**PROPOSED AMENDMENTS TO THE**

**OHIO RULES OF APPELLATE PROCEDURE,**

**CIVIL PROCEDURE, CRIMINAL PROCEDURE,**

**AND JUVENILE PROCEDURE**

**Comments requested:** The Supreme Court of Ohio will accept public comments until March 6, 2013 on the following proposed amendments to the Ohio Rules of Appellate Procedure (3, 4, 9, 11.1, 16, 21, and 43), the Ohio Rules of Civil Procedure (4.4, 15, 40, 50, 59, and 86), the Ohio Rules of Criminal Procedure (12, 32, and 59), and the Ohio Rules of Juvenile Procedure (16 and 47).

Comments on the proposed amendments must be submitted in writing to Jo Ellen Cline, Government Relations Counsel, Supreme Court of Ohio, 65 South Front Street, 7th Floor, Columbus, Ohio 43215-3431 or [j.cline@sc.ohio.gov](mailto:j.cline@sc.ohio.gov) and received no later than March 6, 2013. Please include your full name and regular mailing address in any comment submitted by e-mail. Copies of all comments submitted will be provided to each member of the Commission on the Rules of Practice and Procedure and each Justice of the Supreme Court.

The proposed amendments were recommended to the Supreme Court by the Supreme Court Commission on the Rules of Practice and Procedure and initially were published for comment on October 15, 2012. After reviewing the comments received, the Commission recommended further revisions to the previously published amendments. After considering the written comments and the recommendations of the Commission, the Supreme Court adopted the proposed amendments as revised and directed that the amendments be filed with the General Assembly and republished for public comment.

Pursuant to Article IV, Section 5(B) of the Ohio Constitution, the proposed amendments were filed with the General Assembly on January 15, 2013. The Commission on the Rules of Practice and Procedure and the Supreme Court will consider all comments received during this second comment period, and the Court may modify or withdraw proposed amendments prior to May 1, 2013. The amendments filed with the General Assembly and not withdrawn prior to May 1, 2013 will take effect on July 1, 2013, unless prior to that date the General Assembly adopts a concurrent resolution of disapproval.

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

**PROCESS ON AMENDING THE**

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

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

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

In the fall of each year, the Commission submits to the Supreme Court proposed amendments to the rules of practice and procedure that it recommends take effect the following July 1. The Supreme Court then authorizes the publication of the rules for public comment. *The authorization by the Court of the publication of the proposed amendments is neither an endorsement of, nor a declaration of, intent to approve the proposed amendments. It is an invitation to the judiciary, the practicing bar, and the public at large to provide thoughtful and meaningful feedback on the legal and practical effect of the proposed amendments.* The public comments are reviewed by the Commission which may withdraw, amend, or resubmit all or any provision of the proposed amendments to the Supreme Court. Pursuant to Article IV, Section 5(B), if the proposed amendments are to take effect by July 1, the Supreme Court is required to file the proposed amendments with the General Assembly by January 15.

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

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

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

**Ohio Rules of Appellate Procedure**

*App.R. 3*

The proposed amendments to App.R. 3 clarify that a party seeking to defend a judgment on a ground other than that relied on by the trial court need not file a cross-assignment of error to do so. There has been confusion amongst the appellate courts as to the application of R.C. 2505.22 and the amendment makes clear that the requirement of the statute for a cross-assignment of error is abrogated by the rule. The proposed amendments also clarify the procedure for amending a notice of appeal specifying that no leave is required to amend the notice of appeal if the time to appeal from the order identified in the initial notice of appeal has not yet lapsed. Leave of court is, however, still required if the initial time has lapsed.

*App.R. 4*

The proposed amendments to App.R. 4 reference additional provisions of the civil, juvenile, and criminal rules that authorize parties to request findings of fact and conclusions of law. Although the prior rule reflected the concept that a proper and timely request to the trial court for findings of fact and conclusions of law deferred the running of time to appeal, the reference to these additional provisions in the other rules makes it abundantly clear.

*App.R. 9*

The proposed amendment to App.R. 9 clarifies that a statement of the evidence or proceedings in lieu of an unavailable transcript or an agreed statement of the case are available only in limited circumstances in cases originally heard by a magistrate. This amendment will make clear that a trial judge must have had adequate opportunity to conduct a full review of a factual finding.

*App.R. 11.1*

The proposed amendment makes the due date for the appellant’s opening brief in an accelerated calendar case run from the time that the clerk mails the notice that the record is complete. The amendment brings this rule into alignment with App.R. 18(A) which governs the timing of the appellant’s opening brief in regular calendar cases.

*App.R. 16*

The proposed amendment removes superfluous language that was enacted in 2012. The Supreme Court amended the Rules for the Reporting of Opinions regarding attachments of legal authorities effective July 1, 2012. The proposed amendment removes language from App.R. 16 which referenced a section of those rules that no longer exists.

*App.R. 21*

The Commission recommends amending App.R. 21 to require that any additional authority be presented at least five days prior to oral argument unless there is good cause for later presentment. Additionally, the proposed amendment requires that the additional authority must have been unavailable at the time the party wishing to rely on it filed its last brief.

**Ohio Rules of Civil Procedure**

*Civ.R. 4.4 and Juv.R. 16*

Amendments are proposed to Civ.R. 4.4 and Juv.R. 16 regarding service by posting. The Domestic Relations Law and Procedure Committee of the Ohio Judicial Conference asked the Commission to amend Civ.R. 4.4 to make it clear that posting could be used for service in initial actions. The Commission, after discussions with the Conference, broadened the proposed amendment to include post-decree matters as well. “Posting”, a form of service by publication used by indigent parties, traditionally meant putting the notice on a bulletin board at the courthouse and at least two other designated locations in the county. The Commission believes this type of physical posting is anachronistic and therefore recommends utilizing the county clerk of court’s website, if one exists, for “posting”. The proposed amendments do not require the electronic posting; the proposed amendments only suggest utilizing the Internet as an alternative to traditional posting.

*Civ.R. 15, Civ.R. 50, Civ.R. 59*

The proposed amendments to these rules are modeled on amendments adopted in 2009 to the Federal Rules of Civil Procedure. The proposed amendments to Civ.R. 15 allow for amendment without leave of court of a complaint or other pleading requiring a responsive pleading for twenty-eight days after the service of a responsive pleading or motion. The proposed amendments also limit amendment without leave of court of a complaint or other pleading requiring a responsive pleading to twenty-eight days after service of the pleading when the response has not been served.

Civ.R. 50(B) is amended to extend the time for filing a motion for judgment notwithstanding the verdict to twenty-eight days after entry of judgment or within twenty-eight days after the jury is discharged if a verdict was not returned.

Finally, Civ.R. 59 is amended to extend the time for serving a motion for new trial to twenty-eight days after the entry of the judgment.

*Civ.R. 40*

The proposed amendment to Civ.R. 40 updates terminology in the rule to encompass digital video recording.

**Ohio Rules of Criminal Procedure**

*Crim.R. 12*

The proposed amendment to Crim.R. 12 removes a reference to the Rules of Superintendence. The Commission was contacted by the Franklin County Prosecutor’s office about concerns that the Franklin County Court of Common Pleas move toward e-filing runs afoul of the requirement in Sup.R. 27 because the Commission on Technology and the Courts historically has not “approved” local rules. The reference in Crim.R. 12 to local rules adopted “pursuant to the Rules of Superintendence” compounded this issue as to criminal filings and the local prosecutor did not want to move forward with electronic filing in criminal cases until some clarification was made. By removing the reference to the Rules of Superintendence in Crim.R. 12, the new rule will allow courts to adopt local rules regarding electronic filing more expeditiously.

*Crim.R. 32*

The Commission was asked to review Crim.R. 32 in light of the Supreme Court’s decision in State v. Lester, 2011-Ohio-5204. The current rule arguably required the judgment to specify the specific manner of conviction. The proposed amendment allows, but does not require, the judgment to specify the specific manner of conviction.

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

**FILED BY THE SUPREME COURT OF OHIO**

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

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**OHIO RULES OF APPELLATE PROCEDURE**

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**RULE 3. Appeal as of Right - How Taken**

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**(C) Cross appeal.**

**(1) Cross appeal required.** A person who intends to defend a judgment or order against an appeal taken by an appellant and who also seeks to change the judgment or order or, in the event the judgment or order may be reversed or modified, an interlocutory ruling merged into the judgment or order, shall file a notice of cross appeal within the time allowed by App.R. 4.

**(2) Cross appeal and cross-assignment of error not required.** A person who intends to defend a judgment or order appealed by an appellant on a ground other than that relied on by the trial court but who does not seek to change the judgment or order is not required to file a notice of cross appeal or to raise a cross-assignment of error.

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**(F) Amendment of the notice of appeal.**

(1) **When leave required.** A party may amend a notice of appeal without leave if the time to appeal from the order that was the subject of the initial notice of appeal has not yet lapsed under App.R. 4. Thereafter, ~~The~~ the court of appeals within its discretion and upon such terms as are just may allow the amendment of a ~~timely filed~~ notice of appeal, so long as the amendment does not seek to appeal from a trial court order beyond the time requirements of App.R. 4.

(2) **Where filed.** An amended notice of appeal shall be filed in both the trial court and the court of appeals.

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**Staff Notes (July 1, 2013 Amendments)**

App.R. 3(C)(2) is amended to clarify that a party seeking to defend a judgment on a ground other than that relied on by the trial court need not file a cross-assignment of error to do so; instead, that party may simply raise the arguments in the appellate brief. The prior rule suggested as much, but some courts, relying on R.C. 2505.22, have refused to consider arguments in defense of a judgment in the absence of a cross-assignment of error. *See*, *e.g.*, *Justus v. Allstate Ins. Co.*, 10th Dist. No. 02AP-1222, 2003-Ohio-3913, ¶ 21; *Good v. Krohn*, 151 Ohio App.3d 832, 2002-Ohio-4001, 786 N.E.2d 480, ¶ 15 (3d Dist.); *Zotter v. United Servs. Auto. Assn.*, 11th Dist. No. 94-P-0001, 1994 WL 660838, \*2 (Nov. 19, 1994). Other courts, by contrast, followed the “well established” rule “that ‘a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as the basis thereof.’” *See,* *e.g.*, *Schaaf v. Schaaf*, 9th Dist. No. 05CA0060-M, 2006-Ohio-2983, ¶ 19, quoting *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 92, 637 N.E.2d 306 (1994). The language of the amendment to App.R. 3(C)(2) clarifies that the latter view is the correct one and confirms that the requirement of a cross-assignment of error in R.C. 2505.22 is abrogated by rule.

App.R. 3(F) is amended to clarify the procedure for amending a notice of appeal. Amending a notice of appeal is an efficient mechanism for appealing from a trial court order different from the order referenced in the initial notice of appeal without having to file a second notice of appeal and then seeking to consolidate the two appellate cases. The amendment clarifies that no leave is required to amend a notice of appeal if the time to appeal from the order identified in the initial notice of appeal has not yet lapsed under App.R. 4; this resolves a perceived ambiguity in the former rule, *see Am. Chem. Soc. v. Leadscope*, 10th Dist. No. 08AP-1026, 2010-Ohio-2725, ¶ 22, and is consistent with the general practice of permitting amendments during that initial 30-day time frame. *See*, *e.g.*, *State v. West*, 2d Dist. No. 2000CA56, 2001 WL 43110, at \*1 (Jan. 19, 2001). By contrast, leave is required if a party seeks timely to appeal from a subsequent trial court order after the time to appeal from the originally appealed order has expired under App.R. 4; the decision whether to grant leave at that point is discretionary, reflecting the general reluctance to permit such amendments, *see*, *e.g.*, *Rickard v. Trumbull Twp. Zoning Bd.*, 11th Dist. Nos. 2008-A-0024, 2008-A-0027, 2008-A-0025, 2008-A-0028, and 2008-A-0026, 2009-Ohio-2619, ¶ 42, but also recognizing the potential efficiencies of avoiding a second appeal if the orders in question are inter-related. In all events, however, an amended notice of appeal may not be used to appeal from a trial court order if the time to appeal from that order has already lapsed under App.R. 4. App.R. 3(F)(2) also clarifies that the party filing an amended notice of appeal must file the amendment in both the trial and appellate courts so that both courts are aware of the scope of the appeal.

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

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**(B) Exceptions**

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

**(1) Multiple or cross appeals**

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

**(2) Civil or juvenile post-judgment motion**

In a civil case or juvenile proceeding, if a party files any of the following, if timely and appropriate:

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

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

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

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

(e) a motion for attorneys’ fees under R.C. 2323.42,

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

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

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

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

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

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

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

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

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

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

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

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**Staff Notes (July 1, 2013 Amendments)**

The amendments to App.R. 4(B)(2)(d) and App.R. 4(B)(3)(d) clarify that a proper and timely request to the trial court for findings of fact and conclusions of law defers the running of the time to appeal in all circumstances in which the rules permit such a request. That general concept was reflected in the prior rule, but the amendments reference additional provisions of the civil, juvenile, and criminal rules that authorize parties to request findings of fact and conclusions of law.

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**RULE 9. The Record on Appeal**

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**(C) Statement of the evidence or proceedings when no recording was made, when the transcript of proceedings is unavailable, or when a recording was made but is no longer available for transcription.**

(1)If no recording of the proceedings was made, if a transcript is unavailable, or if a recording was made but is no longer available for transcription, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee no later than twenty days prior to the time for transmission of the record pursuant to App.R. 10 and the appellee may serve on the appellant objections or propose amendments to the statement within ten days after service of the appellant’s statement; these time periods may be extended by the court of appeals for good cause. The statement and any objections or proposed amendments shall be forthwith submitted to the trial court for settlement and approval. The trial court shall act prior to the time for transmission of the record pursuant to App.R. 10, and, as settled and approved, the statement shall be included by the clerk of the trial court in the record on appeal.

(2) In cases initially heard in the trial court by a magistrate, a party may use a statement under this division in lieu of a transcript if the error assigned on appeal relates solely to a legal conclusion. If any part of the error assigned on appeal relates to a factual finding, the record on appeal shall include a transcript or affidavit previously filed with the trial court as set forth in Civ.R. 53(D)(3)(b)(iii), Juv.R. 40(D)(3)(b)(iii), and Crim.R. 19(D)(3)(b)(iii).

**(D) Agreed statement as the record on appeal.**

(1)In lieu of the record on appeal as defined in division (A) of this rule, the parties, no later than ten days prior to the time for transmission of the record under App.R. 10, may prepare and sign a statement of the case showing how the issues raised in the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with additions as the trial court may consider necessary to present fully the issues raised in the appeal, shall be approved by the trial court prior to the time for transmission of the record under App.R. 10 and shall then be certified to the court of appeals as the record on appeal and transmitted to the court of appeals by the clerk of the trial court within the time provided by App.R. 10.

(2) In cases initially heard in the trial court by a magistrate, a party may use a statement under this division in lieu of a transcript if the error assigned on appeal relates to a legal conclusion. If the error assigned on appeal relates to a factual finding, the record on appeal shall include a transcript or affidavit previously filed with the trial court as set forth in Civ.R. 53(D)(3)(b)(iii), Juv.R. 40(D)(3)(b)(iii), and Crim.R. 19(D)(3)(b)(iii).

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**Staff Notes (July 1, 2013 Amendments)**

App.R. 9 is amended to clarify that a statement of the evidence or proceedings in lieu of an unavailable transcript (under App.R. 9(C)) or an agreed statement of the case (under App.R. 9(D)) is available only in limited circumstances in cases originally heard by a magistrate. One of the predicates for appealing from a factual finding in cases initially heard by a magistrate is that the trial judge must have had an adequate opportunity to conduct a full review of the factual finding. That full review is not possible unless the appellant provided the trial court with an adequate description of the evidence presented to the magistrate - either through a transcript or, if a transcript is unavailable, an affidavit describing that evidence. *See* Civ.R. 53(D)(3)(b)(iii) Crim.R. 19(D)(3)(b)(iii) Juv.R. 40(D)(3)(b)(iii) (same;) *see also* Lesh v. Moloney, 10th Dist. No. 11AP–353, 2011-Ohio-6565, ¶ 12 (“Absent a transcript, the trial court had no basis to disagree with the magistrate’s findings of fact.”); *Harris v. Transp. Outlet*, 11th Dist. No. 2007-L-188, 2008-Ohio-2917, ¶ 16. Case law already provides that an appellate court will not review factual findings on appeal unless the appellant provided the trial court with that description of the evidence and that a statement under App.R. 9(C) or App.R. 9(D) does not overcome this problem. *See*, *e.g.*, *Trammell v. McCortney*, 9th Dist. No. 25840, 2011-Ohio-6598, ¶ 9-10; *Swartz v. Swartz*, 9th Dist. No. 11CA0057-M, 2011-Ohio-6685, ¶ 10. But appellants nevertheless continue to attempt to use such statements in these circumstances, suggesting a need for more explicit guidance in the rule. On the other hand, the absence of a transcript or affidavit at the trial court level should not preclude appellate review of a legal determination, so long as the appellant complied with the objection requirements of the applicable magistrate rule. If there is a need for a record of what occurred at a hearing or trial, a statement under App.R. 9(C) or App.R. 9(D) is an acceptable record in an appeal in a case originally tried to a magistrate if the appellant does not intend to challenge factual findings and has properly objected below.

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**RULE 11.1 Accelerated Calendar**

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**(C) Briefs.** Briefs shall be in the form specified by App.R. 16. Appellant shall serve and file ~~his~~ appellant’s brief within fifteen days after the date on which ~~the record is filed~~ the clerk has mailed the notice required by App.R. 11(B). The appellee shall serve and file ~~his~~ appellee’s brief within fifteen days after service of the brief of the appellant. Reply briefs shall not be filed unless ordered by the court.

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**Staff Notes (July 1, 2013 Amendments)**

App.R.11.1(C) is amended to make the due date for the appellant’s opening brief in accelerated calendar cases run from the date when the clerk has mailed the notice that the record is complete, as required by App.R. 11(B). This change brings the language of App.R. 11.1(C) into alignment with the corresponding language of App.R. 18(A), which governs the timing of the appellant’s opening brief in regular calendar cases.

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**RULE 16. Briefs**

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**(E) Unnecessary attachments of legal authorities disfavored.**

~~Notwithstanding anything to the contrary in Rule 7(C) of the Supreme Court Rules for the Reporting of Opinions, parties~~ Parties are discouraged from attaching to briefs any legal authority generally accessible through online legal research databases. If determination of the assignments of error presented requires the consideration of legal authority not generally accessible through online legal research databases but available through another online resource, the citation in the brief to the authority should include the internet URL address where the authority is accessible. If determination of the assignments of error presented requires the consideration of legal authority not accessible through any online resource, the relevant parts shall be reproduced in the brief or in an addendum at the end or may be supplied to the court in pamphlet form.

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**Staff Notes (July 1, 2013 Amendments)**

Effective July 1, 2012, App.R. 16(E) was amended to make clear that parties need not attach to briefs any authority easily available on the internet. Since adoption of the amendment, the Supreme Court Rules for the Reporting of Opinions have been amended to delete Rule 7(C) as referenced in App.R. 16(E). Therefore, the current amendment deletes the superfluous language in the rule.

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**RULE 21. Oral Argument**

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**(I) Citation of Additional Authorities ~~in briefs~~.** If counsel on oral argument intends to present authorities not cited in ~~his~~ the brief, ~~he~~ counsel shall, at least five days prior to oral argument, present in writing such authorities to the court and to opposing counsel, unless there is good cause for a later presentment. Any additional authority is limited to authority created or announced after the presenting party’s last brief was filed.

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**Staff Notes (July 1, 2013 Amendments)**

The amendment to App.R. 21 contains two new requirements. First, any additional authority must be presented at least five days before oral argument, unless there is good cause for later presentment, such as the unavailability of the authority until closer to the time of argument or thereafter. Second, the additional authority must have been unavailable to the party wishing to rely on it at the time that party filed its last brief.

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**RULE 43. Effective Date**

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**(Z)** **Effective date of amendments.** The amendments to Rules 3, 4, 9, 11.1, 16, 21, and 43 filed by the Supreme Court with the General Assembly on January 15, 2013 shall take effect on July 1, 2013. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**OHIO RULES OF CIVIL PROCEDURE**

**\*\*\***

**RULE 4.4 Process: Service by Publication**

**(A) Residence unknown.**

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(2) In a divorce, annulment, or legal separation action, and in actions pertaining to the care, custody, and control of children whose parents are not married, and in all post-decree proceedings, if the plaintiff is proceeding in forma pauperis and if the residence of the defendant is unknown, service by publication shall be made by posting and mail. Before service by posting and mail can be made, an affidavit of a party or the party's counsel shall be filed with the court. The affidavit shall contain the same averments required by division (A)(1) of this rule and, in addition, shall set forth the defendant's last known address.

Upon the filing of the affidavit, the clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse or courthouses in which the general and domestic relations divisions of the court of common pleas for the county are located and in two additional public places in the county that have been designated by local rule for the posting of notices pursuant to this rule. In addition, the postings may be made on the website of the clerk of courts, if available, in a section designated for such purpose. The notice shall contain the same information required by division (A)(1) of this rule to be contained in a newspaper publication. The notice shall be posted in the required locations for six successive weeks.

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

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

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**RULE 15. Amended and Supplemental Pleadings**

**(A) Amendments.** A party may amend ~~his~~ its pleading once as a matter of course ~~at any time before a responsive pleading is served~~ within twenty-eight days after serving it or, if the pleading is one to which ~~no~~ a responsive pleading is ~~permitted and the action has not been placed upon the trial calendar, he may so amend it at any time~~ required within twenty-eight days after ~~it is served~~ service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. ~~Otherwise~~ In all other cases, a party may amend ~~his~~ its pleading only ~~by leave of court or by written consent of the adverse party~~ with the opposing party’s written consent or the court’s leave. ~~Leave of~~ The court shall ~~be~~ freely ~~given~~ give leave when justice so requires. ~~A party shall plead in~~ Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining ~~for response~~ to respond to the original pleading or within fourteen days after service of the amended pleading, whichever ~~period may be the longer, unless the court otherwise orders~~ is later.

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**Staff Notes (July 1, 2013 Amendments)**

Rule 15(A) is amended to allow amendment without leave of court of a complaint, or other pleading requiring a responsive pleading, for a period of 28 days after the service of a responsive pleading or motion. Under the prior rule, amendment without leave of court was limited to pleadings not requiring a response or to which a required response had not been served.

Rule 15(A) is also amended to limit amendment without leave of court of a complaint or other pleading requiring a responsive pleading, to a period of 28 days after service of the pleading when a response has not been served. Under the prior rule, the time for amendment without leave of court under those circumstances was not limited, and could be made at any time prior to service of a response.

The 2013 changes to Civ.R. 15(A) are modeled on the 2009 amendments to Fed.R.Civ.P. 15(a) and made for the same reasons that prompted those amendments.

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**RULE 40. Pre-Recorded Testimony**

All of the testimony and such other evidence as may be appropriate may be presented at a trial by ~~videotape~~ video recording, subject to the provisions of the Rules of Superintendence.

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**Staff Notes (July 1, 2013 Amendments)**

Rule 40 is amended to reflect that modern technology now encompasses digital video recording. The amendment is intended to clarify that presentation by video, analog or digital, is permissible provided that the recording complies with the provisions of the Rules of Superintendence for the Courts of Ohio.

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

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**(B) Motion for judgment notwithstanding the verdict.** Whether or not a motion to direct a verdict has been made or overruled and not later than ~~fourteen~~ twenty-eight days after entry of judgment, a party may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with ~~his~~ the party’s motion; or if a verdict was not returned such party, within ~~fourteen~~ twenty-eight days after the jury has been discharged, may move for judgment in accordance with ~~his~~ the party’s motion. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment. If the judgment is reopened, the court shall either order a new trial or direct the entry of judgment, but no judgment shall be rendered by the court on the ground that the verdict is against the weight of the evidence. If no verdict was returned the court may direct the entry of judgment or may order a new trial.

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

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

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

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**Staff Notes (July 1, 2013 Amendments)**

Rule 50(B) is amended to extend the time for filing a motion for judgment notwithstanding the verdict to 28 days after entry of judgment, or within 28 days after the jury has been discharged if a verdict was not returned. These changes are modeled on the 2009 amendments to Fed.R.Civ.P.15(a) and are made for the same reasons that prompted the amendments to the federal rule.

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**RULE 59. New Trials**

**\*\*\***

**(B) Time for motion.** A motion for a new trial shall be served not later than ~~fourteen~~ twenty-eight days after the entry of the judgment.

**\*\*\***

**(D) On initiative of court.** Not later than ~~fourteen~~ twenty-eight days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party.

The court may also grant a motion for a new trial, timely served by a party, for a reason not stated in the party’s motion. In such case the court shall give the parties notice and an opportunity to be heard on the matter. The court shall specify the grounds for new trial in the order.

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**Staff Notes (July 1, 2013 Amendments)**

Rule 59(B) is amended to extend the time for serving a motion for new trial to 28 days after the entry of the judgment. This change is modeled on the 2009 amendment to Fed.R.Civ.P. 59(b) and is made for the same reasons that prompted the amendment to the federal rule.

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**RULE 86. Effective Date**

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**(JJ)** The amendments to Civil Rules 4.4, 10, 15, 40, 50, 59, and 86 filed by the Supreme Court with the General Assembly on January 15, 2013 shall take effect on July 1, 2013. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**OHIO RULES OF CRIMINAL PROCEDURE**

**\*\*\***

**RULE 12. Pleadings and Motions Before Trial: Defenses and Objections**

**(A) Pleadings and motions.** Pleadings in criminal proceedings shall be the complaint, and the indictment or information, and the pleas of not guilty, not guilty by reason of insanity, guilty, and no contest. All other pleas, demurrers, and motions to quash, are abolished. Defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

**(B) Filing with the court defined**. The filing of documents with the court, as required by these rules, shall be made by filing them with the clerk of court, except that the judge may permit the documents to be filed with the judge, in which event the judge shall note the filing date on the documents and transmit them to the clerk. A court may provide~~,~~ by local rules ~~adopted pursuant to the Rules of Superintendence,~~ for the filing of documents by electronic means. If the court adopts such local rules, they shall include all of the following:

(1) The complaint, if permitted by local rules to be filed electronically, shall comply with Crim.R. 3.

(2) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall order the filing stricken.

(3) A provision shall specify the days and hours during which electronically transmitted documents will be received by the court, and a provision shall specify when documents received electronically will be considered to have been filed.

(4) Any document filed electronically that requires a filing fee may be rejected by the clerk of court unless the filer has complied with the mechanism established by the court for the payment of filing fees.

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**RULE 32. Sentence**

**\*\*\***

**(C) Judgment.**

A judgment of conviction shall set forth the ~~plea, the verdict, or findings, upon which each conviction is based,~~ fact of conviction and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

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**Staff Notes (July 1, 2013 Amendments)**

Rule 32(C) sets forth the four essential elements required for a judgment of conviction as defined by the Supreme Court of Ohio. See *State v. Lester*, 2011-Ohio-5204. The previous rule arguably required the judgment to specify the specific manner of conviction, e.g., plea, verdict, or findings upon with the conviction is based. The amendment to the rule allows, but does not require, the judgment to specify the specific manner of conviction. When a judgment of conviction reflects the four substantive provisions, as set forth by the Supreme Court of Ohio, it is a final order subject to appeal.

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**RULE 59. Effective Date**

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**(BB) Effective date of amendments.** The amendments to Criminal Rule 12, 32, and 59 filed by the Supreme Court with the General Assembly on January 15, 2013 shall take effect on July 1, 2013. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

**OHIO RULES OF JUVENILE PROCEDURE**

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**RULE 16. Process: Service**

**(A) Summons: service, return.** Except as otherwise provided in these rules, summons shall be served as provided in Civil Rules 4(A), (C) and (D), 4.1, 4.2, 4.3, 4.5 and 4.6. The summons shall direct the party served to appear at a stated time and place. Where service is by certified mail, the time shall not be less than seven days after the date of mailing.

Except as otherwise provided in this rule, when the residence of a party is unknown and cannot be ascertained with reasonable diligence, service shall be made by publication. Service by publication upon a non-custodial parent is not required in delinquent child or unruly child cases when the person alleged to have legal custody of the child has been served with summons pursuant to this rule, but the court may not enter any order or judgment against any person who has not been served with process or served by publication unless that person appears. Before service by publication can be made, an affidavit of a party or party's counsel shall be filed with the court. The affidavit shall aver that service of summons cannot be made because the residence of the person is unknown to the affiant and cannot be ascertained with reasonable diligence and shall set forth the last known address of the party to be served.

Service by publication shall be made by newspaper publication, by posting and mail, or by a combination of these methods. The court, by local rule, shall determine which method or methods of publication shall be used. If service by publication is made by newspaper publication, upon the filing of the affidavit, the clerk shall serve notice by publication in a newspaper of general circulation in the county in which the complaint is filed. If no newspaper is published in that county, then publication shall be in a newspaper published in an adjoining county. The publication shall contain the name and address of the court, the case number, the name of the first party on each side, and the name and last known address, if any, of the person or persons whose residence is unknown. The publication shall also contain a summary statement of the object of the complaint and shall notify the person to be served that the person is required to appear at the time and place stated. The time stated shall not be less than seven days after the date of publication. The publication shall be published once and service shall be complete on the date of publication.

After the publication, the publisher or the publisher's agent shall file with the court an affidavit showing the fact of publication together with a copy of the notice of publication. The affidavit and copy of the notice shall constitute proof of service.

If service by publication is made by posting and mail, upon the filing of the affidavit, the clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse in which the division of the common pleas court exercising jurisdiction over the complaint is located and in additional public places in the county that have been designated by local rule for the posting of notices pursuant to this rule. The number of additional public places to be designated shall be either two places or the number of state representative districts that are contained wholly or partly in the county in which the courthouse is located, whichever is greater. In addition, the postings may be made on the website of the clerk of courts, if available, in a section to be designated for such purpose. The notice shall contain the same information required to be contained in a newspaper publication. The notice shall be posted in the required locations for seven consecutive days. The clerk also shall cause the summons and accompanying pleadings to be mailed by ordinary mail, address correction requested, to the last known address of the party to be served. The clerk shall obtain a certificate of mailing from the United States Postal Service. If the clerk is notified of a corrected or forwarding address of the party to be served within the seven day period that notice is posted pursuant to this rule, the clerk shall cause the summons and accompanying pleadings to be mailed to the corrected or forwarding address. The clerk shall note the name, address, and date of each mailing in the docket.

After the seven days of posting, the clerk shall note on the docket where and when notice was posted. Service shall be complete upon the entry of posting.

**(B) Warrant: execution; return.**

**(1) By whom.** The warrant shall be executed by any officer authorized by law.

**(2) Territorial limits.** The warrant may be executed at any place within this state.

**(3) Manner.** The warrant shall be executed by taking the party against whom it is issued into custody. The officer is not required to have possession of the warrant at the time it is executed, but in such case the officer shall inform the party of the complaint made and the fact that the warrant has been issued. A copy of the warrant shall be given to the person named in the warrant as soon as possible.

**(4) Return.** The officer executing a warrant shall make return thereof to the issuing court. Unexecuted warrants shall upon request of the issuing court be returned to that court.

A warrant returned unexecuted and not cancelled or a copy thereof may, while the complaint is pending, be delivered by the court to an authorized officer for execution.

An officer executing a warrant shall take the person named therein without unnecessary delay before the court which issued the warrant.

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**RULE 47. Effective Date**

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**(V) Effective date of amendments.** The amendments to Juvenile Rules 16 and 47 filed by the Supreme Court with the General Assembly on January 15, 2013 shall take effect on July 1, 2013. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

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