

PROPOSED AMENDMENTS TO THE OHIO RULES OF PRACTICE AND PROCEDURE

Comments Requested: The Supreme Court of Ohio will accept public comments until February 5, 2024, on the following proposed amendments to the Ohio Rules of Appellate Procedure, the Ohio Rules of Civil Procedure, the Ohio Rules of Criminal Procedure, the Ohio Rules of Evidence, and the Ohio Rules of Juvenile Procedure.

Comments on the proposed amendments should be submitted in writing to: Michel Jendretzky, Legal Counsel, Supreme Court of Ohio, 65 South Front Street, 7th Floor, Columbus, Ohio 43215-3431 or ruleamendments@sc.ohio.gov not later than February 5, 2024. Please include your full name and mailing address in any comments submitted by e-mail.

Key to Adopted Amendments:

1. Existing language appears in regular type. Example: text
2. Existing language to be deleted appears in strikethrough. Example: ~~text~~
3. New language to be added appears in underline. Example: text

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

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.

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

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

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

Pursuant to this rule-making authority, the Supreme Court has created the Commission on the Rules of Practice and Procedure (“Commission”). The Commission consists of twenty-one 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 Supreme Court of the publication of the proposed amendments is neither an endorsement of, nor a declaration of intent to approve, the proposed amendments. It is an invitation to the judiciary, the practicing bar, and the public at large to provide thoughtful and meaningful feedback on the legal and practical effect of the proposed amendments. The public comments are reviewed by the Commission, which may withdraw, amend, or resubmit all or any provision of the proposed amendments to the Supreme Court. Pursuant to Article IV, Section 5(B) of the Ohio Constitution, if the proposed amendments are to take effect by July 1st, the Supreme Court must file the proposed amendments with the General Assembly by January 15th.

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

Pursuant to Article IV, Section 5(B) of the Ohio Constitution, the Supreme Court has until April 30th of each year to accept all or any provision of the proposed amendments and file with the General Assembly the amendments that the Court approves. The General Assembly has until June 30th 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 1st.

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

Summary

(Changes since initial public comment are in RED.)

1. OHIO RULES OF APPELLATE PROCEDURE

- Reopening Appeal Based on Ineffective Assistance of Counsel

(App.R. 26)

Related Revised Code Sections: None.

The Commission recommends expanding the category of people who may apply for reopening their appeal based on a claim of ineffective assistance of counsel. Currently, App.R. 26(B) allows a “defendant in a criminal case” to make such an application. (*See In re T.A.*, 2022-Ohio-4173). Previously, the proposed amendment added others to whom a right to counsel is provided for under continuing law, including a delinquent child in a juvenile case; a parent in an abuse, neglect, dependency, or permanent custody case; and a defendant facing civil commitment after a finding of unrestorable incompetence. **Following public comment, however, the amendment would add only delinquent children in juvenile cases to this process.**

2. OHIO RULES OF CIVIL PROCEDURE

- Waiver of Service

(Civ.R. 4 and 4.7)

Related Revised Code Section: 2109.03 (fiduciary’s attorney).

The Commission recommends three clarifications to waiver of service. First, changes to Civ.R. 4(D)(1) and 4.7 would clarify that the general authority for waiver of service under Civ.R. 4(D) applies in domestic relations and civil protection order cases. Civ.R. 4 currently directs a plaintiff to Civ.R. 4.7 for waiver of service in civil actions filed in common pleas court. Domestic relations and civil protection order cases are such actions. However, given problems reported with the extended answer period guaranteed under Civ.R. 4.7, the Court specifically excluded those case types from the scope of Civ.R. 4.7 effective July 1, 2022, inadvertently leaving plaintiffs in those cases without a specific rule on which they can rely for waiver of service. The proposal clarifies that waiver of service under Civ.R. 4(D) applies “in any type of action.” Civ.R. 4.7, by its own terms, continues to apply only in civil actions in the court of common pleas.

Second, the revisions to Civ.R. 4(D)(2) make clear that an attorney may sign a waiver of service for his or her client. The proposal previously provided that the attorney could sign only if the attorney is the attorney of record in the matter. A Commission member had reported that, in practice, attorneys were signing waivers of service for their clients and that this can be problematic if the client later claims the attorney did not have authority to so sign. By requiring the signing attorney be the attorney of record, it was thought authority to sign on behalf of the client could be inferred from the authority inherent to the documented representation. **Still with that intent, the**

Commission now recommends stating simply that a waiver signed by a party's attorney is presumed to be authorized. Representation need not be of-record.

Third, the Commission recommends that an individual signing a waiver on their own behalf be required to provide an address for future service under Civ.R. 5. Revisions since public comment specify the address can be a mailing address or an e-mail address.

Conforming revisions are recommended to the waiver of service forms in Civ.R. 4.7.

- Accepting Service

(Civ.R. 4.1)

Related Revised Code Sections: None.

The Commission recommends this amendment to limit signatures on certified or express mail service to those *accepting* delivery. Currently, the rule states that certified or express mail service is evidenced by “return receipt signed by *any person*” (emphasis added). This language has proven problematic where mail carriers sign the receipt upon delivery, failing to truly establish whether service on a person was accomplished. The proposed amendment will clarify the signature of a person “accepting delivery” is required for the receipt.

- Depositions; Time Limits

(Civ.R. 30)

Related Revised Code Sections: None.

The Commission recommends limiting the duration of depositions by rule. Currently, parties might agree to time limits for depositions as part of their discovery plan under Civ.R. 26(F)(3) and proportionality may guide in limiting deposition times, generally. Additionally, Civ.R. 30 allows parties to seek an end to or a limitation in the scope of a deposition *after* the deposition has started. Other than those provisions, no other rule limits the duration of depositions or provides guidance on a reasonable time for depositions.

The proposed amendment limits depositions to one day of seven hours, unless otherwise stipulated or ordered by the court. The amendment further instructs that courts must allow additional time “if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.” The proposal aligns the rule with its federal counterpart, Fed. R. Civ. P. 30(d).

- Subpoena Service

(Civ.R. 45)

Related Revised Code Section: 2319.09 (Uniform Interstate Depositions and Discovery Act).

The Commission recommends revising Civ.R. 45 to specifically reference unrepresented parties as those who may be issuing subpoenas. Currently, the rule refers only to the “issuing attorney.” In practice, courts generally recognize unrepresented parties as the “issuing attorney” under the rule. The proposal reflects that practice. Language is added to clarify that unrepresented

parties cannot necessarily *issue* subpoenas under the continuing rule; rather, subpoenas are issued on their behalf.

The Commission also recommends revisions to the rule's service language to make it consistent with the July 1, 2023, effective changes to process server requirements under Civ.R. 4.1. Those changes heightened the standards to qualify as a personal or residential process server. Civ.R. 45 currently includes the former criteria (i.e., not a party to the case and at least 18 years old). The proposed amendment instead incorporates the Civ.R. 4.1 standard by reference.

3. OHIO RULES OF CRIMINAL PROCEDURE

- Timing of Probable Cause Determination and Initial Hearing (Crim.R. 4)

Related Revised Code Sections: 2151.31 (apprehension, custody, and detention of a child), 2937.011 (pretrial release), 2953.13 (proceedings upon arrest), and 2935.16 (prisoners held without process).

This amendment sets the following times for certain post-arrest events:

- For warrantless arrests, the court must conduct a probable cause review no later than 48 hours after arrest.
 - The amendment specifies that the probable cause review need not be conducted in open court or on the record.
 - Previously, the amendment would have required this review no later than the defendant's first appearance, if sooner than 48 hours after arrest. The time set for probable cause review also would have applied to "arrest[s] on a warrant not issued by a judge or magistrate."
- Regardless of whether a warrant issued for the arrest, the defendant's initial appearance must occur no later than the second court day.
 - Previously, the amendment included language that would have required this initial appearance within 72 hours after arrest, if sooner than the second court day.

Currently, the rule requires the initial appearance to occur "without unnecessary delay." The rule does not currently set a time for the probable cause determination.

Previously, the amendment required the arresting officer to file the complaint within 24 hours after arrest. It also defined "court day" to mean any weekday other than a legal holiday. These provisions were removed following public comment.

4. OHIO RULES OF EVIDENCE

- Technical Changes

(Evid.R. 101)

Related Revised Code Sections: None.

The Commission recommends this revision to correct a cross reference.

- Expert Witness Qualification

(Evid.R. 702)

Related Revised Code Sections: None.

The proposed amendment adds a preponderance of the evidence standard for expert witness qualification. The rule currently states the criteria that must be satisfied for a witness to testify as an expert. The rule is silent as to the standard of proof for that criteria. The amendment adds the criteria must be shown as “more likely than not.”

Following public comment, the proposed amendment also adds that the expert witness’s opinion must reflect a reliable application of the principles and methods to the facts of the case.

These changes mirror an amendment to the rule’s federal counterpart, Fed. R. Evid. 702, which took effect December 1, 2023.

5. OHIO RULES OF JUVENILE PROCEDURE

- Scope of Rules

(Juv.R. 1)

Related Revised Code Sections: None.

The Commission recommends changing the scope of the Ohio Rules of Juvenile Procedure to specifically exclude proceedings for custody, parenting time, companionship, visitation, and child support brought under Revised Code Chapter 3109. Following public comment, the Commission recommends more expansive language beyond the R.C. Chapter 3109 reference, such that *all private child-related matters (i.e., those in which child protective services is not involved) would be excluded from the scope of the Juvenile Rules.* With that exclusion, the Ohio Rules of Civil Procedure would apply, instead. Currently, the Ohio Rules of Civil Procedure clearly apply to custody, parenting time, companionship, visitation, and child support actions between married individuals. Some courts apply those same rules in the same case types between unmarried individuals, and some courts apply the Juvenile Rules in those cases. The amendment ensures consistent application of the Civil Rules, regardless of the parties’ marital relationship.

The proposed amendment also clarifies the exclusion for criminal matters. Currently, the rule provides that only the “trial of criminal actions” is excluded from the Juvenile Rules. The amendment would exclude the entirety of a criminal proceeding.

1
2
3 **OHIO RULES OF APPELLATE PROCEDURE**

4 **RULE 26. Application for Reconsideration; Application for En Banc Consideration;**
5 **Application for Reopening.**

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

7
8 **(B) Application for reopening**

9
10 (1) A defendant in a criminal case, ~~or a delinquent child in a juvenile case, a parent in~~
11 ~~an abuse, neglect, dependency or permanent custody case, or a defendant facing civil~~
12 ~~commitment after a finding of unrestorable incompetence~~ may apply for reopening of the
13 appeal ~~either taken by a prosecutor or~~ from the judgment of conviction and sentence, ~~or a~~
14 ~~judgement of adjudication or disposition, or commitment,~~ based on a claim of ineffective
15 assistance of appellate counsel. An application for reopening shall be filed in the court of
16 appeals where the appeal was decided within ninety days from journalization of the
17 appellate judgment unless the applicant shows good cause for filing at a later time.

18
19 [Existing language unaffected by the amendments is omitted to conserve space]

20 OHIO RULES OF CIVIL PROCEDURE

21
22 RULE 4. Process: Summons.

23
24 [Existing language unaffected by the amendments is omitted to conserve space]

25
26 (D) Waiver of service of summons

27
28 Servicee (1) Authority to waive service of summons, generally

29
30 In any type of action, service of summons may be waived in writing by any person
31 entitled thereto under Rule Civ.R. 4.2 who is at least eighteen years of age and not
32 under disability, or by the ~~defendant's party's~~ attorney as permitted under division
33 (D)(2) of this rule. For any civil action filed in a Court of Common Pleas, the
34 plaintiff may request that the defendant waive service of a summons pursuant to
35 the provisions of Civ.R. 4.7.

36
37 (2) Waiver by attorney on behalf of ~~client~~ a party

38
39 A waiver signed by ~~an a party's~~ attorney ~~on behalf of a client~~ is ~~valid only if the~~
40 ~~attorney is an attorney of record with respect to the proceeding to which the~~
41 ~~summons applies~~ presumed to be authorized.

42
43 (3) Waiver by individual on own behalf

44
45 A waiver signed by an individual on that individual's own behalf is valid only if
46 the waiver sets forth ~~an a mailing~~ address or e-mail address for that individual,
47 which ~~address~~ shall be deemed a proper address for service under Civ.R. 5.

48
49 [Existing language unaffected by the amendments is omitted to conserve space]

50
51
52 Proposed Staff Note (July 1, 2024 Amendment)

53
54 Civil Rule 4(D) is amended in three respects. First, Civ.R. 4(D) and 4.7(B) are amended to clarify
55 that service of summons may be waived in any case. No substantive change is intended in this respect.
56 Second, the rule is amended such that ~~an a waiver signed by a party's attorney may waive service of~~
57 ~~summons on behalf of a client, but only if the attorney is an attorney of record with respect to the proceeding~~
58 ~~to which the summons applies~~ is presumed to be authorized. This amendment promotes the reliability of a
59 waiver signed by an attorney on behalf of a client and minimizes the risk of a defendant, late in the course
60 of an action, asserting that the attorney lacked authority to waive service of summons on behalf of the
61 defendant. Third, the rule is amended such that a waiver signed by an individual on the individual's own
62 benefit is valid only if the waiver sets forth ~~an a mailing or e-mail~~ address for that individual, which address
63 is then deemed ~~a~~ proper ~~address~~ for service of subsequent papers. This amendment is prompted by
64 instances, especially in juvenile court and domestic relations court, of unrepresented parties waiving service
65 of summons without providing the court and the opposing parties an address for service of subsequent
66 papers.

67 **RULE 4.1. Process: Methods of Service.**

68

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

70

71 **(A) Service by clerk**

72

73 (1) Methods of service

74

75 (a) Service by United States certified or express mail

76

77 Evidenced by return receipt signed by any person accepting
78 delivery, service of any process shall be by United States certified
79 or express mail unless otherwise permitted by these rules. The clerk
80 shall deliver a copy of the process and complaint or other document
81 to be served to the United States Postal Service for mailing at the
82 address set forth in the caption or at the address set forth in written
83 instructions furnished to the clerk as certified or express mail return
84 receipt requested, with instructions to the delivering postal
85 employee to show to whom delivered, date of delivery, and address
86 where delivered.

87

88 (b) Service by commercial carrier service

89

90 Unless the serving party furnishes written instructions to the clerk
91 that service be made pursuant to Civ.R. 4.1(A)(1)(a), the clerk may
92 make service of any process by a commercial carrier service
93 utilizing any form of delivery requiring a signed receipt. The clerk
94 shall deliver a copy of the process and complaint or other document
95 to be served to a commercial carrier service for delivery at the
96 address set forth in the caption or at the address set forth in written
97 instructions furnished to the clerk, with instructions to the carrier to
98 return a signed receipt showing to whom delivered, date of delivery,
99 and address where delivered.

100

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

102 **RULE 4.7. Process: Waiving Service.**

103

104 **(A) Requesting a waiver**

105

106 An individual, corporation, partnership, or association that is subject to service under
107 Civ.R. 4 through 4.6 has a duty to avoid unnecessary expenses of serving the
108 summons. The plaintiff may notify such a defendant that an action has been commenced
109 and request that the defendant waive service of a summons. The notice and request must
110 satisfy all of the following requirements:

111

(1) Be in writing and be addressed as required by Civ.R. 4.2;

113

(2) Name the court where the complaint was filed;

115

(3) Be accompanied by a copy of the complaint, two copies of the waiver form
117 appended to this Rule 4.7, and a prepaid means for returning the form;

118

(4) Inform the defendant, using the form appended to this Rule 4.7, of the
120 consequences of waiving and not waiving service;

121

(5) State the date when the request is sent;

123

(6) Give the defendant a reasonable time of at least twenty-eight days after the
124 request was sent - or at least sixty days if sent to the defendant outside of the United
125 States - to return the waiver; ~~and~~

127

(7) Be sent by first-class mail or other reliable means.

129

130 **(B) ~~Limited to courts of common pleas~~ Scope of application**

131

132 The waiver of service provisions in this rule ~~are limited to apply only in~~ civil actions filed
133 in the courts of common pleas ~~but, except that~~ they do not apply to ~~civil protection orders~~
134 ~~pursuant to petitions seeking orders under~~ Civ.R. 65.1 ~~or to~~ nor domestic relations matters
135 as defined in R.C. 3105.011.

136

137 **(C) Failure to waive**

138

139 If a defendant over which the court has personal jurisdiction fails, without good cause, to
140 sign and return a waiver requested by a plaintiff, ~~then~~ the court may impose on the
141 defendant both of the following:

142

(1) The expenses later incurred in making service; ~~and~~

144

(2) The reasonable expenses, including attorney's fees, of any motion required
145 to collect those service expenses.

146

147

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

149
150 [Form] RULE 4.7 NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF SUMMONS.

151
152 (Caption)

153
154 To *(name the defendant or — if the defendant is a corporation, partnership, or association*
155 *— name an officer or agent authorized to receive service):*

156
157 WHY ARE YOU GETTING THIS?

158
159 A lawsuit has been filed against you, or the entity you represent, in this court under the
160 number shown above. A copy of the complaint is attached.

161
162 This is not a summons, or an official notice from the court. It is a request that, to avoid
163 expenses, you waive formal service of a summons by signing and returning the enclosed
164 waiver. To avoid these possible expenses, you must return the signed waiver within (give
165 at least 28 days or at least 60 days if the defendant is outside the United States) from the
166 date shown below, which is the date this notice was sent. Two copies of the waiver form
167 are enclosed, along with a stamped, self-addressed envelope or other prepaid means for
168 returning one copy. You may keep the other copy.

169
170 WHAT HAPPENS NEXT?

171
172 If you return the signed waiver, I will file it with the court. The action will then proceed as
173 if you had been served on the date the waiver is filed, but no summons will be served on
174 you and you will have 60 days from the date this notice is sent (see the date below) to
175 answer the complaint (or 90 days if this notice is sent to you outside the United States).

176
177 If you do not return the signed waiver within the time indicated, I will arrange to have the
178 summons and complaint served on you. And I will ask the court to require you, or the entity
179 you represent, to pay the expenses of making service.

180
181 Please read the enclosed statement about the duty to avoid unnecessary expenses.

182
183 I certify that this request is being sent to you on the date below.

184
185 Date: _____

186
187 ~~(Signature of the attorney or unrepresented party)~~

188
189 _____

190
191 ~~(Printed name)~~

192
193 _____

194

195 (~~Address~~)
196 _____
197 _____
198

199 (~~E-mail address~~)
200 _____
201 _____
202

203 (~~Telephone number~~)
204 _____
205 _____
206

207 Name of party requesting waiver of service of summons: _____
208

209 Individual issuing this request on behalf of that party:

210
211 Printed name: _____
212

213 Signature: _____
214

215 Address: _____
216

217 E-mail address: _____
218

219 Telephone number: _____
220

221 **[Form] RULE 4.7 WAIVER OF THE SERVICE OF SUMMONS.**
222

223 (Caption)

224 To *(name the plaintiff's attorney or the unrepresented plaintiff)*:
225

226 I have received your request to waive service of a summons in this action along with a copy
227 of the complaint, two copies of this waiver form, and a prepaid means of returning one
228 signed copy of the form to you.
229

230 I, or the entity I represent, agree to save the expense of serving a summons and complaint
231 in this case.
232

233 I understand that I, or the entity I represent, will keep all defenses or objections to the
234 lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections
235 to the absence of a summons or of service.
236

237 I also understand that I, or the entity I represent, must file and serve an answer or a motion
238 under Rule 12 within 60 days from _____, the date when this request
239 was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default
240 judgment could be entered against me or the entity I represent.
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Date: _____

~~(Signature of the attorney or unrepresented party)~~

~~(Printed name)~~

~~(Address)~~

~~(E-mail address)~~

~~(Telephone number)~~

Name of party waiving service of summons: _____

Individual signing on behalf of party waiving service of summons:

Printed name: _____

Relationship to party waiving service of summons: _____

Signature: _____

Address: _____

E-mail address: _____

Telephone number: _____

(Attach the following)

DUTY TO AVOID UNNECESSARY EXPENSES OF SERVING A SUMMONS

Rule 4.7 of the Ohio Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is subject to the court's personal jurisdiction and who fails to return a signed waiver of service requested by a plaintiff may be required to pay the expenses of service, unless the defendant shows good cause for the failure.

290 “Good cause” does not include a belief that the lawsuit is groundless, or that it has been
291 brought in an improper venue, or that the court has no jurisdiction over this matter or over
292 the defendant or the defendant’s property.

293
294 If the waiver is signed and returned, you can still make these and all other defenses and
295 objections, but you cannot object to the absence of a summons or of service.

296
297 If you waive service, then you must, within the time specified on the waiver form, serve an
298 answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing
299 and returning the waiver form, you are allowed more time to respond than if a summons
300 had been served.

301
302

303 Proposed Staff Note (July 1, 2024, Amendment)

304
305 Division (B) of this rule is amended with Civ.R. 4(D) to clarify that service of summons may be
306 waived in any type of action. No substantive change is intended. The signature blocks of the forms are
307 amended to promote clarity.

308 **RULE 30. Depositions Upon Oral Examination.**

309

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

311

312 **(D) ~~Motion~~ Duration; motion to terminate or limit examinations**

313

314

(1) Duration

315

316 Unless otherwise stipulated or ordered by the court, a deposition is limited to one

317 day of seven hours. The court shall allow additional time consistent with Civ.R.

318 26(B)(6)(a) and (b) if needed to fairly examine the deponent or if the deponent,

319 another person, or any other circumstance impedes or delays the examination.

320

321

(2) Motion to terminate or limit examinations

322

323 At any time during the taking of the deposition, on motion of any party or of the

324 deponent and upon a showing that the examination is being conducted in bad faith

325 or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or

326 party, the court in which the action is pending may order the officer conducting the

327 examination to cease forthwith from taking the deposition, or may limit the scope

328 and manner of the taking of the deposition as provided in Civ.R. 26(C). If the order

329 made terminates the examination, it shall be resumed thereafter only upon the order

330 of the court in which the action is pending. Upon demand of the objecting party or

331 deponent, the taking of the deposition shall be suspended for the time necessary to

332 make a motion for an order. The provisions of Civ.R. 37 apply to the award of

333 expenses incurred in relation to the motion.

334

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

336 **RULE 45. Subpoena.**

337

338 **(A) Form; issuance; notice**

339

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

341

342 (3) A party on whose behalf a subpoena is issued under division (A)(1)(b)(ii), (iii), (iv),
343 (v), or (vi) of this rule shall serve prompt written notice, including a copy of the subpoena,
344 on all other parties as provided in Civ.R. 5. If the ~~issuing attorney party modifies a~~
345 subpoena ~~issued under division (A)(1)(b)(ii), (iii), (iv), (v), or (vi) of this rule in any way~~
346 ~~is modified~~, the ~~issuing attorney party on whose behalf the subpoena is issued~~ shall give
347 prompt written notice of the modification, including a copy of the subpoena as modified,
348 to all other parties.

349

350 **(B) Service**

351

352 A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, or a
353 deputy of any, by an attorney at law, or by any other person designated by court order of
354 ~~court who is not a party and is not less than eighteen years of age~~ under Civ.R. 4.1(E).
355 Service of a subpoena upon a person named therein shall be made by delivering a copy of
356 the subpoena to the person, by reading it to him or her in person, by leaving it at the person's
357 usual place of residence, or by placing a sealed envelope containing the subpoena in the
358 United States mail as certified or express mail return receipt requested with instructions to
359 the delivering postal authority to show to whom delivered, date of delivery and address
360 where delivered, and by tendering to the person upon demand the fees for one day's
361 attendance and the mileage allowed by law. The person responsible for serving the
362 subpoena shall file a return of the subpoena with the clerk. When the subpoena is served
363 by mail delivery, the person filing the return shall attach the signed receipt to the return. If
364 the witness being subpoenaed resides outside the county in which the court is located, the
365 fees for one day's attendance and mileage shall be tendered without demand. The return
366 may be forwarded through the postal service or otherwise.

367

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

369

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

373

374 (2) A

375

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

379

380 ~~(b)(3)~~ Subject to division (D)(2) of this rule, a person commanded to produce under
381 divisions (A)(1)(b), (iii), (iv), (v), or (vi) of this rule may, within fourteen days after service

382 of the subpoena or before the time specified for compliance if such time is less than
383 fourteen days after service, serve upon the party or attorney designated in the subpoena
384 written objections to production. If objection is made, the party serving the subpoena shall
385 not be entitled to production except pursuant to an order of the court by which the subpoena
386 was issued. If objection has been made, the party serving the subpoena, upon notice to the
387 person commanded to produce, may move at any time for an order to compel the
388 production. An order to compel production shall protect any person who is not a party or
389 an officer of a party from significant expense resulting from the production commanded.

390
391 ~~(3)~~(4) On timely motion, the court from which the subpoena was issued shall quash or
392 modify the subpoena, or order appearance or production only under specified conditions,
393 if the subpoena does any of the following:

394
395 (a) Fails to allow reasonable time to comply;

396
397 (b) Requires disclosure of privileged or otherwise protected matter and no
398 exception or waiver applies;

399
400 (c) Requires disclosure of a fact known or opinion held by an expert not
401 retained or specially employed by any party in anticipation of litigation or
402 preparation for trial as described by Civ.R. 26(B)(7)(h), if the fact or opinion does
403 not describe specific events or occurrences in dispute and results from study by that
404 expert that was not made at the request of any party;

405
406 (d) Subjects a person to undue burden.

407
408 ~~(4)~~(5) Before filing a motion pursuant to division (C)~~(3)~~(4)(d) of this rule, a person
409 resisting discovery under this rule shall attempt to resolve any claim of undue burden
410 through discussions with the issuing attorney or unrepresented party. A motion filed
411 pursuant to division (C)~~(3)~~(4)(d) of this rule shall be supported by an affidavit of the
412 subpoenaed person or a certificate of that person's attorney of the efforts made to resolve
413 any claim of undue burden.

414
415 ~~(5)~~(6) If a motion is made under division (C)~~(3)~~(4)(c) or (C)~~(3)~~(4)(d) of this rule, the court
416 shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued
417 shows a substantial need for the testimony or material that cannot be otherwise met without
418 undue hardship and assures that the person to whom the subpoena is addressed will be
419 reasonably compensated.

420
421 **[Existing language unaffected by the amendments is omitted to conserve space]**

422 OHIO RULES OF CRIMINAL PROCEDURE

423
424 **RULE 4. Warrant or Summons; Arrest.**

425
426 [Existing language unaffected by the amendments is omitted to conserve space]

427
428 **(E) Arrest**

429
430 **(1) Arrest upon warrant**

431
432 (a) Where a person is arrested upon a warrant that states it was issued before a
433 scheduled initial appearance, or the warrant is silent as to when it was issued, the
434 judicial officer before whom the person is brought shall determine bail.

435
436 (b) Where a person is arrested upon a warrant that states it was issued after an
437 initial appearance or the failure to appear at an initial appearance and the arrest
438 occurs either in the county from which the warrant issued or in an adjoining county,
439 the arresting officer shall, except as provided in division (F) of this rule, where the
440 warrant provides for the posting of bail, permit the arrested person to post a sum of
441 cash or secured bail bond as contained in the warrant with the requirement that the
442 arrested person appear before the warrant issuing court at a time and date certain,
443 or bring the arrested person **without unnecessary delay** before the court that issued
444 the warrant ~~promptly and in no event later than the second court day or seventy-~~
445 ~~two hours after arrest, whichever first occurs. If the defendant is brought before~~
446 ~~the court and if a probable cause determination has not already been conducted as~~
447 ~~required by division (E)(3) of this rule, the court shall first conduct a probable cause~~
448 ~~determination under division (E)(3) and shall also determine bail.~~

449
450 (c) Where a person is arrested upon a warrant that states it was issued after an
451 initial appearance or the failure to appear at an initial appearance and the arrest
452 occurs in any county other than the county from which the warrant was issued or in
453 an adjoining county, the following sequence of procedures shall be followed:

454
455 (i) Where the warrant provides for the posting of bail, the arrested
456 person shall be permitted to post a sum of cash or secured bail bond as
457 contained in the warrant with the requirement that the arrested person
458 appear before the warrant issuing court at a time and date certain.

459
460 (ii) The arrested person may in writing waive the procedures in division
461 (E)(1)(c)(iii) of this rule after having been informed in writing and orally by
462 a law enforcement officer of those procedures, and consenting to being
463 removed to the warrant issuing court without further delay. This waiver
464 shall contain a representation by a law enforcement officer that the waiver
465 was read to the arrested person and that the arrested person signed the
466 waiver in the officer's presence.

467

468 (iii) Where the warrant is silent as to the posting of bail, requires that the
469 arrested person be held without bail, the arrested person chooses not to post
470 bail, or the arrested person chooses not to waive the procedures contained
471 in division (E)(1) of this rule, the arrested person shall, except as provided
472 in division (F) of this rule, be brought without unnecessary delay before a
473 court of record therein, having jurisdiction over such an offense, and the
474 promptly and in no event later than the second court day or seventy two
475 hours after arrest, whichever first occurs. If a probable cause determination
476 has not already been conducted as required by division (E)(3) of this rule,
477 the court shall first proceed under division (E)(3) of this rule. The arrested
478 person shall not be removed from that county until the arrested person has
479 been given a reasonable opportunity to consult with an attorney, or
480 individual of the arrested person's choice, and to post bail to be determined
481 by the judge or magistrate of that court not inconsistent with the directions
482 of the issuing court as contained in the warrant or after consultation with
483 the issuing court. ~~if~~ If the warrant is silent as to the posting of bail or holding
484 the arrested person without bail, the court may permit the arrested person to
485 post bail, hold the arrested person without bail, or consult with the warrant
486 issuing court on the issue of bail.

487
488 (d) If the arrested person is not released, the arrested person shall then be
489 removed from the county and brought before the court issuing the warrant, without
490 unnecessary delay and not later than the second court day following the person's
491 arrest as provided for in R.C. 2937.011(J)(1). If the arrested person is released, the
492 release shall be on condition that the arrested person appear in the issuing court at
493 a time and date certain.

494
495 (2) Arrest without warrant. Where a person is arrested without a warrant and has not
496 been released from custody pursuant to division (F) of this rule, the arresting officer shall
497 ~~except as provided in division (F),~~ bring complete the following tasks:

498
499 (a) Promptly prepare a sworn statement setting forth probable cause supporting
500 the arrest. The statement of probable cause may, but need not be, incorporated into
501 the complaint. A judge or magistrate of a court having jurisdiction over the offense
502 shall review the officer's sworn statement without unnecessary delay and,
503 notwithstanding Crim. R. 45, not later than 48 hours after the arrest. The probable
504 cause review need not be conducted in open court or on the record. If the reviewing
505 judge or magistrate does not find that the statement establishes probable cause to
506 believe an offense has been committed, the defendant shall be released for that
507 offense.

508
509 (b) Bring the arrested person without unnecessary delay, and not later than the
510 second court day following the person's arrest, before a court having jurisdiction
511 of the offense, and shall promptly and in no event later than twenty four hours file
512 or cause to be filed a complaint describing the offense for which the person was
513 arrested. The defendant shall be brought before a court having jurisdiction of the
514 offense promptly and in no event later than the second court day or seventy two

515 ~~hours after arrest, whichever first occurs. If a probable cause determination has not~~
516 ~~already been conducted as required by division (E)(3) of this rule, the court shall~~
517 ~~first proceed under division (E)(3) of this rule.~~ Thereafter the court shall proceed in
518 accordance with Crim. R.5.

519 ~~(3) Probable cause review for defendants in custody~~

520
521
522 ~~If a defendant remains in custody following a warrantless arrest or arrest on a~~
523 ~~warrant not issued by a judge or magistrate, the complaint and supporting affidavits~~
524 ~~shall be reviewed by a judge or magistrate promptly and in no event later than the~~
525 ~~defendant's first appearance before the court or forty-eight hours after arrest,~~
526 ~~whichever first occurs. Such probable cause review may be conducted in open~~
527 ~~court or in the presence of the parties. If the judge or magistrate determines that~~
528 ~~the complaint does not establish probable cause, the defendant shall be ordered~~
529 ~~released.~~

530
531 ~~(4) "Court day" defined~~

532
533 ~~As used in division (E) of this rule, "court day" means any weekday other than a~~
534 ~~weekday designated in its entirety as a legal holiday under the laws of the State of~~
535 ~~Ohio day the court is open for regular business.~~

536
537 **[Existing language unaffected by the amendments is omitted to conserve space]**

538
539
540 Proposed Staff Note (July 1, 2024, Amendment)

541
542 Crim.R. 4 has been amended to explicitly conform with constitutional and statutory requirements
543 concerning warrantless arrests and the processing of persons who have been arrested and not yet
544 released on bail.

545
546 *Probable Cause Review for Warrantless Arrests*

547
548 With respect to warrantless arrests, the Rule has been amended to require that the arresting
549 officer promptly provide a judicial officer having jurisdiction over the offense with a sworn statement
550 setting forth the officer's belief that there is probable cause to hold the person arrested for an offense.
551 The judicial officer must review the officer's statement and make an independent probable cause
552 determination without unnecessary delay and in no event later than 48 hours after arrest.

553
554 This requirement, set forth in division (E)(2)(i), is constitutionally required. Post-arrest detention is
555 a Fourth Amendment "seizure" that must be based on probable cause. Constitutionally, the requirement
556 is that the probable cause determination be made "promptly after arrest" by a neutral and detached
557 government official. See, *Gerstein v. Pugh*, 420 U.S. at 125. Anything less than 48 hours from the time
558 of the arrest until the determination of probable cause is considered sufficiently prompt so as to avoid a
559 systemic challenge to that jurisdiction's arrest procedures (although, on an individual basis, a delay could
560 be violative of the Fourth Amendment even if the probable cause determination is made in less than 48
561 hours). *County of Riverside v. McLaughlin*, 500 U.S. 44, 111 S.Ct. 166, 114 L.Ed.2d 49 (1991).

562
563 *Riverside* underscored that the police do not comply with the Fourth Amendment when they
564 arrest a person without a warrant and then use the ensuing time to establish probable cause for the
565 already-executed warrantless arrest. The 48 hours contemplated by *Riverside* represents the outside

566 time frame by which police, who must have had probable cause when they made the arrest in the first
567 place, and the court must ensure that a neutral and detached government official will have reviewed the
568 complaint for probable cause. The 48 hours contemplated as the outer deadline in *Riverside* is inclusive
569 of weekends and holidays; for that reason, the Rule explicitly excludes Crim.R. 45's normal computation
570 from the deadline for determining probable cause for the warrantless arrest.

571
572 The determination of probable cause required within 48 hours of arrest need not be conducted
573 pursuant to a hearing or in open court. Rather, much like judicial review of an application for a search
574 warrant under Crim.R. 41, judicial review of the arresting officer's probable cause statement can be
575 conducted informally, outside of court, and outside the presence of either the parties or any alleged victim
576 of the offense of arrest. The judicial officer's ex parte review of the arresting officer's sworn statement
577 can be conducted via remote communication.

578
579 *First Appearance of Defendant*

580
581 R.C. 2937.011(J)(1) requires that persons who have been arrested and not yet released be
582 brought to open court for a bail hearing by "the second court day" following arrest. The Rule has been
583 amended to be in accord with this statutory provision.

584
585 The amended Crim.R. 4 also provides that the "second court day" is the time limit for filing the
586 complaint. This is required by Crim.R. 5, which states that the complaint will be reviewed with the
587 defendant at the defendant's initial appearance before the court. *Accord*, Crim.R. 10 (arraignment
588 procedure includes the reading of the complaint).

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OHIO RULES OF EVIDENCE

RULE 101. Scope of Rules: Applicability; Privileges; Exceptions.

(A) Applicability

These rules govern proceedings in the courts of this state, subject to the exceptions stated in division ~~(C)~~(D) of this rule.

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

599 **RULE 702. Testimony by Experts.**

600

601 A witness may testify as an expert if the proponent demonstrates to the court that it is more likely
602 than not that all of the following apply:

603

604 (A) The witness' testimony either relates to matters beyond the knowledge or
605 experience possessed by lay persons or dispels a misconception common among lay
606 persons;

607

608 (B) The witness is qualified as an expert by specialized knowledge, skill, experience,
609 training, or education regarding the subject matter of the testimony;

610

611 (C) The witness' testimony is based on reliable scientific, technical, or other specialized
612 information and the expert's opinion reflects a reliable application of the principles and
613 methods to the facts of the case. To the extent that the testimony reports the result of a
614 procedure, test, or experiment, the testimony is reliable only if all of the following apply:

615

616 (1) The theory upon which the procedure, test, or experiment is based is
617 objectively verifiable or is validly derived from widely accepted knowledge, facts,
618 or principles;

619

620 (2) The design of the procedure, test, or experiment reliably implements the
621 theory;

622

623 (3) The particular procedure, test, or experiment was conducted in a way that
624 will yield an accurate result.

625 OHIO RULES OF JUVENILE PROCEDURE

626
627 **RULE 1. Scope of Rules: Applicability; Construction; Exceptions.**

628
629 **(A) Applicability**

630 These rules prescribe the procedure to be followed in all juvenile courts of this state in all
631 proceedings coming within the jurisdiction of such courts, with the exceptions stated in
632 ~~subdivision~~ division (C) of this rule.

633
634
635 **(B) Construction**

636 These rules shall be liberally interpreted and construed so as to effectuate all of the
637 following purposes:

- 638
639 (1) To effect the just determination of every juvenile court proceeding by
640 ensuring the parties a fair hearing and the recognition and enforcement of their
641 constitutional and other legal rights;
- 642
643 (2) To secure simplicity and uniformity in procedure, fairness in
644 administration, and the elimination of unjustifiable expense and delay;
- 645
646 (3) To provide for the care, protection, and mental and physical development
647 of children subject to the jurisdiction of the juvenile court, and to protect the welfare
648 of the community; ~~and~~
- 649
650 (4) To protect the public interest by treating children as persons in need of
651 supervision, care, and rehabilitation.

652
653
654 **(C) Exceptions**

655 These rules shall not apply to ~~procedure~~ any of the following procedures:

- 656
657 (1) Upon appeal to review any judgment, order, or ruling;
- 658
659 (2) ~~Upon the trial of~~ In criminal actions proceedings;
- 660
661 (3) ~~Upon the trial of actions for~~ In divorce, annulment, legal separation, and
662 related proceedings;
- 663
664 (4) In proceedings to determine parent-child relationships, provided, however
665 that appointment of counsel shall be in accordance with ~~Rule Juv.R. 4(A) of the~~
666 ~~Rules of Juvenile Procedure;~~
- 667
668 (5) In proceedings for custody, Any proceeding relating to the allocation of
669 parental rights and responsibilities, child support or medical support, or parenting
670

671 time, or companionship, visitation, or child support brought under Revised Code
672 Chapter 3109 rights wherein child protective services is not, or is no longer, a party
673 to the action;

674
675 (6) In the commitment of the mentally ill and ~~mentally retarded~~ intellectually
676 disabled;

677
678 ~~(6)~~(7) In proceedings under Revised Code section 2151.85 ~~of the Revised Code~~ to
679 the extent ~~that~~ there is a conflict between these rules and Revised Code section
680 2151.85 ~~of the Revised Code~~.

681
682 When any statute provides for procedure by general or specific reference to the statutes
683 governing procedure in juvenile court actions, procedure shall be in accordance with these
684 rules.

685
686 **[Existing language unaffected by the amendments is omitted to conserve space]**