methods of service appropriate for subsequent service in civil protection order
595 proceedings under Civ.R. 5(B), and ensures the Respondent receives reliable notice of full hearing civil
596 protection orders. Additionally, Civ.R. 5(B)(3) requires a proof of service record be created, which includes
597 the date and specific manner by which the service was made under Civ.R. 5(B)(2).

598
599 Consistent with R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214, division (C)(4)(a) recognizes that
600 the statutory urgency of adjudicating a civil protection order petition is not part of a motion for renewal,
601 contempt, modification, or termination of a full hearing civil protection order or an approved consent
602 agreement. Accordingly, an initial attempt by personal service is not required and any of the methods of
603 service under Civ.R. 4 through Civ.R. 4.6 is appropriate for such a motion.

604
605 Division (C)(4)(b) aligns with division (C)(3) of the rule and clarifies that subsequent service in
606 proceedings for renewal, contempt, modification, or termination of a full hearing civil protection order or an
607 approved consent agreement is to be made in accordance with Civ.R. 5(B).

608
609 **Division (F): Proceedings in matters referred to magistrates.**

610
611 A new division (F)(3)(e) is also added to address issues discussed in *Schneider v. Razek*, 2015-
612 Ohio-410 (8th Dist.) relating to proceedings on motions for renewal, contempt, modification, or termination
613 of civil protection orders.

614
615 **Division (G): Final order; objections prior to appeal; stay of appeal.**

616
617 Division (G) is amended to require that a party must file objections prior to filing an appeal from a
618 trial court's otherwise appealable adoption, modification, or rejection of a magistrate's ruling. This
619 amendment is grounded on two key principles. First, it promotes the fair administration of justice, including
620 affording the trial court an opportunity to review the transcript and address any insufficiency of evidence or
621 abuse of discretion that would render the order or a term of the order unjust. Second, it creates a more
622 robust record upon which the appeal may proceed.

623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650

OHIO RULES OF CRIMINAL PROCEDURE

RULE 16. Discovery and inspection

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

(H) Discovery: Right to Copy or Photograph. If the defendant serves a written demand for discovery or any other pleading seeking disclosure of evidence on the prosecuting attorney, a reciprocal duty of disclosure by the defendant arises without further demand by the state. A public records request made by the defendant, directly or indirectly, shall be treated as a demand for discovery in a criminal case if, and only if, the request is made to an agency involved in the prosecution or investigation of that case. The defendant shall provide copies or photographs, or permit the prosecuting attorney to copy or photograph, the following items related to the particular case indictment, information or complaint, and which are material to the innocence or alibi of the defendant, or are intended for use by the defense as evidence at the trial, or were obtained from or belong to the victim, within the possession of, or reasonably available to the defendant, except as provided in division (J) of this rule:

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

Staff Notes (July 1, 2016 Amendment)

In *State v. Athon*, 2013-Ohio-1956, the Court addressed the question of when a request of discovery by a criminal defendant triggers reciprocal discovery obligations under Crim.R. 16(H). The amendment seeks to put into effect the rule announced by the Court in *Athon*, and articulates a standard designed to allow defense counsel to be able to determine, at the time of filing a public records request, whether that request would trigger reciprocal discovery.

651 **OHIO RULES OF EVIDENCE**

652
653 **RULE 601. General Rule of Competency**

654 Every person is competent to be a witness except:

655
656 **[Existing language unaffected by the amendments is omitted to conserve space]**

657 (D) A person giving expert testimony on the issue of liability in any medical claim, as
658 defined in R.C. 2305.113, asserted in any civil action against a physician, podiatrist, or hospital
659 arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist, unless
660 the:

661
662 (1) The person testifying is licensed to practice medicine and surgery, osteopathic
663 medicine and surgery, or podiatric medicine and surgery by the state medical board or by the
664 licensing authority of any state, and unless the;

665
666 (2) The person devotes at least one-half of his or her professional time to the active
667 clinical practice in his or her field of licensure, or to its instruction in an accredited school. This;
668 and

669
670 (3) The person practices in the same or a substantially similar specialty as the
671 defendant. The court shall not permit an expert in one medical specialty to testify against a health
672 care provider in another medical specialty unless the expert shows both that the standards of care
673 and practice in the two specialties are similar and that the expert has substantial familiarity between
674 the specialties.

675
676 If the person is certified in a specialty, the person must be certified by a board recognized
677 by the American board of medical specialties or the American board of osteopathic specialties in
678 a specialty having acknowledged expertise and training directly related to the particular health care
679 matter at issue.

680
681 Nothing in this division shall be construed to limit the power of the trial court to adjudge
682 the testimony of any expert witness incompetent on any other ground, or to limit the power of the
683 trial court to allow the testimony of any other witness, on a matter unrelated to the liability issues
684 in the medical claim, when that testimony is relevant to the medical claim involved.

685
686 This division shall not prohibit other medical professionals who otherwise are competent
687 to testify under these rules from giving expert testimony on the appropriate standard of care in
688 their own profession in any claim asserted in any civil action against a physician, podiatrist,
689 medical professional, or hospital arising out of the diagnosis, care, or treatment of any person.

690
691 **[Existing language unaffected by the amendments is omitted to conserve space]**

692
693
694
695
696
697

698 **Staff Notes (July 1, 2016 Amendments)**

699
700 Nonsubstantive revisions are made to Evid.R. 601(D) to make clear that the rule applies only to
701 expert testimony as to liability in any medical claim, as defined by R.C. 2305.113, asserted against a
702 physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person by a physician
703 or podiatrist. The rule does not apply to expert testimony for any other medical claims, or for any dental,
704 optometric, or chiropractic claims, as defined by R.C. 2305.113.

705
706 The structure and provisions of Evid.R. 601(D) are also revised to more-closely resemble the
707 structure of R.C. 2743.43 and to incorporate the provisions of that statute that are not inconsistent with the
708 provisions of the current rule. Pursuant to authority of Article IV, Section 5(B) of the Ohio Constitution, the
709 provisions of R.C. 2743.43 are superseded in their entirety by the amended rule.

710
711
712
713 **RULE 803. Exceptions to the Rule Against Hearsay Exceptions; Availability of**
714 **Declarant Immaterial —Regardless of Whether the Declarant Is Available as a Witness.**

715
716 The following are not excluded by the hearsay rule against hearsay, even though regardless
717 of whether the declarant is available as a witness:

718
719 **[Existing language unaffected by the amendments is omitted to conserve space]**

720
721 **(10) Absence of public record or entry. To prove the absence of a record, report,**
722 **statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of**
723 **which a record, report, statement, or data compilation, in any form, was regularly made and**
724 **preserved by a public office or agency, evidence in the form of a certification in accordance with**
725 **Rule 901(B)(10) or testimony, that diligent search failed to disclose the record, report, statement,**
726 **or data compilation, or entry Testimony—or a certification under Evid.R. 901(B)(10)—that a**
727 **diligent search failed to disclose a public record or statement if:**

728
729 **(a) The testimony or certification is admitted to prove that:**

730
731 **(i) The record or statement does not exist; or**

732
733 **(ii) A matter did not occur or exist, if a public office regularly kept a record or statement**
734 **for a matter of that kind; and**

735
736 **(b) In a criminal case, a prosecutor who intends to offer a certification provides written**
737 **notice of that intent at least 14 days before trial, and the defendant does not object in writing within**
738 **7 days of receiving the notice — unless the court sets a different time for the notice or the objection.**

739
740 **[Existing language unaffected by the amendments is omitted to conserve space]**

741
742
743 **Staff Note (July 1, 2016 Amendment)**

744
745 The amendment adopts the 2011 federal stylistic changes made to the introductory language of
746 Fed.R.Evid. 803 and to Fed.R.Evid. 803(10).

747

748 The amendment also adds Evid.R. 803(10)(b) which is modeled on a similar amendment made to
749 Fed.R.Evid. 803(10) in 2013 in response to the United States Supreme Court ruling in *Melendez-Diaz v.*
750 *Massachusetts*, 557. U.S. 305 (2009). As explained in the Federal Advisory Committee notes to the 2013
751 amendment, the *Melendez-Diaz* Court declared that a testimonial certificate could be admitted if the
752 accused is given advance notice and does not timely demand the presence of the official who prepared the
753 certificate. The language of Fed.R.Evid. 803(10)(B) and Ohio Evid.R. 803(10)(b) incorporates, with minor
754 variations, a "notice-and-demand" procedure that was approved by the *Melendez-Diaz* Court.

755 OHIO RULES OF JUVENILE PROCEDURE

756
757 **RULE 20. Service and Filing of Papers When Required Subsequent to Filing of**
758 **Complaint.**

759
760 (A) **Service: when required.** Written notices, requests for discovery, designation of
761 record on appeal and written motions, other than those which are heard ex parte, and similar papers
762 shall be served upon each of the parties.

763
764 (B) **Service: how made; proof of service.** Whenever under these rules or by an order
765 of the court service is required or permitted to be made upon a party represented by an attorney,
766 the service shall be made upon the attorney unless service is ordered by the court upon the party.
767 Service upon the attorney or upon the party, and proof of service, shall be made in the manner
768 provided in Civ. R. 5(B). Papers filed with the court shall not be considered until proof of service
769 is endorsed thereon or separately filed.

770
771 (C) **Filing.** ~~All papers~~ Unless otherwise provided by these rules, by local rule, or by
772 order of the court, any paper after the complaint that is required to be served upon a party shall be
773 filed simultaneously with or immediately with the court within three days after service. Discovery
774 requests and responses shall not be filed until they are used in the proceeding or the court orders
775 filing. Papers filed with the court shall not be considered until proof of service is endorsed thereon
776 or separately filed. The proof of service shall state the date and the manner of service and shall be
777 signed and filed in the manner provided in Civil Rule 5(D).

778
779 (D) **Filing with the court defined.** Filing with the court shall be as defined by Civ.R.
780 5(E).

781
782
783 **Staff Note (July 1, 2016 Amendments)**

784
785 The rule is amended to conform its provisions to the 2016 amendments of Civ.R. 5(D). The
786 amendments retain the substance of Juv.R. 20 except (1) the time for filing is changed from "simultaneously
787 or immediately after service" to "within three days after service," (2) this general rule for the time for filing is
788 made subject to, and superseded by, any provision in other juvenile rules, local rules, or orders of court that
789 set a different time for filing, and (3) division (D) is added to define "filing with the court" as it is defined by
790 Civ.R. 5(E).