

AMENDMENTS TO THE OHIO RULES OF PRACTICE AND PROCEDURE

The following amendments to the Ohio Rules of Civil Procedure (4, 4.1, 4.7, 16, 26, 53, 73, and Proposed Civil Form), the Ohio Rules of Criminal Procedure (19 and 46), the Ohio Rules of Evidence (601, proposed 810, and 902), Ohio Rules of Appellate Procedure (3, 19, and 21), and the Ohio Rules of Juvenile Procedure (3, 4, and 42). The Court is also seeking public comment on changes to the Model Uniform Traffic Ticket, found in the Ohio Traffic Rules. The history of these amendments is as follows:

October 7, 2019 First publication for public comment (ENDING NOV. 6, 2019)

Key to Adopted Amendments:

1. Unaltered language appears in regular type. Example: text
2. Language that has been deleted appears in strikethrough. Example: ~~text~~
3. New language that has been added appears in underline. Example: text

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

Comments requested: The Supreme Court of Ohio will accept public comments until November 6, 2019 on the following proposed amendments to the Ohio Rules of Civil Procedure (4, 4.1, 4.7, 16, 26, 53, 73, and Proposed Civil Form), the Ohio Rules of Criminal Procedure (19 and 46), the Ohio Rules of Evidence (601, proposed 810, and 902), Ohio Rules of Appellate Procedure (3, 19, and 21), and the Ohio Rules of Juvenile Procedure (3, 4, and 42). The Court is also seeking public comment on changes to the Model Uniform Traffic Ticket, found in the Ohio Traffic Rules.

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

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

Comment Contact: Comments on the proposed amendments must be submitted in writing to Jess Mosser, Interim Judicial and Legislative Affairs Counsel, Supreme Court of Ohio, 65 South Front Street, 7th Floor, Columbus, Ohio 43215-3431 or Jesse.Mosser@sc.ohio.gov and received no later than November 6, 2019. Please include your full name and regular mailing address in any comment submitted by e-mail. Copies of all comments submitted will be provided to each member of the Commission on the Rules of Practice and Procedure and each Justice of the Supreme Court.

Comment Deadline: Comments must be submitted no later than November 6, 2019.

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

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

Summary

1. OHIO RULES OF CIVIL PROCEDURE

- Waiver of Service **(Civ.R. 4, 4.1, and 4.7)**

The Commission recommends this series of amendments in order to implement a waiver of service provision, as is used in the Federal Rules. Under this scheme, defendants who voluntarily waive service will be given an extended time to file an answer. Waiver of service does *not* waive any objection to jurisdiction or venue. Parties that refuse to waive service without good cause may be held responsible for paying the costs of obtaining service.

As noted above, a similar system is utilized in the federal system and a majority of states utilize some type of incentivized waiver system. The proposal for the Ohio rules does limit this process to civil actions filed in Common Pleas Court.

- Discovery **(Civ.R. 16 and 26)**

The Commission recommends this series of amendments in order to bring the Ohio rules for discovery closer in line with the corresponding federal rules. These proposals would require, among other things, a scheduling order for discovery and other pre-trial matters. A discovery *conference* with the court, however, would still be permissive. Civ.R. 16 contains a list of possible items that could be addressed by the scheduling order.

The proposal to amend Civ.R. 26 follows many of the same themes, and adopts the federal rule concept of “proportionality.” This concept would allow a trial court to consider the breadth and scope of the civil case in making determinations as to the type and quantity of discovery that would be appropriate.

The proposed amendment also includes a requirement that the parties hold a discovery conference between the parties, file a discovery plan with the court, and disclose certain information without requiring any request for discovery. The proposal specifically requires the disclosure of documents obtained by way of public records request.

- Magistrates Jury Trials **(Civ.R. 53)**

The Commission recommends amendments to Civ.R. 53 so as to clarify how a jury trial conducted by a magistrate is to proceed. Specifically, the amendment directs a trial judge to file a

final judgment in accordance with the legal findings of the magistrate and the factual findings of the jury, in accordance with Civ.R. 58. The amendment also specifies that all of the magistrate's legal rulings cannot be objected to and taken before the judge. Furthermore, the rule specifies that any post-trial motions will be decided by the magistrate.

This amendment would only come into play when parties unanimously consent to a magistrate conducting a jury trial, as provided under current Civ.R. 53(C)(1)(c).

- Fixed Cross-Reference
(Civ.R. 73)

The Commission recommends a small corrective amendment to Civ.R. 73, as the rule previously made reference to Civ.R.3(B). In 2019, Civ.R. 3 was amended and the referenced subsection is now Civ.R. 3(C). This amendment reflects that change.

- Civil Indigency Form
(Proposed Form)

The Commission proposes a form to be added to the Civil Rules. This form is in response to the General Assembly amending R.C. 2323.311 in March 2019. At that time, the statute was amended so as to allow indigent civil litigants the ability to petition a court for the waiver of filing fee deposits. The legislation requested that the Supreme Court create a form so as to allow civil litigants the ability to petition the court for this relief. The new statute also laid out various financial benchmarks which are found in the proposed form.

2. OHIO RULES OF CRIMINAL PROCEDURE

- Bail and Bond
(Crim.R. 46)

The Commission proposes this series of amendments in relation to the setting of bail in criminal cases. The most prominent features of these amendments include a requirement that a court utilize the least restrictive bond conditions and least amount of monetary bail to secure the defendant's appearance, and an expanded non-exclusive list of bond conditions.

Additionally, the amendment makes clear that a bond schedule is to be used for the sole purpose of securing a release before an initial appearance, and is not to be considered by a trial court during a bond hearing.

Finally, these amendments also make small amendments that require a judge review bail at arraignment should the defendant still be in custody at that time.

- Duties of Criminal Magistrates
(Crim.R. 19)

The Commission proposes these amendments to allow magistrates to take pleas in criminal cases up to fourth and fifth degree felonies. The rule currently allows magistrates to take pleas, but only in misdemeanor cases.

The Commission, at the request of the Ohio Judicial Conference, also recommends language that would allow magistrates to conduct proceedings in Supreme Court certified specialized dockets, but only when authorized by and in accordance with the existing Specialized Docket Standards.

This specific proposed language was recommended by the Supreme Court's Commission on Specialized Dockets. The intent of the language is to allow a magistrate to assist in managing specialized dockets, but only to the extent approved by the Commission on Specialized Dockets and, ultimately, the Supreme Court.

3. OHIO RULES OF EVIDENCE

- Competency
(Evid.R. 601)

The Commission recommends amendments to Evid.R. 601 so as to change the standard for competency for children under ten years of age. Under the current rule, a child under such an age is presumed to lack competency to testify. This amendment would specify that all persons are competent to testify unless the Court determines they are not.

This amendment would bring Ohio in line with the majority of other states in regards to competence to testify.

- Residual Hearsay Exception
(Evid.R. 810)

The Commission recommends the creation of Evid.R. 810 so as to create a residual hearsay exception, as is found in the Federal rules. This exception, which is modeled after the federal rule that will go into effect in December 2019, would allow a court to consider hearsay evidence if it is supported by sufficient guarantees of trustworthiness. The rule would also require notice be given to the opposing party as to use of the evidence in question.

- Self-Authentication of Business Records and Electronic Records
(Evid.R. 902)

The Commission recommends amendments to Evid.R. 902 to align with the Federal rules in regards to authentication of business records. Under the current rule, business records must be authenticated by custodians of the records. This often times requires live testimony from such

custodians, including employees of cell-phone companies to authenticate call records. Under these amendments, records could be authenticated by sworn statement or certification.

4. OHIO RULES OF APPELLATE PROCEDURE

- Filing of Cross-Appeals
(App.R. 3)

The Commission recommends amendments to App.R. 3 so as to clarify that notices of cross-appeals need to be filed with the clerk of the trial court. This is intended to prevent confusion and an appellee from accidentally missing a filing deadline for such a cross-appeal.

- Applying Word Limits on Appellate Briefs
(App.R. 19)

The Commission recommends amendments to App.R. 19 so as to move away from requiring page limits on briefs, and move into placing word limits on briefs. The proposed amendments are intended to eliminate concerns of utilizing odd fonts or spacing in order to fit an appellate brief into an allotted page length. Utilizing word limitations would allow for uniform length of a brief, in that regard.

- Oral Argument Time Limitations
(App.R. 21)

The Commission recommends amendments to App.R. 21 so as to restrict standard oral argument time from thirty minutes to fifteen minutes. The amendments also specify that parties on the same side of an issue are to split the fifteen minutes amongst themselves as they agree, and each party does not get a separate fifteen minutes.

This proposal was made by the Ohio Association for Court Administrators and mirrors what is already common practice among Ohio's appellate courts.

5. OHIO JUVENILE RULES

- Appointment of Counsel
(Juv.R. 3)

The Commission recommends this series of amendments in regards to the appointment of counsel for juveniles. The proposal was received from the Juvenile Justice Subcommittee of the Supreme Court's Advisory Committee on Children and Families. The amendments would specify that a juvenile shall be appointed counsel at the earliest stage of proceedings, giving the child a "meaningful opportunity" to consult with counsel before any hearings. The juvenile would not be permitted to waive counsel without meeting with appointed or retained counsel. Also, the rule would not allow any waiver of counsel if the child is detained pending adjudication. Finally, the

rule would specify that a juvenile is presumed indigent and the finances of their parents shall not be considered when deciding to appoint counsel.

- Appointment of Guardian ad Litem
(Juv.R. 4)

The Commission recommends this series of amendments in regards to the appointment of guardians ad litem. This proposal was submitted by the Juvenile Law and Procedure Committee of the Ohio Judicial Conference. The amendment would clarify that should the child's wishes come into conflict with a guardian ad litem's duty to adhere to the child's best interest, then a new attorney would be appointed for the child. The current rule allows for the appointment of a new guardian ad litem.

- Consent to Marry
(Juv.R. 42)

The Commission recommends this series of amendments to Juv.R. 42 in order to comply with the recently amended statute. In April 2019, various amendments to R.C. 3101.01 in relation to a minor seeking consent to enter into marriage. The amendments to this rule are in response to that legislation.

6. MODEL UNIFORM TRAFFIC TICKET

- Redesign

The Commission recommends a redesign of the Model Uniform Traffic Ticket ("MUTT") as found in the Ohio Traffic Rules. Some of these recommendations come from a recent task force related to the issuance of warrants in Ohio. This task force was convened by Governor DeWine. A small number of other additions were also made, such as language that would allow a driver to "opt in" to receiving text notifications of upcoming court dates and a checkbox that indicates the existence of audio-visual evidence of the traffic stop were also included.

1 **OHIO RULES OF CIVIL PROCEDURE**

2
3 **RULE 4. Process: Summons**

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

6
7 **(D) Waiver of service of summons.** Service of summons may be waived in writing by
8 any person entitled thereto under Rule 4.2 who is at least eighteen years of age and not under
9 disability. For any civil action filed in a Court of Common Pleas, the plaintiff may request that the
10 defendant waive service of a summons pursuant to the provisions of Civ.R. 4.7.

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

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14 **Proposed Staff Note (July 2020)**

15
16 Civ.R. 4(D) is amended to include a reference to the specific provisions for waiver of service of
17 summons provided for in Civ.R. 4.7.
18

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

33
34 **(A) Requesting a Waiver.** An individual, corporation, partnership, or association that
35 is subject to service under Civ.R. 4 through 4.6 has a duty to avoid unnecessary expenses of serving
36 the summons. The plaintiff may notify such a defendant that an action has been commenced and
37 request that the defendant waive service of a summons. The notice and request must:

38
39 (1) be in writing and be addressed as required by Civ.R. 4.2;

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41 (2) name the court where the complaint was filed;

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

45
46 (4) inform the defendant, using the form appended to this Rule 4.7, of the
47 consequences of waiving and not waiving service;

48
49 (5) state the date when the request is sent;

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51 (6) give the defendant a reasonable time of at least twenty-eight days after the
52 request was sent—or at least sixty days if sent to the defendant outside of the United
53 States—to return the waiver; and

54
55 (7) be sent by first-class mail or other reliable means.

56
57 **(B) Limited to Courts of Common Pleas.** The waiver of service provisions in this
58 rule are limited to civil actions filed in the Courts of Common Pleas.

59
60 **(C) Failure to Waive.** If a defendant over which the court has personal jurisdiction
61 fails, without good cause, to sign and return a waiver requested by a plaintiff, then the court must
62 impose on the defendant:

63
64 (1) the expenses later incurred in making service; and

65
66 (2) the reasonable expenses, including attorney's fees, of any motion required
67 to collect those service expenses.

68
69 **(D) Time to Answer After a Waiver.** A defendant who, before being served with
70 process, timely returns a waiver need not serve an answer to the complaint until sixty days after
71 the request was sent—or until ninety days after it was sent to the defendant in a foreign country.

72
73 **(E) Results of Filing a Waiver.** When the plaintiff files a waiver, proof of service is
74 not required and these rules apply as if a summons and complaint had been served at the time of
75 filing the waiver.

76

77 **(F) Jurisdiction and Venue Not Waived.** Waiving service of a summons does not
78 waive any objection to jurisdiction or to venue.

79
80 **[Form] RULE 4.7 NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF SUMMONS.**

81
82 (Caption)

83
84 To (name the defendant or — if the defendant is a corporation, partnership, or association
85 — name an officer or agent authorized to receive service):

86
87 WHY ARE YOU GETTING THIS?

88
89 A lawsuit has been filed against you, or the entity you represent, in this court under the
90 number shown above. A copy of the complaint is attached.

91
92 This is not a summons, or an official notice from the court. It is a request that, to avoid
93 expenses, you waive formal service of a summons by signing and returning the enclosed
94 waiver. To avoid these expenses, you must return the signed waiver within (give at least
95 28 days or at least 60 days if the defendant is outside the United States) from the date
96 shown below, which is the date this notice was sent. Two copies of the waiver form are
97 enclosed, along with a stamped, self-addressed envelope or other prepaid means for
98 returning one copy. You may keep the other copy.

99
100 WHAT HAPPENS NEXT?

101
102 If you return the signed waiver, I will file it with the court. The action will then proceed as
103 if you had been served on the date the waiver is filed, but no summons will be served on
104 you and you will have 60 days from the date this notice is sent (see the date below) to
105 answer the complaint (or 90 days if this notice is sent to you outside the United States).

106
107 If you do not return the signed waiver within the time indicated, I will arrange to have the
108 summons and complaint served on you. And I will ask the court to require you, or the entity
109 you represent, to pay the expenses of making service.

110
111 Please read the enclosed statement about the duty to avoid unnecessary expenses.

112
113 I certify that this request is being sent to you on the date below.

114
115 Date: _____

116
117 (Signature of the attorney or unrepresented party)

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119 _____

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121 (Printed name)

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(Address)

(E-mail address)

(Telephone number)

[Form] RULE 4.7 WAIVER OF THE SERVICE OF SUMMONS.

(Caption)

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

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

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

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

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

Date: _____

(Signature of the attorney or unrepresented party)

(Printed name)

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(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 will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

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

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

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

Proposed Staff Notes (July 2020)

Rule 4.7 is based on the federal rule permitting waiver of service. Paragraph (A) states what the present rule implies: the defendant has a duty to avoid costs associated with the service of a summons not needed to inform the defendant regarding the commencement of an action. The text of the rule also sets forth the requirements for a Notice and Request for Waiver sufficient to put the cost-shifting provision in place. These requirements are illustrated in the forms appended to the rule. Pursuant to Rule 4(D), only those persons who are identified in Rule 4.2 and who are eighteen years of age or older and not under a disability may waive service.

216 Paragraph (A)(7) permits the use of alternatives to the United States mails in sending the Notice
217 and Request. While private messenger services or electronic communications may be more expensive than
218 the mail, they may be equally reliable and on occasion more convenient to the parties. Especially with
219 respect to transmissions to foreign countries, alternative means may be desirable, for in some countries
220 facsimile transmission or electronic mail are the most efficient and economical means of communication. If
221 electronic means such as facsimile transmission or electronic mail are employed, the sender should
222 maintain a record of the transmission to assure proof of transmission if receipt is denied, but a party
223 receiving such a transmission has a duty to cooperate and cannot avoid liability for the resulting cost of
224 formal service if the transmission is prevented at the point of receipt.
225

226 A defendant failing to comply with a request for waiver shall be given an opportunity to show good
227 cause for the failure, which is the case under paragraph (B), but sufficient cause should be rare. It is not a
228 good cause for failure to waive service that the claim is unjust or that the court lacks jurisdiction. Sufficient
229 cause not to shift the cost of service would exist, however, if the defendant did not receive the request or
230 was insufficiently literate in English to understand it. It should be noted that the provisions for shifting the
231 cost of service apply only if the defendant is subject to the court's personal jurisdiction.
232

233 Paragraph (B) is a cost-shifting provision. The costs that may be imposed on the defendant could
234 include, for example, the cost of the time of a process server required to make contact with a defendant
235 residing in a guarded apartment house or residential development. The paragraph is explicit that the costs
236 of enforcing the cost-shifting provision are themselves recoverable from a defendant who fails to return the
237 waiver. In the absence of such a provision, the purpose of the rule would be frustrated by the cost of its
238 enforcement, which is likely to be high in relation to the small benefit secured by the plaintiff.
239

240 Paragraph (C) extends the time for answer if, before being served with process, the defendant
241 waives formal service. The extension is intended to serve as an inducement to waive service and to assure
242 that a defendant will not gain any delay by declining to waive service and thereby causing the additional
243 time needed to effect service. By waiving service, a defendant is not called upon to respond to the complaint
244 until 60 days from the date the notice was sent to it—90 days if the notice was sent to a foreign country—
245 rather than within the 28-day period from date of service specified in Rule 12.
246

247 Paragraph (D) clarifies the effective date of service when service is waived. The device of
248 requested waiver of service is not suitable if a limitations period which is about to expire is not tolled by
249 filing the action. Unless there is ample time, the plaintiff should proceed directly to the formal methods for
250 service identified in Rules 4-4.6.
251

252 The procedure of requesting waiver of service should also not be used if the time for service under
253 Rule 4(E) will expire before the date on which the waiver must be returned. The court could refuse a request
254 for additional time unless the plaintiff can demonstrate good cause as to why service was not made within
255 that period. It may be noted that the presumptive time limit for service under Rule 4(E) does not apply to
256 out-of-state service or service in a foreign country.
257

258 Paragraph (E) of Rule 4.7 is explicit that a timely waiver of service of a summons does not prejudice
259 the right of a defendant to object by means of a motion authorized by Rule 12(B) to the absence of
260 jurisdiction, or to assert improper venue under Rule 12(B)(3). The only issues eliminated are those involving
261 the sufficiency of the summons or the sufficiency of the method by which it is served.
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RULE 16. Pretrial Procedure

(A) Purposes of a Pretrial Conference. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

- (1) expediting disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and (5) facilitating settlement.

Attorneys, their clients, and unrepresented parties shall endeavor in good faith to agree on all the schedules contemplated by this rule and courts shall consider such agreements in the establishment of any such schedule.

(B) Scheduling.

(1) Scheduling Order. Except for matters listed in Civ. R. 1(C), the court shall issue a scheduling order:

- (a) after receiving the parties' report under Civ. R. 26(F);
- (b) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference; or
- (c) sua sponte by the court.

(2) Time to Issue. The court shall issue the scheduling order as soon as practicable, but unless the court finds good cause for delay, the court shall issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has responded to the complaint.

(3) Contents. The scheduling order may:

- (a) limit the time to join other parties, amend the pleadings, complete discovery, and file motions;
- (b) modify the timing of disclosures under Civ. R. 26(A);

- 307
308 (c) modify the extent of discovery;
309
310 (d) provide for disclosure, discovery, or preservation of electronically stored
311 information;
312
313 (e) direct that before moving for an order relating to discovery, the movant must
314 request a conference with the court;
315
316 (f) set dates for pretrial conferences and for trial; and (g) include other
317 appropriate matters.

318
319 (2) Modifying a Schedule. A schedule may be modified only for good cause and with
320 the court's consent.

321
322 (C) **Attendance and Matters for Consideration at a Pretrial Conference.**

323
324 (1) Attendance. A represented party must authorize at least one of its attorneys to make
325 stipulations and admissions about all matters that can reasonably be anticipated for
326 discussion at a pretrial conference. If appropriate, the court may require that a party or its
327 representative be present or reasonably available by other means to consider possible
328 settlement.

329
330 (2) Matters for Consideration. At any pretrial conference, the court shall consider and
331 take appropriate action on the following matters:

332
333 (a) The possibility of settlement of the action;

334

335 (b) The simplification of the issues;

336

337 (c) Itemizations of expenses and special damages;

338

339 (d) The necessity of amendments to the pleadings;

340

341 (e) The exchange of medical reports and hospital records (The production by any party
342 of medical reports, medical records, hospital records does not constitute a waiver of the
343 privilege granted under section 2317.02 of the Revised Code.);

344

345 (f) The number of expert witnesses;

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347 (g) The preservation of electronically stored information and other information held by
348 the parties or third parties;

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350 (h) The timing, methods of search and production, and the limitations, if any, to be
351 applied to the discovery of documents and electronically stored information;

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(i) Disclosure and the exchange of documents obtained through public records requests;

(j) Any agreements or decisions on the sharing or shifting of costs pursuant to Rule 26(C)(2);

(k) The adoption of any agreements by the parties for asserting claims of privilege or for protecting designated materials after production;

(l) The imposition of sanctions as authorized by Civ. R. 37;

(m) The possibility of obtaining:

(i) Admissions of fact;

(ii) Agreements on admissibility of documents and other evidence to avoid unnecessary testimony or other proof during trial.

(n) Disposing of pending motions;

(o) Determination of the applicable deadline for disposition of the case pursuant to Sup. R. 39 and 42, and a timetable for:

(i) initial disclosures of known and reasonably available non-privileged, non-work product documents and things that support or contradict the specifically pleaded claims and defenses,

(ii) joining parties,

(iii) amending the pleadings,

(iv) mediation or other alternative dispute resolution requested by parties,

(v) exchanging lists of lay witnesses, expert witnesses and reports, and exhibits for trial,

(vi) completing discovery,

(vii) filing of motions, responses, replies and decisions,

(viii) further case management conferences, and

(ix) a trial date, preferably one agreed-upon by the parties.

(p) Facilitating in other ways, the just, speedy, and inexpensive disposition of the action.

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(D) **Pretrial Orders.** After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(E) **Final Pretrial Conference and Orders.** The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

~~In any action, the court may schedule one or more conferences before trial to accomplish the following objectives:~~

- ~~(1) — The possibility of settlement of the action;~~
- ~~(2) — The simplification of the issues;~~
- ~~(3) — Itemizations of expenses and special damages;~~
- ~~(4) — The necessity of amendments to the pleadings;~~
- ~~(5) — The exchange of reports of expert witnesses expected to be called by each party;~~
- ~~(6) — The exchange of medical reports and hospital records;~~
- ~~(7) — The number of expert witnesses;~~
- ~~(8) — The timing, methods of search and production, and the limitations, if any, to be applied to the discovery of documents and electronically stored information;~~
- ~~(9) The adoption of any agreements by the parties for asserting claims of privilege or for protecting designated materials after production;~~
- ~~(10) — The imposition of sanctions as authorized by Civ. R. 37;~~
- ~~(11) — The possibility of obtaining:
 - ~~(a) Admissions of fact;~~
 - ~~(b) Agreements on admissibility of documents and other evidence to avoid unnecessary testimony or other proof during trial.~~~~
- ~~(12) — Other matters which may aid in the disposition of the action.~~

444 ~~The production by any party of medical reports or hospital records does not constitute a~~
445 ~~waiver of the privilege granted under section 2317.02 of the Revised Code.~~

446
447 ~~The court may, and on the request of either party shall, make a written order that recites~~
448 ~~the action taken at the conference. The court shall enter the order and submit copies to the~~
449 ~~parties. Unless modified, the order shall control the subsequent course of action.~~

450
451 ~~Upon reasonable notice to the parties, the court may require that parties, or their~~
452 ~~representatives or insurers, attend a conference or participate in other pretrial proceedings.~~

453
454
455 **Proposed Staff Note (2020 Amendment)**

456
457 Civ. R. 16 has been amended to bring the Ohio rule closer to the federal rule, while still allowing
458 for Ohio courts to decide whether to hold a scheduling conference. Civ. R. 16(A) lists several purposes
459 for why a scheduling conference may be held. In addition, the last paragraph of Civ. R. 16(A) provides
460 that parties will attempt to agree on the schedules contemplated by Civ. R. 16, and courts will endeavor
461 to respect the agreements of the parties. This paragraph is consistent with the concept of shared
462 responsibility among parties and courts in Civ. R. 1.

463
464 Similar to the prior version of Civ. R. 16, Civ. R. 16(A) still provides that holding a scheduling
465 conference is permissive, not mandatory. However, Civ. R. 16(B) requires that in all cases, except those
466 set forth in Civ. R. 1(C), a scheduling order must be issued by the court. The purpose of this requirement
467 is to promote greater consistency, predictability, and transparency for attorneys, parties, and
468 unrepresented parties in courts across Ohio.

469
470 Civ. R. 16(B)(1) clarifies that a scheduling order must be issued after the court receives the parties'
471 Civ. R. 26(F) report or after the court holds a scheduling conference. If no report is submitted or the
472 court does not hold a scheduling conference, the court must issue the scheduling order sua sponte.

473
474 Civ. R. 16(B)(2) specifies the timing requirements by which a scheduling order must be issued,
475 based on the date that any defendant has been served with the complaint or that any defendant has
476 responded to the complaint. This subsection does not require a court to wait for all defendants to be
477 served with the complaint or respond to the complaint before entering a scheduling order.

478
479 Civ. R. 16(B)(3) lists potential content that a court may include in a scheduling order.

480
481 Civ. R. 16(C) describes a variety of items that a court may address at a scheduling conference,
482 including a timetable to address deadlines for discovery and various disclosures, dispositive motions,
483 and trial. Many of the items now listed in Civ. R. 16(C) were included in the prior version of Civ. R. 16.

484
485 Civ. R. 16(E) and (F) are identical to these same subsections in the federal rule.
486

487 **RULE 26. General Provisions Governing Discovery**
488

489 **(A) Policy; discovery methods.** It is the policy of these rules (1) to preserve the right of
490 attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to
491 prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects
492 of such cases and (2) to prevent an attorney from taking undue advantage of an adversary's industry
493 or efforts.
494

495 Parties may obtain discovery by one or more of the following methods: deposition upon
496 oral examination or written questions; written interrogatories; production of documents,
497 electronically stored information, or things or permission to enter upon land or other property, for
498 inspection and other purposes; physical and mental examinations; and requests for admission.
499 Unless the court orders otherwise, the frequency of use of these methods is not limited.
500

501 **(B) Scope of discovery.** Unless otherwise ordered by the court in accordance with these
502 rules, the scope of discovery is as follows:
503

504 (1) In General. ~~Parties may obtain discovery regarding any matter, not privileged, which~~
505 ~~is relevant to the subject matter involved in the pending action, whether it relates to the claim or~~
506 ~~defense of the party seeking discovery or to the claim or defense of any other party, including the~~
507 ~~existence, description, nature, custody, condition and location of any books, documents,~~
508 ~~electronically stored information, or other tangible things and the identity and location of persons~~
509 ~~having knowledge of any discoverable matter. It is not ground for objection that the information~~
510 ~~sought will be inadmissible at the trial if the information sought appears reasonably calculated to~~
511 ~~lead to the discovery of admissible evidence. Unless otherwise limited by court order, the scope~~
512 of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that
513 is relevant to any party's claim or defense and proportional to the needs of the case, considering
514 the importance of the issues at stake in the action, the amount in controversy, the parties' relative
515 access to relevant information, the parties' access to resources, the importance of the discovery in
516 resolving the issues, and whether the burden or expense of the proposed discovery outweighs its
517 likely benefit. Information within this scope of discovery need not be admissible in evidence to be
518 discoverable.
519

520 (2) Insurance agreements. A party may obtain discovery of the existence and contents of
521 any insurance agreement under which any person carrying on an insurance business may be liable
522 to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse
523 for payments made to satisfy the judgment. Information concerning the insurance agreement is not
524 by reason of disclosure subject to comment or admissible in evidence at trial.
525

526 (3) Initial Disclosure by a Party.
527

528 (a) Without awaiting a discovery request, a party must provide to the other parties,
529 except as exempted by Civ. R. 26(B)(3)(b) or as otherwise stipulated, or ordered by the court:

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(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information - along with the subjects of that information - that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy - or a description by category and location - of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Civ. R. 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Civ. R. 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(b) The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(iii) an action to enforce or quash an administrative summons or subpoena;

(iv) a proceeding ancillary to a proceeding in another court; and

(v) an action to enforce an arbitration award.

(c) A party must make the initial disclosures no later than the parties' first pre-trial or case management conference, unless a different time is set by stipulation or court order, or unless a party objects. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(d) A party that is first served or otherwise joined after the first pre-trial or case management conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(e) A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully

576 investigated the case or because it challenges the sufficiency of another party's disclosures or
577 because another party has not made its disclosures.

578
579 ~~(3)~~(4) Trial preparation: materials. Subject to the provisions of subdivision (B)(6) of this
580 rule, a party may obtain discovery of documents, electronically stored information and tangible
581 things prepared in anticipation of litigation or for trial by or for another party or by or for that other
582 party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only
583 upon a showing of good cause therefor. A statement concerning the action or its subject matter
584 previously given by the party seeking the statement may be obtained without showing good cause.
585 A statement of a party is (a) a written statement signed or otherwise adopted or approved by the
586 party, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof,
587 which is a substantially verbatim recital of an oral statement which was made by the party and
588 contemporaneously recorded.

589
590 (5) Specific Limitations on Electronically Stored Information. A party need not
591 provide discovery of electronically stored information from sources that the party identifies as not
592 reasonably accessible because of undue burden or cost. On motion to compel discovery or for a
593 protective order, the party from whom discovery is sought must show that the information is not
594 reasonably accessible because of undue burden or cost. If that showing is made, the court may
595 nonetheless order discovery from such sources if the requesting party shows good cause,
596 considering the limitations of Rule 26(B)(6). The court may specify conditions for the discovery.

597
598 (4)(6) Limitations on Frequency and Extent.

599
600 (a) When Permitted. By order, the court may limit the number of depositions, requests
601 under Rule 36, and interrogatories or the length of depositions.

602
603 (b) When Required. On motion or on its own, the court must limit the frequency or
604 extent of discovery otherwise allowed by these rules or by local rule if it determines that:

605
606 (i) the discovery sought is unreasonably cumulative or duplicative, or can be
607 obtained from some other source that is more convenient, less burdensome, or less
608 expensive;

609
610 (ii) the party seeking discovery has had ample opportunity to obtain the information
611 by discovery in the action; or

612
613 (iii) the proposed discovery is outside the scope permitted by Rule 26(B)(1).

614
615 ~~(4) Electronically stored information. A party need not provide discovery of electronically~~
616 ~~stored information when the production imposes undue burden or expense. On motion to compel~~
617 ~~discovery or for a protective order, the party from whom electronically stored information is sought~~
618 ~~must show that the information is not reasonably accessible because of undue burden or expense.~~
619 ~~If a showing of undue burden or expense is made, the court may nonetheless order production of~~
620 ~~electronically stored information if the requesting party shows good cause. The court shall consider~~
621 ~~the following factors when determining if good cause exists:~~

622
623 (a) — whether the discovery sought is unreasonably cumulative or duplicative;

624
625 (b) — whether the information sought can be obtained from some other source that is
626 less burdensome, or less expensive;

627
628 (c) — whether the party seeking discovery has had ample opportunity by discovery in
629 the action to obtain the information sought; and

630
631 (d) — whether the burden or expense of the proposed discovery outweighs the likely
632 benefit, taking into account the relative importance in the case of the issues on which electronic
633 discovery is sought, the amount in controversy, the parties' resources, and the importance of the
634 proposed discovery in resolving the issues.

635
636 (c) In ordering production of electronically stored information, the court may specify the
637 format, extent, timing, allocation of expenses and other conditions for the discovery of the
638 electronically stored information.

639
640 (5)(7) Trial preparation: experts. **Disclosure of Expert Testimony.**

641 (a) Subject to the provisions of division (B)(5)(b) of this rule and Civ.R. 35(B), a party
642 may discover facts known or opinions held by an expert retained or specially employed by another
643 party in anticipation of litigation or preparation for trial only upon a showing that the party seeking
644 discovery is unable without undue hardship to obtain facts and opinions on the same subject by
645 other means or upon a showing of other exceptional circumstances indicating that denial of
646 discovery would cause manifest injustice.

647
648 (b) As an alternative or in addition to obtaining discovery under division (B)(5)(a) of this
649 rule, a party by means of interrogatories may require any other party (i) to identify each person
650 whom the other party expects to call as an expert witness at trial, and (ii) to state the subject
651 matter on which the expert is expected to testify. Thereafter, any party may discover from the
652 expert or the other party facts known or opinions held by the expert which are relevant to the
653 stated subject matter. Discovery of the expert's opinions and the grounds therefor is restricted to
654 those previously given to the other party or those to be given on direct examination at trial.

655
656 (a) A party must disclose to the other parties the identity of any witness it may use at trial
657 to present evidence under Ohio Rule of Evidence 702, 703, or 705.

658
659 (b) The reports of expert witnesses expected to be called by each party shall be exchanged
660 with all other parties. The parties shall submit expert reports and curriculum vitae in accordance
661 with the time schedule established by the Court. The party with the burden of proof as to a
662 particular issue shall be required to first submit expert reports as to that issue. Thereafter, the
663 responding party shall submit opposing expert reports within the schedule established by the Court.

664
665 (c) Other than under subsection (d), a party may not call an expert witness to testify unless

666 a written report has been procured from the witness and provided to opposing counsel. The report
667 of an expert must disclose a complete statement of all opinions and the basis and reasons for them
668 as to each matter on which the expert will testify. It must also state the compensation for the
669 expert's study or testimony. Unless good cause is shown, all reports and, if applicable,
670 supplemental reports must be supplied no later than thirty (30) days prior to trial. An expert will
671 not be permitted to testify or provide opinions on matters not disclosed in his or her report.

672
673 (d) Treating Physicians. A treating physician may testify as an expert and offer opinions as
674 to matters addressed in the treating physician's records. Treating physicians' records relevant to
675 the case shall be provided to opposing counsel in lieu of an expert report in accordance with the
676 time schedule established by the Court.

677
678 (e) A party may take a discovery deposition of their opponent's expert witness only after
679 the mutual exchange of reports has occurred unless the expert is a treating physician permitted to
680 testify as an expert under subsection (d). Upon good cause shown, additional time after submission
681 of both sides' expert reports will be provided for these discovery depositions if requested by a party.
682 If a party chooses not to hire an expert in opposition to an issue, that party will be permitted to
683 take the discovery deposition of the proponent's expert.

684
685 (e)(f) Drafts of any report provided by any expert, regardless of the form in which the draft
686 is recorded, are protected by division (B)(4) of this rule.

687
688 (d)(g) Communications between a party's attorney and any witness identified as an expert
689 witness under division ~~(B)(5)(b)~~ (B)(7) of this rule regardless of the form of the communications,
690 are protected by division ~~(B)(3)~~ (B)(4) of this rule except to the extent that the communications:

691
692 (i) relate to compensation for the expert's study or testimony;

693
694 (ii) identify facts or data that the party's attorney provided and that the expert
695 considered in forming the opinions to be expressed; or

696
697 (iii) identify assumptions that the party's attorney provided and that the expert
698 relied on in forming the opinions to be expressed.

699
700 (h) Expert Employed Only for Trial Preparation. Ordinarily, a party may not, by
701 interrogatories or deposition, discover facts known or opinions held by an expert who has been
702 retained or specially employed by another party in anticipation of litigation or to prepare for trial
703 and who is not expected to be called as a witness at trial. But a party may do so only:

704
705 (i) as provided in Rule 35(b); or

706
707 (ii) on showing exceptional circumstances under which it is impracticable for the
708 party to obtain facts or opinions on the same subject by other means.

709
710 (e)(iii) The court may require that the party seeking discovery under division (B)(7)
711 of this rule shall pay the expert a reasonable fee for time spent in deposition

712 ~~responding to discovery, and, with respect to discovery permitted under division~~
713 ~~(B)(5)(a) of this rule, the court may require a party to pay another party a fair~~
714 ~~portion of the fees and expenses incurred by the latter party in obtaining facts~~
715 ~~and opinions from the expert.~~

716 ~~(6)~~(8) Claims of Privilege or Protection of Trial-Preparation Materials.

717
718
719 (a) Information Withheld. When information subject to discovery is withheld on a claim
720 that it is privileged or subject to protection as trial preparation materials, the claim shall be made
721 expressly and shall be supported by a description of the nature of the documents, communications,
722 or things not produced that is sufficient to enable the demanding party to contest the claim.

723
724 (b) Information Produced. If information is produced in discovery that is subject to a
725 claim of privilege or of protection as trial preparation material, the party making the claim may
726 notify any party that received the information of the claim and the basis for it. After being notified,
727 a receiving party must promptly return, sequester, or destroy the specified information and any
728 copies within the party's possession, custody or control. A party may not use or disclose the
729 information until the claim is resolved. A receiving party may promptly present the information to
730 the court under seal for a determination of the claim of privilege or of protection as trial
731 preparation material. If the receiving party disclosed the information before being notified, it must
732 take reasonable steps to retrieve it. The producing party must preserve the information until the
733 claim is resolved.

734
735 (C) **Protective orders.** Upon motion by any party or by the person from whom
736 discovery is sought, and for good cause shown, the court in which the action is pending may make
737 any order that justice requires to protect a party or person from annoyance, embarrassment,
738 oppression, or undue burden or expense, including one or more of the following: (1) that the
739 discovery not be had; (2) that the discovery may be had only on specified terms and conditions,
740 including a designation of the time or place or the allocation of expenses; (3) that the discovery
741 may be had only by a method of discovery other than that selected by the party seeking discovery;
742 (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain
743 matters; (5) that discovery be conducted with no one present except persons designated by the
744 court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade
745 secret or other confidential research, development, or commercial information not be disclosed or
746 be disclosed only in a designated way; (8) that the parties simultaneously file specified documents
747 or information enclosed in sealed envelopes to be opened as directed by the court.

748
749 If the motion for a protective order is denied in whole or in part, the court, on terms and
750 conditions as are just, may order that any party or person provide or permit discovery. The
751 provisions of Civ. R. 37(A)(4) apply to the award of expenses incurred in relation to the motion.

752
753 Before any person moves for a protective order under this rule, that person shall make a
754 reasonable effort to resolve the matter through discussion with the attorney or unrepresented party
755 seeking discovery. A motion for a protective order shall be accompanied by a statement reciting
756 the effort made to resolve the matter in accordance with this paragraph.

757

758 **(D) Sequence and timing of discovery.** Unless the court upon motion, for the
759 convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of
760 discovery may be used in any sequence and the fact that a party is conducting discovery, whether
761 by deposition or otherwise, shall not operate to delay any other party's discovery.
762

763 **(E) Supplementation of responses.** A party who has responded to a request for
764 discovery with a response that was complete when made is under no duty to supplement his
765 response to include information thereafter acquired, except as follows:
766

767 (1) A party is under a duty seasonably to supplement his response with respect to any
768 question directly addressed to (a) the identity and location of person having knowledge of
769 discoverable matters, and (b) the identity of each person expected to be called as an expert witness
770 as trial and the subject matter on which he is expected to testify.
771

772 (2) A party who knows or later learns that his response is incorrect is under a duty
773 seasonably to correct the response.
774

775 (3) A duty to supplement responses may be imposed by order of the court, agreement of the
776 parties, or at any time prior to trial through requests for supplementation of prior responses.
777

778 **(F) Conference of the Parties; Planning for Discovery.**
779

780 (1) Conference Timing. Except those matters excepted under Civ. R. 1(C), or when the
781 court orders otherwise, the attorneys and unrepresented parties shall confer as soon as
782 practicable—and in any event no later than 21 days before a scheduling conference is to be held.
783

784 (2) Conference Content; Parties' Responsibilities. In conferring, the parties must
785 consider the nature and basis of their claims and defenses and the possibilities for promptly settling
786 or resolving the case; make or arrange for the disclosures required by Civ. R. 26(A)(1); discuss
787 any issues about preserving discoverable information; and develop a proposed discovery plan. The
788 attorneys of record and all unrepresented parties that have appeared in the case are jointly
789 responsible for arranging the conference, for attempting in good faith to agree on the proposed
790 discovery plan, and for filing with the court within 14 days after the conference a written report
791 outlining the plan. The court may order the parties or attorneys to attend the conference in person.
792

793 (3) Discovery Plan. A discovery plan shall state the parties' views and proposals on:
794

795 (a) what changes should be made in the timing, form, or requirement for disclosures
796 under Civ. R. 26(A), including a statement of when initial disclosures were made or will be made;
797

798 (b) agreed-upon deadlines for discovery and other items that may be included in a case
799 schedule to be issued under Rule 16, any proposed modifications to a schedule already issued
800 under Civ. R. 16, and compliance with Sup. R 39 and 42.
801

802 (c) the subjects on which discovery may be needed, when discovery should be
803 completed, and whether discovery should be conducted in phases or be limited to or focused on

804 particular issues;

805

806 (d) any issues about disclosure, discovery, or preservation of electronically stored
807 information, including the form or forms in which it should be produced;

808

809 (e) disclosure and the exchange of documents obtained through public records
810 requests;

811

812 (f) any issues about claims of privilege or of protection as trial-preparation materials;

813

814 (g) what changes should be made in the limitations on discovery imposed under these
815 rules or by local rule, and what other limitations should be imposed;

816

817 (h) any other orders that the court should issue under Civ. R. 26(C) or under Civ. R.
818 16(B) and (C); and

819

820 (i) any modifications required or to be requested under any scheduling order issued
821 under Civ. R. 16.

822

823

824

Proposed Staff Notes (2020 Amendment)

825

826 Civ. R. 26 has been amended to bring the Ohio rule closer to the federal rule in many respects.

827

Rule 26(B)(1)

828

829 Civ. R. 26(B)(1) incorporates nearly identical language as the federal rule in Fed. R. Civ. P.
830 26(b)(1), as amended in 2015. Civ. R. 26(B)(1) now includes language bearing on proportionality,
831 which contemplates greater judicial involvement in the discovery process and thus acknowledges the
832 reality that it cannot always operate on a self-regulating basis. The scope of available information,
833 including the increase and pervasiveness of electronically stored information, has greatly increased
834 both the potential cost of wide- ranging discovery and the potential for discovery to be used as an
835 instrument for delay or oppression. The present amendment reflects the need for continuing and close
836 judicial involvement in the cases that do not yield readily to the ideal of effective party management. It
837 is expected that discovery will be effectively managed by the parties in many cases. But there will be
838 important occasions for judicial management, both when the parties are legitimately unable to resolve
839 important differences and when the parties fall short of effective, cooperative management on their
840 own.

841

842 This change does not place on the party seeking discovery the burden of addressing all
843 proportionality considerations. Nor is the change intended to permit the opposing party to refuse
844 discovery simply by making a boilerplate objection that it is not proportional. The parties and the court
845 have a collective responsibility to consider the proportionality of all discovery and consider it in
846 resolving discovery disputes.

846

847

848 The parties may begin discovery without a full appreciation of the factors that bear on
849 proportionality. A party requesting discovery, for example, may have little information about the burden
850 or expense of responding. A party requested to provide discovery may have little information about
851 the importance of the discovery in resolving the issues as understood by the requesting party. Many
of these uncertainties should be addressed and reduced in the parties' Civ. R. 26(F) conference and

852 in scheduling and pretrial conferences with the court. But if the parties continue to disagree, the
853 discovery dispute could be brought before the court. A party claiming undue burden or expense
854 ordinarily has far better information — perhaps the only information — with respect to that part of the
855 determination. A party claiming that a request is important to resolve the issues should be able to
856 explain the ways in which the underlying information bears on the issues as that party understands
857 them. The court's responsibility, using all the information provided by the parties, is to consider these
858 and all the other factors in reaching a case-specific determination of the appropriate scope of
859 discovery.

860
861 With regard to the parties' relative access to relevant information, some cases involve what
862 often is called "information asymmetry." One party — often an individual plaintiff — may have very
863 little discoverable information. The other party may have vast amounts of information, including
864 information that can be readily retrieved and information that is more difficult to retrieve. In practice
865 these circumstances often mean that the burden of responding to discovery lies heavier on the party
866 who has more information, and properly so.

867
868 The former provision for discovery of relevant but inadmissible information that appears
869 "reasonably calculated to lead to the discovery of admissible evidence" is also deleted. It is replaced
870 by the direct statement that "Information within this scope of discovery need not be admissible in
871 evidence to be discoverable." Discovery of nonprivileged information not admissible in evidence
872 remains available so long as it is otherwise within the scope of discovery.

873 874 **Rule 26(B)(3)**

875 This provision has been added to include a requirement that parties, in most cases, exchange
876 initial disclosures without awaiting discovery requests. The language of Civ. R. 26(B)(3) closely follows
877 the federal rule. The purpose of the initial disclosure obligation is to accelerate the exchange of
878 information about the case, consistent with Civ. R. 1 and 26(B)(1).

879 880 **Rule 26(B)(5)**

881 This subsection is revised to preserve the limitation on production of electronically stored
882 information ("ESI") if it is from a source not reasonably accessible due to undue burden or cost. The court
883 may still order production upon a showing of good cause. The amended rule eliminates the prior factors to
884 be considered when determining if good cause exists and relies instead on the general concepts of
885 proportionality contained in Rule 26.

886 887 **Rule 26(B)(6)**

888 Civ. R. 26(B)(6) has been added to clarify that courts have authority to modify the frequency
889 and extent of discovery, including consideration that bear on proportionality to Civ. R. 26(B)(1). This
890 language in Civ. R. 26(B)(6) is similar to the language in Fed. R. Civ. P. 26(b)(2)(A) and (C).

891 892 **Rule 26(B)(7)**

893 The Ohio Civil Rules had not previously required experts to provide a written report. The Local
894 Rules of some counties required a written report while many others did not. Interrogatories directed to
895 the subject matter on which an expert may testify have in practice shown to be an insufficient means
896 to ascertain an opposing expert's opinions and the grounds upon which they are based. The absence
897 of a written report frequently puts counsel in the position of having to bear the substantial time and
898 expense of a deposition in order to learn the opinions of an opposing party's expert. Requiring a written
899 report from experts setting forth all opinions and the basis and reasons for such opinions may, in many
900 cases, obviate the need for a deposition, and will lessen the time and significant expense associated

901 with expert discovery. So will permitting the deposition of experts only after the mutual exchange of
902 expert reports. Further expense can be lessened by permitting treating physicians to testify as an
903 expert as to matters addressed in medical records, without the necessity of writing a separate medical
904 report, if such records are timely provided to opposing counsel. Subsection (B)(7)(h) is the same as
905 Fed. R. Civ. P. 26(b)(4)(D) and protects facts and opinions held by an expert who is not expected to
906 be called as a witness at trial.

907
908
909
910

Rule 26(F)

911 The changes in the proposed rules are best highlighted and understood in contrast to the
912 Federal Rules. The differences between proposed Ohio's Civ.R. 26(F) and Fed. Civ.R. 26(F) are as
913 follows:

914

915 1. Civ.R. 26(F)(1) – The Ohio Rule reads, “Except those matters excepted under Civ.R.
916 1(C)[...].” The Federal Rule reads, “Except in a proceeding exempted from initial disclosure under
917 Rule 26(a)(1)(B)[...].”

918

919 2. Civ.R. 26(F)(1) – The Ohio Rule states that “attorneys and unrepresented parties shall
920 confer as soon as practicable[...].” The Federal Rule states that “the parties must confer as soon as
921 practicable[...].”

922

923 3. Civ. R. 26(F)(1) – The Ohio Rule reads, at the end, “21 days before a scheduling conference
924 is to be held.” The intent with this language of the proposed Ohio Rule is to simplify the setting of the
925 scheduling conference and to give the court greater flexibility in setting that conference. The Federal
926 Rule reads, at the end, “21 days before a scheduling conference is held or a scheduling order is due
927 under Rule 16(b).”

928

929 4. Civ.R. 26(F)(2) – The Ohio Rule reads, at the end of the second to last sentence, “and for
930 filing with the court[...].” The Federal Rule reads, at the end of the second of the second to last
931 sentence, “and for submitting with the court[...].”

932

933 5. Civ.R. 26(F)(3) – The Ohio Rule uses the word “shall” and the Federal Rule uses the
934 word“must.”

935

936 6. Civ.R. 26(F)(3)(e) – The Ohio Rule addresses public records disclosure as part of the
937 discovery plan whereas the Federal Rule does not.

938

939 7. Civ.R. 26(F)(3)(f) – The Ohio Rule ends with “of protection as trial-preparation
940 materials[...].” The Federal Rule (Fed. Civ.R. 26(F)(3)(D)) ends with “as trial-preparation materials,
941 including – if the parties agree on a procedure to assert these claims after production – whether to ask
942 the court to include their agreement in an order under Federal Rule of Evidence 502[...].”

943

944 8. Civ.R. 26(F)(3)(b) and (i) – these subsections are not included in Fed. Civ.R. 26(F)(3).

945

946 9. Civ.R. 26(F)(4) – This subsection was removed from the proposed Ohio Rules, but it is
947 included in the Federal Rules.

948

949 10. This amendment introduces to Ohio's civil rules the concept of an early, mandatory

950 conference among the attorneys and any unrepresented party, and requires the filing of a written report
951 outlining the results of that conference. This amendment also requires that the discovery plan, to
952 which counsel and the parties agree, be in compliance with the time limitations of Sup.R. 39 and 42.
953

954 **RULE 53. Magistrates.**

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

957 **(C) Authority.**

959 (1) *Scope.* To assist courts of record and pursuant to reference under Civ. R. 53(D)(1),
961 magistrates are authorized, subject to the terms of the relevant reference, to do any of the following:

962 (a) Determine any motion in any case;

964 (b) Conduct the trial of any case that will not be tried to a jury;

966 (c) Upon unanimous written consent of the parties, preside over the trial of any
968 case that will be tried to a jury;

970 (d) Conduct proceedings upon application for the issuance of a temporary
971 protection order as authorized by law;

973 (e) Exercise any other authority specifically vested in magistrates by statute and
974 consistent with this rule.

975
976 (2) *Jury trials before magistrates.* Notwithstanding any other provision of these rules,
977 in jury trials presided over by magistrates, the factual findings of the jury shall be conclusive as in
978 any trial before a judge. All motions presented following the unanimous written consent of the
979 parties, including those under Civ.R. 26, 37, 50, 51, 56, 59, 60, and 62, shall be heard and decided
980 by the magistrate. No objections shall be entertained to the factual findings of a jury, or to the
981 motion or legal rulings made by the magistrate except on appeal to the appropriate appellate court
982 after entry of a final judgment or final appealable order. The trial judge to whom the matter was
983 originally assigned before the parties consented to trial before a magistrate shall enter judgment
984 consistent with the magistrate's journalized entry pursuant to Civ.R. 58, but shall not otherwise
985 review the magistrate's rulings or a jury's factual findings in a jury trial before a magistrate.

986
987 ~~(2)~~(3) *Regulation of proceedings.* In performing the responsibilities described in Civ. R.
988 53(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate all
989 proceedings as if by the court and to do everything necessary for the efficient performance of those
990 responsibilities, including but not limited to, the following:

991 (a) Issuing subpoenas for the attendance of witnesses and the production of
992 evidence;

994 (b) Ruling upon the admissibility of evidence;

996 (c) Putting witnesses under oath and examining them;

998 (d) Calling the parties to the action and examining them under oath;

1000 (e) When necessary to obtain the presence of an alleged contemnor in cases
1001 involving direct or indirect contempt of court, issuing an attachment for the alleged
1002 contemnor and setting the type, amount, and any conditions of bail pursuant to Crim. R.
1003 46;

1004
1005 (f) Imposing, subject to Civ. R. 53(D)(8), appropriate sanctions for civil or
1006 criminal contempt committed in the presence of the magistrate.
1007

1008 **[Existing language unaffected by the amendments is omitted to conserve space]**

1009
1010 **Proposed Staff Notes (July 2020)**

1011
1012 **Division (C)(2)**

1013
1014 A major improvement to federal practice in the last half century was the authorization given
1015 magistrate judges to conduct civil jury trials. F.R.C.P. 73. Following the lead of the federal courts, Ohio
1016 magistrates also now conduct civil jury trials with written consent of all parties as authorized by Civ.R.
1017 53(C)(1)(c). Yet, as demonstrated in *Gilson v. American Institute of Alternative Medicine*, 10th Dist. Case
1018 No. 15AP-548, 2016-Ohio-1324, ¶¶ 28-29, 103, Ohio procedure remains cumbersome after jury trials
1019 conducted by magistrates, and may require the trial court to unnecessarily review factual findings of the
1020 jury and certain interlocutory rulings of a magistrate. This is unnecessarily time consuming and costly.

1021
1022 The amendment adds a new Division (C)(2) and renumbers the existing Division (C)(2) as Division
1023 (C)(3). New Civ.R. 53(C)(2) streamlines the procedure following jury trials conducted by magistrates upon
1024 unanimous consent of the parties, although still requiring the entry of judgment by the trial court. Factual
1025 findings of the jury and the magistrate's interlocutory rulings preceding the entry of judgment, are no longer
1026 required to undergo a cumbersome and expensive procedure for which essentially the first line of appeal
1027 has been to the trial court, rather than directly to a court of appeals.
1028

1029 **RULE 73. Probate Division of the Court of Common Pleas**
1030

1031 (A) **Applicability.** These Rules of Civil Procedure shall apply to proceedings in the
1032 probate division of the court of common pleas as indicated in this rule. Additionally, all of the
1033 Rules of Civil Procedure, though not specifically mentioned in this rule, shall apply except to the
1034 extent that by their nature they would be clearly inapplicable.
1035

1036 (B) **Venue.** Civ. R. ~~3(B)~~ 3(C) shall not apply to proceedings in the probate division of
1037 the court of common pleas, which shall be venued as provided by law. Proceedings under Chapters
1038 2101. through 2131. of the Revised Code, which may be venued in the general division or the
1039 probate division of the court of common pleas, shall be venued in the probate division of the
1040 appropriate court of common pleas.
1041

1042 Proceedings that are improperly venued shall be transferred to a proper venue provided by
1043 law and division (B) of this rule, and the court may assess costs, including reasonable attorney
1044 fees, to the time of transfer against the party who commenced the action in an improper venue.
1045

1046 **[Existing language unaffected by the amendments is omitted to conserve space]**
1047
1048

1049 **OHIO RULES OF CRIMINAL PROCEDURE**

1050

1051 **RULE 19. Magistrates**

1052

1053 [Existing language unaffected by the amendments is omitted to conserve space]

1054

1055 **(C) Authority**

1056

1057 (1) *Scope.* To assist courts of record and pursuant to reference under Crim. R.

1058 19(D)(1), magistrates are authorized, subject to the terms of the relevant reference, to do any of

1059 the following:

1060

1061 (a) Conduct initial appearances and preliminary hearings pursuant to Crim. R. 5.

1062

1063 (b) Conduct arraignments pursuant to Crim.R. 10.

1064

1065 (c) Receive pleas, in accordance with Crim.R. 11, only as follows:

1066

1067 (i) In felony and misdemeanor cases, accept and enter not guilty pleas.

1068

1069 (ii) In felony cases that contain only fourth and/or fifth degree felonies and in all

1070 misdemeanor cases, accept and enter guilty and no contest pleas, determine guilt or innocence,

1071 receive statements in explanation and in mitigation of sentence, and recommend a penalty to be

1072 imposed. If imprisonment is a possible penalty for the offense charged, the matter may be referred

1073 only with the unanimous consent of the parties, in writing or on the record in open court.

1074

1075 (d) Conduct pretrial conferences pursuant to Crim. R. 17.1.

1076

1077 (e) Conduct proceedings to establish bail pursuant to Crim. R. 46.

1078

1079 (f) Hear and decide the following motions:

1080

1081 (i) Any pretrial or post-judgment motion in any misdemeanor case for which

1082 imprisonment is not a possible penalty.

1083

1084 (ii) Upon the unanimous consent of the parties in writing or on the record in open court,

1085 any pretrial or post-judgment motion in any misdemeanor case for which imprisonment is a

1086 possibility.

1087 (g) Conduct proceedings upon application for the issuance of a temporary protection

1088 order as authorized by law.

1089

1090 (h) Conduct the trial of any misdemeanor case that will not be tried to a jury. If the

1091 offense charged is an offense for which imprisonment is a possible penalty, the matter may be

1092 referred only with unanimous consent of the parties in writing or on the record in open court.

1093

1094 (i) Conduct proceedings in Supreme Court certified dockets only when authorized and
1095 only in accordance with the authority granted by the Specialized Docket Standards.

1096
1097 ~~(i)~~(j) Exercise any other authority specifically vested in magistrates by statute and
1098 consistent with this rule.

1099
1100 (2) *Regulation of proceedings.* In performing the responsibilities described in Crim.
1101 R. 19(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate
1102 all proceedings as if by the court and to do everything necessary for the efficient performance of
1103 those responsibilities, including but not limited to, the following:

1104
1105 (a) Issuing subpoenas for the attendance of witnesses and the production of evidence;

1106
1107 (b) Ruling upon the admissibility of evidence in misdemeanor cases in accordance with
1108 division (C)(1)(f) of this rule;

1109
1110 (c) Putting witnesses under oath and examining them;

1111
1112 (d) When necessary to obtain the presence of an alleged contemnor in cases involving
1113 direct or indirect contempt of court, issuing attachment for the alleged contemnor and setting the
1114 type, amount, and any conditions of bail pursuant to Crim. R. 46;

1115
1116 (e) Imposing, subject to Crim. R. 19(D)(8), appropriate sanctions for civil or criminal
1117 contempt committed in the presence of the magistrate.

1118
1119 **[Existing language unaffected by the amendments is omitted to conserve space]**
1120

1121 **RULE 46. Bail Pretrial Release and Detention**

1122
1123 (A) **Pretrial detention.** A defendant may be detained pretrial, pursuant to a motion by
1124 the prosecutor or the court's own motion, in accordance with the standards and procedures set forth
1125 in the Revised Code.

1126
1127 (B) **Pretrial release.** Unless the court orders the defendant detained under division (A)
1128 of this rule, the court shall release the defendant on the least restrictive conditions that, in the
1129 discretion of the court, will reasonably assure the defendant's appearance in court, the protection
1130 or safety of any person or the community, and that the defendant will not obstruct the criminal
1131 justice process. If the court orders financial conditions of release, those financial conditions shall
1132 be related solely to the defendant's risk of non-appearance. Any financial conditions shall be in an
1133 amount and type which are least costly to the defendant while also sufficient to reasonably assure
1134 the defendant's future appearance in court.

1135
1136 (1) ~~Types and amounts of bail~~ **Financial conditions of release.** Any person who is
1137 entitled to release shall be released upon one or more of the following types of ~~bail~~ financial
1138 conditions in the amount set by the court:

1139
1140 (1a) The personal recognizance of the accused or an unsecured bail bond;

1141
1142 (1b) A bail bond secured by the deposit of ten percent of the amount of the bond in
1143 cash. Ninety percent of the deposit shall be returned upon compliance with all conditions
1144 of the bond;

1145
1146 (1c) A surety bond, a bond secured by real estate or securities as allowed by law,
1147 or the deposit of cash, at the option of the defendant.

1148
1149
1150 (B)(C)(2) ~~Non-financial Conditions~~ **conditions of release bail.** The court may
1151 impose any of the following conditions of ~~bail~~ release:

1152
1153 (a) Place the person in the custody of a designated person or organization
1154 agreeing to supervise the person;

1155
1156 (b) Place restrictions on the travel, association, or place of abode of the person
1157 during the period of release;

1158
1159 (c) Place the person under a house arrest, electronic monitoring, or work release
1160 program;

1161
1162 (d) Regulate or prohibit the person's contact with the victim;

1163
1164 (e) Regulate the person's contact with witnesses or others associated with the case
1165 upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to
1166 intimidate those persons;

1167
1168 (f) ~~Require a person who is charged with an offense that is alcohol or drug related,~~
1169 ~~and who appears to need treatment, to attend treatment while on bail~~ completion of a drug
1170 and/or alcohol assessment and compliance with treatment recommendations, for any
1171 person charged with an offense that is alcohol or drug related, or where alcohol or drug
1172 influence or addiction appears to be a contributing factor in the offense, and who appears
1173 based upon an evaluation, prior treatment history, or recent alcohol or drug use, to be in
1174 need of treatment;

1175
1176 (g) Require compliance with alternatives to pretrial detention, including but not
1177 limited to diversion programs, day reporting, or comparable alternatives, to ensure the
1178 person's appearance at future court proceedings;

1179
1180 (h) Any other constitutional condition considered reasonably necessary to
1181 reasonably assure ~~ensure~~ appearance or public safety.

1182
1183 **(C) Factors.** In determining the types, amounts, and conditions of bail, the court shall
1184 consider all relevant information, including but not limited to:

1185
1186 (1) The nature and circumstances of the crime charged, and specifically whether the
1187 defendant used or had access to a weapon;

1188
1189 (2) The weight of the evidence against the defendant;

1190
1191 (3) The confirmation of the defendant's identity;

1192
1193 (4) The defendant's family ties, employment, financial resources, character, mental
1194 condition, length of residence in the community, jurisdiction of residence, record of convictions,
1195 record of appearance at court proceedings or of flight to avoid prosecution;

1196
1197 (5) Whether the defendant is on probation, a community control sanction, parole, post-
1198 release control, bail, or under a court protection order

1199
1200 **(D) Appearance pursuant to summons.** When summons has been issued and the
1201 defendant has appeared pursuant to the summons, absent good cause, there is a presumption of
1202 release on personal recognizance ~~a recognizance bond shall be the preferred type of bail.~~

1203
1204 **(E) ~~Amendments~~ Continuation of Bail.** ~~A court, at any time, may order additional or~~
1205 ~~different types, amounts, or conditions of bail.~~ Unless modified by the judicial officer, or if
1206 application is made by a surety for discharge from a bond pursuant to R.C. 2937.40, conditions of
1207 release shall continue until the return of a verdict or the entry of a guilty plea, and may continue
1208 thereafter pending sentence or disposition of the case on review. When a judicial officer, either
1209 on motion of a party or on the court's own motion, determines that the considerations set forth in
1210 subsections (B) and (C) require a modification of the conditions of release, the judicial officer may
1211 order additional or different types, amounts or conditions of bail, or may eliminate or lessen
1212 conditions of bail determined to be no longer necessary.

1213
1214 **(F) Information need not be admissible.** Information stated in or offered in connection
1215 with any order entered pursuant to this rule need not conform to the rules pertaining to the
1216 admissibility of evidence in a court of law. Statements or admissions of the defendant made at a
1217 bail proceeding or in the course of compliance with a condition of bail shall not be received as
1218 substantive evidence in the trial of the case.

1219
1220 **(G) Bond schedule.**

1221
1222 (1) In order to expedite the prompt release of a defendant prior to initial appearance,
1223 ~~Each~~ each court shall establish a bail bond schedule covering all misdemeanors including traffic
1224 offenses, either specifically, by type, by potential penalty, or by some other reasonable method of
1225 classification. The court also may include requirements for release in consideration of divisions
1226 (B) and (C)(5) of this rule. The sole purpose of a bail schedule is to allow for the consideration of
1227 release prior to the defendant's initial appearance.

1228
1229 (2) A bond schedule shall not be considered as "relevant information" under division
1230 (D) of this rule.

1231
1232 (3) Each municipal or county court shall, by rule, establish a method whereby a person
1233 may make bail by use of a credit card. ~~No credit card transaction shall be permitted when a service~~
1234 ~~charge is made against the court or clerk unless allowed by law.~~

1235
1236 (4) Each court shall review its bail bond schedule bi-annually by January 31 of each
1237 even numbered year, to ensure an appropriate bail bond schedule that does not result in the
1238 unnecessary detention of defendants due to inability to pay.

1239
1240 ~~**(H) — Continuation of bonds.** Unless otherwise ordered by the court pursuant to division~~
1241 ~~(E) of this rule, or if application is made by the surety for discharge, the same bond shall continue~~
1242 ~~until the return of a verdict or the acceptance of a guilty plea. In the discretion of the court, the~~
1243 ~~same bond may also continue pending sentence or disposition of the case on review. Any provision~~
1244 ~~of a bond or similar instrument that is contrary to this rule is void.~~

1245
1246 **(H) Review of Release Conditions.** A person who has been arrested, either pursuant
1247 to a warrant or without a warrant, and who has not been released on bail, shall be brought before
1248 a judicial officer for an initial bail hearing no later than the second court day following the arrest.
1249 That bail hearing may be combined with the initial appearance provided for in Crim. R. 5(A).

1250
1251 If, at the initial bail hearing before a judicial officer, the defendant was not represented by
1252 counsel, and if the defendant has not yet been released on bail, a second bail hearing shall be held
1253 on the second court day following the initial bail hearing. An indigent defendant shall be afforded
1254 representation by appointed counsel at State's expense at this second bail hearing.

1255
1256 **(I) Failure to appear; breach of conditions.** Any person who fails to appear before
1257 any court as required is subject to the punishment provided by the law, and any bond ~~bail~~ given

1258 for the person's release may be forfeited. If there is a breach of condition of release bail, the court
1259 may amend the bail.

1260
1261 **(J) Justification of sureties.** Every surety, except a corporate surety licensed as
1262 provided by law, shall justify by affidavit, and may be required to describe in the affidavit, the
1263 property that the surety proposes as security and the encumbrances on it, the number and amount
1264 of other bonds and undertakings for bail entered into by the surety and remaining undischarged,
1265 and all of the surety's other liabilities. The surety shall provide other evidence of financial
1266 responsibility as the court or clerk may require. No bail bond shall be approved unless the surety
1267 or sureties appear, in the opinion of the court or clerk, to be financially responsible in at least the
1268 amount of the bond. No licensed attorney at law shall be a surety.

1269
1270

1271 **Proposed Staff Note (July 2020)**

1272
1273 **Crim.R. 46**

1274
1275 Crim. R. 46 has been amended to improve efficiency in setting bail in an amount that effectively
1276 ensures (1) the defendant's continued presence at future proceedings, (2) that future proceedings will not
1277 be impeded by any effort to obstruct justice, and (3) the safety of any person as well as the community in
1278 general. Crim. R. 46 continues to entrust to the judicial officer's sound discretion the setting of particular
1279 conditions of release that will be imposed on a particular defendant in a particular case. At the same time,
1280 the amendments seek to ensure that excessive money bails are not used as a means of simply denying a
1281 defendant bail without benefit of a detention hearing prescribed by statute. See
1282 R.C. 2937.222

1283
1284 The title of Crim. R. 46 has been changed to recognize that pretrial detention is available under the
1285 Revised Code in those cases where no conditions of release are reasonably available. Subsection (A) has
1286 been added to that same effect.

1287
1288 Subsection (B) recognizes that conditions of release include both financial and non-financial
1289 conditions, either or both of which may be employed by the judicial officer in the exercise of the judicial
1290 officer's discretion. Financial conditions should be the least costly to reasonably ensure the defendant's
1291 presence at future proceedings; limiting financial conditions to ensuring against risk of flight is consistent
1292 with subsection (I), which provides that bond can only be forfeited when a defendant fails to appear at a
1293 future proceeding. The subsection's list of non-financial conditions is not exclusive, but identifies a number
1294 of non-financial conditions already employed by courts in Ohio and elsewhere.

1295
1296 Subsection (G) recognizes that a bond schedule is to be used for the sole purpose of securing a
1297 release before an initial appearance, and is not to be considered by a judicial officer during a bond hearing.

1298
1299 Subsection (H) has been amended to ensure that a person arrested who has not already been
1300 released pursuant to posting a bond specified in a bond schedule or prescribed in an arrest warrant, will
1301 appear before a judicial officer no later than the second court day after arrest. If the defendant's appearance
1302 at that time is without counsel, and if the defendant has not yet been released, then a second hearing, with
1303 the opportunity for the defendant to be represented by counsel, must take place within two court days after
1304 the initial court appearance.

1305

1306 **OHIO RULES OF APPELLATE PROCEDURE**

1307

1308 **RULE 3. Appeals as of Right – How Taken**

1309

1310 [Existing language unaffected by the amendments is omitted to conserve space]

1311

1312 **(C) Cross-Appeal**

1313

1314 **(1) Cross When notice of cross-appeal required.** ~~A person who~~ Whether or not an
1315 ~~appellee~~ intends to defend a ~~judgment or an order on~~ against an appeal taken by an appellant, an
1316 ~~appellee and~~ who also seeks to change the ~~judgment or order or~~, in the event the ~~judgment or order~~
1317 ~~is may be~~ reversed or modified, an interlocutory ruling merged into the ~~judgment or order~~, shall
1318 file a notice of cross-appeal with the clerk of the trial court, and may also file a courtesy copy of
1319 the notice of cross-appeal with the clerk of the appellate court, within the time allowed by App.R.
1320 4. The clerk of the trial court shall process the notice of cross-appeal in the same manner as the
1321 notice of appeal.

1322

1323 **(2) Cross When notice of cross-appeal not required; and cross-assignment of error**
1324 **not never required.** A person who intends to defend a ~~judgment or an~~ order appealed by an
1325 appellant on a ground other than that relied on by the trial court but who does not seek to change
1326 the ~~judgment or order~~ is not required to file a notice of cross-appeal or to raise a cross-assignment
1327 of error.

1328

1329 [Existing language unaffected by the amendments is omitted to conserve space]

1330

1331 **RULE 19. Form of Briefs and Other Papers**

1332
1333 (A) **Form of briefs.** Briefs may be typewritten or be produced by standard
1334 typographic printing or by any duplicating or copying process which produces a clear black image
1335 on white paper. Carbon copies of briefs may not be submitted without permission of the court,
1336 except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear
1337 in at least a twelve point type on opaque, unglazed paper. Briefs produced by standard typographic
1338 process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7
1339 1/6 inches. Those produced by any other process shall be bound in volumes having pages not
1340 exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double
1341 spacing between each line of text except quoted matter which shall be single spaced. Where
1342 necessary, briefs may be of such size as required to utilize copies of pertinent documents.
1343

1344 Without prior leave of court, no initial brief of appellant or cross-appellant and no answer
1345 brief of appellee or cross-appellee shall ~~exceed thirty five pages in length~~ contain more than
1346 15,300 words, and no reply brief shall ~~exceed fifteen pages in length~~ contain more than 6,500
1347 words, exclusive of the cover page, the table of contents, table of cases, statutes and other
1348 authorities cited, statement regarding oral argument, certificates of counsel, signature blocks,
1349 certificate of service, and appendices, if any. A court of appeals, by local rule, may adopt ~~shorter~~
1350 ~~or longer page~~ different word-count limitations. In all proceedings involving post-conviction
1351 review of a capital case, as defined in Crim.R. 42, there shall be no ~~page limitations or word-~~
1352 ~~count limitations.~~ The signature of the attorney, or an unrepresented party, constitutes a
1353 certification that the document filed complies with the applicable word-count limitation. The
1354 person signing the document may rely on the word count of the word-processing system used
1355 to prepare the document.
1356

1357 The front covers of the briefs, if separately bound, shall contain: (1) the name of the court
1358 and the number of the case; (2) the title of the case [see App. R. 11(A)]; (3) the nature of the
1359 proceeding in the court (e.g., Appeal) and the name of the court below; (4) the title of the
1360 document (e.g., Brief for Appellant); and (5) the names and addresses of counsel representing the
1361 party on whose behalf the document is filed.
1362

1363 (B) **Form of other papers.** Applications for reconsideration shall be produced in a
1364 manner prescribed by subdivision (A). Motions and other papers may be produced in a like
1365 manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size.
1366 Lines of typewritten text shall be double spaced except quoted matter which shall be single
1367 spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for
1368 filing and service if they are legible.
1369

1370 A motion or other paper addressed to the court shall contain a caption setting forth the
1371 name of the court, the title of the case, the case number and a brief descriptive title indicating
1372 the purpose of the paper.
1373

1374 **RULE 21. Oral Argument**
1375

1376 **(A) Scheduling and requesting oral argument.** The court shall schedule oral argument
1377 in all cases, whether or not requested by a party, unless the court has adopted a local rule requiring
1378 a party to request oral argument. In the event of such a local rule, the court shall schedule oral
1379 argument at the request of any of the parties. Such a request shall be in the form of the words
1380 “ORAL ARGUMENT REQUESTED” displayed prominently on the cover page of the appellant’s
1381 opening brief or the appellee’s brief; no separate motion or other filing is necessary to secure oral
1382 argument. Notwithstanding any of the foregoing, the court is not required to schedule oral
1383 argument, even if requested, if any of the parties is both incarcerated and proceeding pro se.
1384

1385 **(B) Notice of oral argument and of appellate panel.**
1386

1387 (1) The court shall advise all parties of the time and place at which oral argument will be
1388 heard.
1389

1390 (2) No later than fourteen days prior to the date on which oral argument will be heard, the
1391 court of appeals shall make available to the parties the names of the judges assigned to the three-
1392 judge panel that will hear the case. If the case is submitted on briefs without oral argument, the
1393 court of appeals shall make available to the parties the names of the judges assigned to the three-
1394 judge panel that will hear the case no later than fourteen days prior to the date on which the case
1395 is submitted to the panel. If the membership of the panel changes after the names of the judges are
1396 made available to the parties pursuant to this rule, the court of appeals shall immediately make the
1397 new membership of the panel available to the parties.
1398

1399 **(C) Time allowed for argument.** Unless otherwise ordered, each side will be allowed
1400 ~~thirty-fifteen~~ minutes for argument. Either sua sponte or upon motion, the court may vary the time
1401 for oral argument permitted by this rule. Motions to vary the time for oral argument shall be filed
1402 at least seven days before the date scheduled for oral argument. A party is not obliged to use all of
1403 the time allowed, and the court may terminate the argument whenever in its judgment further
1404 argument is unnecessary.
1405

1406 **(D) Order and content of argument.** The appellant is entitled to open and conclude the
1407 argument, except in the case of a cross appeal. The opening argument shall include a fair statement
1408 of the case. Counsel will not be permitted to read at length from briefs, records or authorities.
1409

1410 **(E) Cross and separate appeals.** A cross-appeal or separate appeal shall be argued with
1411 the initial appeal at a single argument, unless the court otherwise directs. ~~If separate~~ Separate
1412 appellants or appellees support the same argument, they shall share the thirty fifteen minutes
1413 allowed to their side for argument unless pursuant to timely request the court grants additional
1414 time. Separate parties supporting the same side of an appeal may agree to divide their time however
1415 they choose.
1416

1417 **(F) Nonappearance of parties.** If the appellee fails to appear to present argument, the
1418 court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the

1419 court may hear argument on behalf of the appellee, if ~~his~~ appellee's counsel is present. If neither
1420 party appears, the case will be decided on the briefs unless the court shall otherwise order.

1421
1422 **(G) Submission on briefs.** By agreement of the parties, a case may be submitted for
1423 decision on the briefs, but the court may direct that the case be argued.

1424
1425 **(H) Motions.** Oral argument will not be heard upon motions unless ordered by the court.

1426
1427 **(I) Citation of Additional Authorities.** If counsel on oral argument intends to present
1428 authorities not cited in the brief, counsel shall, at least five days prior to oral argument, present in
1429 writing such authorities to the court and to opposing counsel, unless there is good cause for a later
1430 presentment.

1431

1432 **OHIO RULES OF JUVENILE PROCEDURE**

1433
1434 **RULE 3. Waiver of Rights**

1435
1436 (A) All children in delinquency and status offense cases shall be appointed counsel at
1437 the earliest stage of the proceedings, so that the child has a meaningful opportunity to consult with
1438 counsel prior to any hearings.

1439
1440 (B) The court shall not allow any waiver of counsel unless the child has met privately
1441 with appointed or retained counsel to discuss the child's right to counsel and the disadvantages of
1442 self-representation.

1443
1444 (C) A child's right to be represented by counsel may not be waived in the following
1445 circumstances:

1446
1447 (1) When a child is detained pending adjudication;

1448
1449 (2) At a hearing conducted pursuant to Juv.R. 30;

1450
1451 ~~(2)~~(3) When a serious youthful offender dispositional sentence has been requested; or

1452
1453 ~~(3)~~(4) When there is a conflict or disagreement between the child and the parent, guardian,
1454 or custodian; or if the parent, guardian, or custodian requests that the child be removed
1455 from the home.

1456
1457 ~~(B) If a child is facing the potential loss of liberty, the child shall be informed on the~~
1458 ~~record of the child's right to counsel and the disadvantages of self representation.~~

1459
1460 ~~(C) If a child is charged with a felony offense, the court shall not allow any waiver of~~
1461 ~~counsel unless the child has met privately with an attorney to discuss the child's right to counsel~~
1462 ~~and the disadvantages of self representation.~~

1463
1464 (D) In all other cases, Any any waiver of the right to counsel shall be made, only by the
1465 child, in open court, recorded, in the presence of the child's lawyer, and in writing. The court shall
1466 advise the child of the right to counsel and the dangers of self-representation. In determining
1467 whether a child has knowingly, intelligently, and voluntarily waived the right to counsel, the court
1468 shall look to the totality of the circumstances including, but not limited to: the child's age;
1469 intelligence; education; background and experience generally and in the court system specifically;
1470 the child's emotional stability; and the complexity of the proceedings. The Court shall ensure that
1471 a child consults with a parent, ~~custodian~~, guardian, or guardian ad litem, before any waiver of
1472 counsel. ~~However, no parent, guardian, custodian, or other person may waive the child's right to~~
1473 ~~counsel.~~

1474
1475 (E) A child is presumed indigent and thus entitled to the appointment of counsel at
1476 state expense without regard to the income of the child's parent, guardian or custodian.

1477

1478
1479

(F) Other rights of a child may be waived with permission of the court.

1480 **RULE 4. Assistance of Counsel; Guardian Ad Litem**

1481
1482 (A) **Assistance of counsel.** Every party shall have the right to be represented by
1483 counsel and every child, parent, custodian, or other person in loco parentis the right to appointed
1484 counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court
1485 proceeding. When the complaint alleges that a child is an abused child, the court must appoint an
1486 attorney to represent the interests of the child. This rule shall not be construed to provide for a
1487 right to appointed counsel in cases in which that right is not otherwise provided for by constitution
1488 or statute.

1489
1490 (B) **Guardian *ad litem*; when appointed.** The court shall appoint a guardian *ad litem*
1491 to protect the interests of a child or incompetent adult in a juvenile court proceeding when:

- 1492
1493 (1) The child has no parents, guardian, or legal custodian;
1494
1495 (2) The interests of the child and the interests of the parent may conflict;
1496
1497 (3) The parent is under eighteen years of age or appears to be mentally incompetent;
1498
1499 (4) The court believes that the parent of the child is not capable of representing the best
1500 interest of the child.

1501
1502 (5) Any proceeding involves allegations of abuse or neglect, or dependency, voluntary
1503 surrender of permanent custody, or termination of parental rights as soon as possible after the
1504 commencement of such proceeding.

1505
1506 (6) There is an agreement for the voluntary surrender of temporary custody that is made
1507 in accordance with section 5103.15 of the Revised Code, and thereafter there is a request for
1508 extension of the voluntary agreement.

1509
1510 (7) The proceeding is a removal action.

1511
1512 (8) Appointment is otherwise necessary to meet the requirements of a fair hearing.

1513
1514 (9) If a court appoints a person who is not an attorney admitted to the practice of law
1515 in this state to be a guardian ad litem, the court may appoint an attorney admitted to the practice
1516 of law in this state to serve as attorney for the child or ward.

1517
1518 (C) **Guardian ad litem as counsel.**

1519
1520 (1) ~~When the guardian ad litem is an attorney admitted to practice in this state, the~~
1521 ~~guardian may also serve as counsel to the ward providing no conflict between the roles exist.~~

1522
1523 (2) ~~If a person is serving as guardian ad litem and as attorney for a ward and either that~~
1524 ~~person or the court finds a conflict between the responsibilities of the role of attorney and that of~~
1525 ~~guardian ad litem, the court shall appoint another person as guardian ad litem for the ward.~~

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~~(3) If a court appoints a person who is not an attorney admitted to practice in this state to be a guardian ad litem, the court may appoint an attorney admitted to practice in this state to serve as attorney for the guardian ad litem.~~

If an attorney is serving as Guardian ad litem for a child or ward, and the court finds a conflict exists between the role of the Guardian ad litem and the interest or wishes of the child of the ward, the court shall appoint counsel for the child or ward.

(D) Appearance of attorneys. An attorney shall enter appearance by filing a written notice with the court or by appearing personally at a court hearing and informing the court of said representation.

(E) Notice to guardian ad litem. The guardian ad litem shall be given notice of all proceedings in the same manner as notice is given to other parties to the action.

(F) Withdrawal of counsel or guardian ad litem. An attorney or guardian ad litem may withdraw only with the consent of the court upon good cause shown.

(G) Costs. The court may fix compensation for the services of appointed counsel and guardians ad litem, tax the same as part of the costs and assess them against the child, the child's parents, custodian, or other person in loco parentis of such child.

1549 **RULE 42. Consent to Marry**

1551 **(A) ~~Application where parental consent not required~~ Application where Juvenile Court consent.**

1552 ~~When a minor desires to contract matrimony and has no parent, guardian, or custodian whose~~
1553 ~~consent to the marriage is required by law, the minor shall file an application under oath in the~~
1554 ~~county where the female resides requesting that the judge of the juvenile court give consent and~~
1555 ~~approbation in the probate court for such marriage.~~

1556
1557 (1) When two persons, both age seventeen, seek to be joined in marriage, both
1558 persons shall file an application under oath requesting that the juvenile court give consent and
1559 approbation in the probate court for such marriage.

1560
1561 (2) When a person age seventeen desires to be joined in marriage to an adult who is
1562 no more than four years older, the minor shall file an application under oath in the county where
1563 the minor resides requesting that the juvenile court consent and approbation in the probate court
1564 for such marriage.

1565
1566 **(B) ~~Contents of application~~ Application where both persons are age seventeen.**
1567 The application required by division (A)(1) of this rule shall contain all of the following:

1568
1569 (1) The name, and address, and date of birth of the person for whom consent is sought
1570 seeking consent;

1571
1572 (2) ~~The age of the person for whom consent is sought~~ An affirmation that the person
1573 seeking consent is age seventeen;

1574
1575 (3) ~~The reason why consent of a parent is not required~~ The name and date of birth of
1576 the other person to be joined in marriage;

1577
1578 (4) ~~The name and address, if known, of the parent, where the minor alleges that parental~~
1579 consent is unnecessary because the parent has neglected or abandoned the child for at least one
1580 year immediately preceding the application An affirmation that the other person to be joined in
1581 marriage is also seventeen.

1582
1583 (5) An affirmation that the application is being filed in the juvenile court of the county
1584 where the he/she resides, and that a similar application has not been filed in a juvenile court of
1585 another county within the state;

1586
1587 (6) An affirmation that the applicant is either:

1588
1589 (a) A member of the armed services;

1590
1591 (b) A employed and self-subsisting;

1592
1593 (c) A independent from the care and control of his or her parent, guardian, or custodian.

1594

1595 (7) An affirmation that the applicant who is to marry is free from force or coercion;
1596

1597 (8) The name and address of a parent, legal guardian, or legal custodian of the person
1598 seeking consent with whom the juvenile court shall consult, and;
1599

1600 (9) The Court should find by clear and convincing evidence that the intended marriage
1601 and the emancipation is in the best interest of the applicant.
1602

1603 (C) Contents of Application application where only one person is age seventeen
1604 ~~female pregnant or delivered of child born out of wedlock. Where a female is pregnant or~~
1605 ~~delivered of a child born out of wedlock and the parents of such child seek to marry even though~~
1606 ~~one or both of them is under the minimum age prescribed by law for persons who may contract~~
1607 ~~marriage, such persons shall file an application under oath in the county where the female resides~~
1608 ~~requesting that the judge of the juvenile court give consent in the probate court to such marriage.~~
1609

1610 The application required by division (A)(2) of this rule shall contain all of the following:
1611

1612 (1) The name, address, and date of birth of the person seeking consent;
1613

1614 (2) An affirmation that the person seeking consent is age seventeen;
1615

1616 (3) The name and date of birth of the other person to be joined in marriage;
1617

1618 (4) An affirmation that the other person to be joined in marriage is no more than four
1619 years older than the person seeking consent;
1620

1621 (5) An affirmation that the application is being filed in the juvenile court of the county
1622 where he or she resides, and that a similar application has not been filed in a juvenile court of
1623 another county within the state;
1624

1625 (6) An affirmation that the applicant is either:
1626

1627 (a) A member of the armed services;
1628

1629 (b) Employed and self-subsisting;
1630

1631 (c) Independent from the care and control of his or her parent, guardian, or custodian.
1632

1633 (7) An affirmation that the applicant who is to marry is free from force or coercion;
1634

1635 (8) The name and address of a parent, legal guardian, or legal custodian of the person
1636 seeking consent with whom the juvenile court shall consult, and;
1637

1638 (9) The Court should find by clear and convincing evidence that the intended marriage
1639 and the emancipation is in the best interest of the applicant.
1640

1641 (D) **Contents of application.** ~~The application required by subdivision (C) shall~~
1642 ~~contain:~~

1643
1644 (1) ~~The name and address of the person or persons for whom consent is sought;~~

1645
1646 (2) ~~The age of such person;~~

1647
1648 (3) ~~An indication of whether the female is pregnant or has already been delivered;~~

1649
1650 (4) ~~An indication of whether or not any applicant under eighteen years of age is already~~
1651 ~~a ward of the court; and~~

1652
1653 (5) ~~Any other facts which may assist the court in determining whether to consent to~~
1654 ~~such marriage.~~

1655
1656 ~~If pregnancy is asserted, a certificate from a physician verifying pregnancy shall be~~
1657 ~~attached to the application. If an illegitimate child has been delivered, the birth certificate of such~~
1658 ~~child shall be attached.~~

1659
1660 ~~The consent to the granting of the application by each parent whose consent to the marriage~~
1661 ~~is required by law shall be indorsed on the application.~~

1662
1663 The Court shall appoint an attorney as guardian ad litem for each party to the intended
1664 marriage who is seventeen years of age.

1665
1666 (E) **Investigation Consultation.** ~~Upon receipt of an application under subdivision (C),~~
1667 ~~the court shall set a date and time for hearing thereon at its earliest convenience and shall direct~~
1668 ~~that an inquiry be made as to the circumstances surrounding the applicants. The court shall consult~~
1669 ~~with the parent, legal guardian or legal custodian of each person age seventeen seeking consent,~~
1670 ~~as well as the guardian ad litem appointed for each person age seventeen seeking consent. The~~
1671 ~~purpose of this consultation is to determine if the intended marriage is in the best interests of each~~
1672 ~~person age seventeen and whether each person age seventeen has the capacity of a person of the~~
1673 ~~age of eighteen years or more as described in R.C. 3109.01.~~

1674
1675 (F) **Notice.** ~~If neglect or abandonment is alleged in an application under subdivision~~
1676 ~~(A) and the address of the parent is known, the The court shall cause notice of the date and time~~
1677 ~~of hearing consultation to be served upon such given to the applicant, guardian ad litem, and parent,~~
1678 ~~legal guardian, or legal custodian of each person age seventeen seeking consent. All proceedings~~
1679 ~~shall be recorded.~~

1680
1681 (G) **Judgment.** ~~If the court finds that the allegations stated in the application are true,~~
1682 ~~and that the granting of the application is in the best interest of the applicants, the court shall grant~~
1683 ~~the consent and shall make the applicant referred to in subdivision (C) a ward of the court.~~

1684
1685 The court shall grant the consent to marry if the court finds:

1686

1687 (1) The information stated in the application is true;

1688

1689 (2) The party to the intended marriage, who is seventeen, decision to marry is free from
1690 force or coercion;

1691

1692 (3) Granting of the application is in the best interest of each person age seventeen
1693 seeking to be joined in marriage, and;

1694

1695 (4) Each person age seventeen has the capacity of a person of the age eighteen years or
1696 older, as described in R.C. 3109.01.

1697

1698 **(H) Certified copy.** A certified copy of the judgment entry shall be transmitted to the
1699 probate court in the county where the application was filed or will be filed.

1700

1701 **(I) Denial of application.** Upon denial of the application, the Clerk is instructed to
1702 provide the applicant with the Notice of Appeal form and advise him or her of the right to an
1703 appeal.

1704

1705 **OHIO RULES OF EVIDENCE**

1706

1707 **RULE 601. General Rule of Competency**

1708

1709 ~~Every person is competent to be a witness except:~~

1710

1711 ~~(A) Those of unsound mind, and children under ten years of age, who appear incapable~~
1712 ~~of receiving just impressions of the facts and transactions respecting which they are examined, or~~
1713 ~~of relating them truly. **General rule.** Every person is competent to be a witness except as~~
1714 ~~otherwise provided in these rules.~~

1715

1716 **(B) Disqualification of witness in general.** A person is disqualified to testify as a
1717 witness when the court determines that the person is:

1718

1719 (1) Incapable of expressing himself or herself concerning the matter as to be
1720 understood, either directly or through interpretation by one who can understand him or her; or,

1721

1722 (2) Incapable of understanding the duty of a witness to tell the truth.

1723

1724 ~~(B)(C)~~ A spouse testifying against the other spouse charged with a crime except when
1725 either of the following applies:

1726

1727 (1) a crime against the testifying spouse or a child of either spouse is charged;

1728

1729 (2) the testifying spouse elects to testify.

1730

1731 ~~(C)(D)~~ An officer, while on duty for the exclusive or main purpose of enforcing traffic
1732 laws, arresting or assisting in the arrest of a person charged with a traffic violation punishable as
1733 a misdemeanor where the officer at the time of the arrest was not using a properly marked motor
1734 vehicle as defined by statute or was not wearing a legally distinctive uniform as defined by statute.

1735

1736 ~~(D)(E)~~ A person giving expert testimony on the issue of liability in any medical claim, as
1737 defined in R.C. 2305.113, asserted in any civil action against a physician, podiatrist, or hospital
1738 arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist, unless:

1739

1740 (1) The person testifying is licensed to practice medicine and surgery, osteopathic
1741 medicine and surgery, or podiatric medicine and surgery by the state medical board or by the
1742 licensing authority of any state;

1743

1744 (2) The person devotes at least one-half of his or her professional time to the active
1745 clinical practice in his or her field of licensure, or to its instruction in an accredited school and

1746

1747 (3) The person practices in the same or a substantially similar specialty as the
1748 defendant. The court shall not permit an expert in one medical specialty to testify against a health
1749 care provider in another medical specialty unless the expert shows both that the standards of care

1750 and practice in the two specialties are similar and that the expert has substantial familiarity between
1751 the specialties.

1752
1753 If the person is certified in a specialty, the person must be certified by a board recognized
1754 by the American board of medical specialties or the American board of osteopathic specialties in
1755 a specialty having acknowledged expertise and training directly related to the particular health care
1756 matter at issue.

1757
1758 Nothing in this division shall be construed to limit the power of the trial court to adjudge
1759 the testimony of any expert witness incompetent on any other ground, or to limit the power of the
1760 trial court to allow the testimony of any other witness, on a matter unrelated to the liability issues
1761 in the medical claim, when that testimony is relevant to the medical claim involved.

1762
1763 This division shall not prohibit other medical professionals who otherwise are competent
1764 to testify under these rules from giving expert testimony on the appropriate standard of care in
1765 their own profession in any claim asserted in any civil action against a physician, podiatrist,
1766 medical professional, or hospital arising out of the diagnosis, care, or treatment of any person.

1767
1768 ~~(E)~~(F) As otherwise provided in these rules.
1769

1770 **RULE 810. Residual Exception**

1771
1772 (A) **In General.** Under the following conditions, a hearsay statement is not excluded
1773 by the rule against hearsay even if the statement is not admissible under a hearsay exception in
1774 Rule 803 or 804:

1775
1776 (1) The statement is supported by sufficient guarantees of trustworthiness – after
1777 considering the totality of circumstances under which it was made and evidence, if any,
1778 corroborating the statement; and

1779
1780 (2) It is more probative on the point for which it is offered than any other evidence that
1781 the proponent can obtain through reasonable efforts.

1782
1783 (B) **Notice.** The statement is admissible only if the proponent gives an adverse party
1784 reasonable notice of the intent to offer the statement – including its substance and the declarant’s
1785 name – so that the party has a fair opportunity to meet it. The notice must be provided in writing
1786 before the trial or hearing – or in any form during the trial or hearing if the court, for good cause,
1787 excuses a lack of earlier notice.

1788

1789 **RULE 902. Self-Authentication**

1790
1791 Extrinsic evidence of authenticity as a condition precedent to admissibility is not required
1792 with respect to the following:

1793
1794 **(1) Domestic public documents under seal.** A document bearing a seal purporting to
1795 be that of the United States, or of any State, district, Commonwealth, territory, or insular
1796 possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of
1797 a political subdivision, department, officer, or agency thereof, and a signature purporting to be an
1798 attestation or execution.

1799
1800 **(2) Domestic public documents not under seal.** A document purporting to bear the
1801 signature in the official capacity of an officer or employee of any entity included in paragraph (1)
1802 hereof, having no seal, if a public officer having a seal and having official duties in the district or
1803 political subdivision of the officer or employee certifies under seal that the signer has the official
1804 capacity and that the signature is genuine.

1805
1806 **(3) Foreign public documents.** A document purporting to be executed or attested in
1807 the official capacity by a person authorized by the laws of a foreign country to make the execution
1808 or attestation, and accompanied by a final certification as to the genuineness of the signature and
1809 official position (a) of the executing or attesting person, or (b) of any foreign official whose
1810 certificate of genuineness of signature and official position relates to the execution or attestation
1811 or is in a chain of certificates of genuineness of signature and official position relating to the
1812 execution or attestation. A final certification may be made by a secretary of embassy or legation,
1813 consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or
1814 consular official of the foreign country assigned or accredited to the United States. If reasonable
1815 opportunity has been given to all parties to investigate the authenticity and accuracy of official
1816 documents, the court may, for good cause shown, order that they be treated as presumptively
1817 authentic without final certification or permit them to be evidenced by an attested summary with
1818 or without final certification.

1819
1820 **(4) Certified copies of public records.** A copy of an official record or report or entry
1821 therein, or of a document authorized by law to be recorded or filed and actually recorded or filed
1822 in a public office, including data compilations in any form, certified as correct by the custodian or
1823 other person authorized to make the certification, by certificate complying with paragraph (1), (2),
1824 or (3) of this rule or complying with any law of a jurisdiction, state or federal, or rule prescribed
1825 by the Supreme Court of Ohio.

1826
1827 **(5) Official publications.** Books, pamphlets, or other publications purporting to be
1828 issued by public authority.

1829
1830 **(6) Newspapers and periodicals.** Printed materials purporting to be newspapers or
1831 periodicals, including notices and advertisements contained therein.

1832
1833 **(7) Trade inscriptions and the like.** Inscriptions, signs, tags, or labels purporting to
1834 have been affixed in the course of business and indicating ownership, control, or origin.

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(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions created by law. Any signature, document, or other matter declared by any law of a jurisdiction, state or federal, to be presumptively or prima facie genuine or authentic.

(11) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of Evid.R. 803(6), as shown by a certification of the custodian or another qualified person that complies with an Ohio statute or a rule prescribed by the Supreme Court of Ohio. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record —and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

(12) Certified Foreign Records of a Regularly Conducted Activity. In a civil case, the original or a copy of a foreign record that meets the requirements of Evid.R. 902(11), modified as follows: the certification, rather than complying with an Ohio statute or Supreme Court of Ohio rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Evid.R. 902(11).

(13) Certified Records Generated by an Electronic Process or System. A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Evid.R. 902(11) or (12). The proponent must also meet the notice requirements of Evid.R. 902(11).

(14) Certified Data Copied from an Electronic Device, Storage Medium, or File. Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Evid.R. 902(11) or (12). The proponent also must meet the notice requirements of Evid.R. 902(11).

IN THE COURT OF _____
 _____ COUNTY, OHIO

)	CASE NO.
)	
Plaintiff,)	JUDGE
)	
vs.)	
)	<u>FINANCIAL DISCLOSURE / FEE</u>
)	<u>WAIVER AFFIDAVIT</u>
Defendant.)	<u>AND ORDER</u>

Pursuant to R.C. 2323.311, the below-named Applicant requests that the Court determine that the Applicant is an indigent litigant and be granted a waiver of the prepayment of costs or fees in the above captioned matter. The Applicant submits the following information in support of said request.

Personal Information			
Applicant's First Name		Applicant's Last Name	
Applicant's Date of Birth		Last 4 Digits of Applicant's SSN	
Applicant's Address			
Other Persons Living in Your Household			
First Name	Last Name	Is this person a child under 18?	Relationship (Spouse or Child)
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Public Benefits			
I receive the following public benefits and my gross income, including the cash benefits marked below, does not exceed 187.5% of the federal poverty guidelines.			
Place an "X" next to any benefits you receive.			
Ohio Works First ¹ : ___ SSI ² : ___ Medicaid ³ : ___ Veterans Pension Benefit ⁴ : ___ SNAP / Food Stamps ⁵ : ___			
Monthly Income			
I am NOT able to access my spouse's income <input type="checkbox"/>			
	Applicant	Spouse (If Living in Household)	Total Monthly Income
Gross Monthly Employment Income, including Self-Employment Income (Before Taxes)	\$	\$	\$
Unemployment, Worker's Compensation, Spousal Support (If Receiving)	\$	\$	\$

Pursuant to R.C. 2323.311(B)(3), upon the filing of a civil action or proceeding and the affidavit of indigency under division (B)(1) of this section, the clerk of the court shall accept the action, proceeding, or motion for filing.

TOTAL MONTHLY INCOME		\$
Liquid Assets		
Type of Asset	Estimated Value	
Cash on Hand	\$	
Available Cash in Checking, Savings, Money Market Accounts	\$	
Stocks, Bonds, CDs	\$	
Other Liquid Assets	\$	
Total Liquid Assets		\$
Monthly Expenses		
Column A		Column B
Type of Expense	Amount	Type of Expense
Rent / Mortgage / Property Tax / Insurance	\$	Insurance (Medical, Dental, Auto, etc.)
Food / Groceries	\$	Child or Spousal Support that You Pay
Utilities (Heat, Gas, Electric, Water / Sewer, Trash)	\$	Medical / Dental Expenses or Associated Costs of Caring for a Sick or Disabled Family Member
Transportation / Gas	\$	Credit Card, Other Loans
Phone	\$	Taxes Withheld or Owed
Child Care	\$	Other (Specify)
Total Column A Expenses		Total Column B Expenses
\$		\$
TOTAL MONTHLY EXPENSES (Column A + Column B)		

I, _____, hereby, certify that the information I have provided on
 (Print Name)
 this financial disclosure form is true to the best of my knowledge and that I unable to prepay the costs or fees in this case.

 Signature

NOTARY PUBLIC:
 Sworn to before me and signed in my presence this _____ day of _____, 20_____.

 Notary Public

If available, an individual duly authorized to administer this oath at the Clerk of Court's Office will do so at no cost to the Applicant.

ORDER

- Upon the request of the Applicant and the Court's review, the Court finds that the Applicant **IS** an indigent litigant and **GRANTS** a waiver of the prepayment of costs or fees in this matter.
- Upon the request of the Applicant and the Court's review, the Court finds that the Applicant is **NOT** an indigent litigant and **DENIES** a waiver of the prepayment of costs or fees in this matter.

Pursuant to R.C. 2323.311(B)(3), upon the filing of a civil action or proceeding and the affidavit of indigency under division (B)(1) of this section, the clerk of the court shall accept the action, motion, or proceeding for filing.

IT IS SO ORDERED

Judge / Magistrate

Date

APPENDIX

2019 FEDERAL POVERTY LIMIT (FPL)

Persons in family/household	100% Poverty	100% Poverty Monthly Gross Income	187.5% Poverty	187.5% Poverty Monthly Gross Income
1	\$12,490	\$1,040.83	\$23,419	\$1,951.58
2	\$16,910	\$1,409.17	\$31,706	\$2,642.17
3	\$21,330	\$1,777.50	\$39,994	\$3,332.83
4	\$25,750	\$2,145.83	\$48,281	\$4,023.42
5	\$30,170	\$2,514.17	\$56,569	\$4,714.08
6	\$34,590	\$2,882.50	\$64,856	\$5,404.67
7	\$39,010	\$3,250.83	\$73,144	\$6,095.33
8	\$43,430	\$3,619.17	\$81,431	\$6,785.92

R.C. 2323.311(B)

(4) A judge or magistrate of the court shall review the affidavit of indigency as filed pursuant to division (B)(2) of this section and shall approve or deny the applicant's application to qualify as an indigent litigant. The judge or magistrate shall approve the application if the applicant's gross income does not exceed one hundred eighty-seven and five-tenths per cent of the federal poverty guidelines as determined by the United States department of health and human services for the state of Ohio and the applicant's monthly expenses are equal to or in excess of the applicant's liquid assets as specified in division (C)(2) of section 120-1-03 of the Administrative Code, as amended, or a substantially similar provision. If the application is approved, the clerk shall waive the advance deposit or security and the court shall proceed with the civil action or proceeding. If the application is denied, the clerk shall retain the filing of the action or proceeding, and the court shall issue an order granting the applicant whose application is denied thirty days to make the required advance deposit or security, prior to any dismissal or other action on the filing of the civil action or proceeding.

(6) Nothing in this section shall prevent a court from approving or affirming an application to qualify as an indigent litigant for an applicant whose gross income exceeds one hundred eighty-seven and five-tenths per cent of the federal poverty guidelines as determined by the United States department of health and human services for the state of Ohio, or whose liquid assets equal or exceed the applicant's monthly expenses as specified in division (C)(2) of section 120-1-03 of the Administrative Code, as amended, or a substantially similar provision.

¹Ohio Works First Income Limit: 50% FPL (R.C. 5107.10(D)(1)(a))

²SSI Income Limit: cannot have countable income that exceeds the Federal Benefit Rate (FBR). 2019 FBR: \$771 monthly for single disabled individual; \$1157 monthly for disabled couple (20 CFR 416.1100)

³Medicaid Income Limit:

Modified Adjusted Gross Income (MAGI):138% FPL (OAC 5160:1-4-01; 42 USC 1396a(a)(10)(A)(i)(VIII))

Aged, Blind or Disabled: \$791 for single person; \$1177 for disabled couple

⁴Veterans Pension Benefit Income Limit: \$13,535 annually / \$1,127 monthly for a single person; \$17,724 annually / \$1,477 monthly for a veteran with one dependent

⁵Supplemental Nutrition Assistance Program (SNAP) Income Limit: 130% FPL for assistance groups with nondisabled/nonelderly member; 165% FPL for elderly and disabled assistance groups (OAC 5101:4-4-11; Food Assistance Change Transmittal No. 61)

TO DEFENDANT: SUMMONS You are summoned and ordered to appear

on _____ at _____ in _____ at _____

If you fail to appear at this time and place, you may be arrested or your license may be cancelled.

_____ COUNTY, OHIO
 STATE OF OHIO _____ TICKET NUMBER: _____
 REFERENCE # _____
 PHONE NUMBER _____ CASE # _____
 NAME _____ COUNTY OF RESIDENCE: _____
 STREET _____
 CITY, STATE _____ ZIP _____
 TEXT/PHONE NOTIFICATION APPROVED Yes No

OPERATOR LICENSE / STATE ID# <input type="checkbox"/> None*		BIRTH DATE	ISSUE DATE	STATE
CLASS	EXPIRES	ENDORSEMENT(S)/RESTRICTIONS(S)		SSN# (last 4 digits)
		<input type="checkbox"/> CDL <input type="checkbox"/> MC <input type="checkbox"/> Other _____		
SEX	HEIGHT	WEIGHT	EYES	HAIR
* If no DL/State ID, REQUIRED documentation attached:				<input type="checkbox"/> Yes

TO DEFENDANT: COMPLAINT _____ AT _____, YOU
 Operated /Passenger /Parked /Walked Passenger Motorcycle Bicycle Other _____
 Commercial DOT# _____ >=26,000 lbs <16 Pass Bus >=16 Pass Bus Haz. Mat.
 VEHICLE: YEAR _____ MAKE _____ MODEL _____
 COLOR _____ LICENSE # _____ STATE _____
 UPON A PUBLIC HIGHWAY, NAMELY _____ DIRECTION _____
 AT/NEAR _____
 IN THE _____ OF _____ IN _____
 COUNTY (NO.), _____ STATE OF OHIO AND COMMITTED THE FOLLOWING OFFENSE(S).

SPEED: _____ MPH in _____ MPH zone		<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Over limits <input type="checkbox"/> Unsafe for conditions <input type="checkbox"/> ACDA		
<input type="checkbox"/> Radar <input type="checkbox"/> Air <input type="checkbox"/> VASCAR <input type="checkbox"/> Pace <input type="checkbox"/> Laser		<input type="checkbox"/> Stationary <input type="checkbox"/> Moving
OVI: <input type="checkbox"/> Under the influence of alcohol/drug of abuse.		<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> In physical control of vehicle.		
<input type="checkbox"/> Prohibited blood alcohol concentration. _____ BAC		
<input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Urine <input type="checkbox"/> Refused		
Prior OVIs:	# of prior OVIs	Years of prior OVIs
DRIVER LICENSE: <input type="checkbox"/> None <input type="checkbox"/> Not on person <input type="checkbox"/> Revoked <input type="checkbox"/> Suspended		<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
EXPIRED: <input type="checkbox"/> < 6 months <input type="checkbox"/> > 6 months <input type="checkbox"/> Failure to Reinstate		
Suspension Type: _____		
SAFETY BELT: Failure to wear		<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Child Restraint <input type="checkbox"/> Booster Seat		
OTHER OFFENSE:		<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> DRIVER LICENSE HELD <input type="checkbox"/> VEHICLE SEIZED <input type="checkbox"/> JUVENILE OFFENDER		
<input type="checkbox"/> DISTRACTED DRIVING PENTALTY ENHANCEMENT APPLIES (REMARKS REQUIRED)		
PAVEMENT: <input type="checkbox"/> Dry <input type="checkbox"/> Wet <input type="checkbox"/> Snow <input type="checkbox"/> Ice	# of Lanes _____	<input type="checkbox"/> Construction Zone
VISIBILITY: <input type="checkbox"/> Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Dusk <input type="checkbox"/> Night <input type="checkbox"/> Dawn		<input type="checkbox"/> Workers Present
WEATHER: <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Fog <input type="checkbox"/> No Adverse		<input type="checkbox"/> A/V
TRAFFIC: <input type="checkbox"/> Heavy <input type="checkbox"/> Moderate <input type="checkbox"/> Light <input type="checkbox"/> None		
AREA: <input type="checkbox"/> Business <input type="checkbox"/> Rural <input type="checkbox"/> Residential <input type="checkbox"/> Industry <input type="checkbox"/> School <input type="checkbox"/> Freeway		
CRASH: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Almost Caused <input type="checkbox"/> Non-Injury <input type="checkbox"/> Injury <input type="checkbox"/> Fatal		
Crash Report Number: _____		
REMARKS: _____		
ACCOMPANYING CRIMINAL CHARGE <input type="checkbox"/> Yes <input type="checkbox"/> No TOTAL # OFFENSES _____		

This summons served personally to the defendant on _____. This issuing/charging law enforcement officer states under the penalties of perjury and falsification that he/she has read the above complaint and that it is true. **PERSONAL APPEARANCE REQUIRED** Yes No

Charging Law Enforcement Officer _____
 Issuing Law Enforcement Officer SAME AS ABOVE

Court Code	Unit	Post	District

TO DEFENDANT: Read this material carefully.

Personal Appearance Required

If the officer marked this block on the face of the ticket, you must appear in court. Your appearance in court is required because the offenses cannot be processed by a traffic violations bureau.

Failure to Appear and/or Pay:

- The posting of bail or depositing your license as bond is to secure your appearance in court or the processing of the offenses through a traffic violations bureau. It is not a payment of fines, or costs.
- If you do not appear at the time and place stated in the citation or if you do not timely process this citation through a traffic violations bureau, your license **may** be cancelled.
- Also, a warrant may be issued for your arrest and you may be subject to additional criminal penalties.

The following offenses require court appearance and may not be processed by a traffic violations bureau:

- Any Indictable offense;
- Operating a vehicle under the influence of alcohol or any drug of abuse;
- Leave scene of accident;
- Driving while under suspension or revocation of driver's or commercial driver's license when jail is a possible penalty; [Tr.R. 13(B)(4)]
- Driving without being licensed to drive when jail is a possible penalty; [Tr.R. 13(B)(5)]
- A third moving traffic offense within 12 months;
- Passing a standing school bus;
- Willfully eluding or fleeing a police officer;
- Drag racing.

Waiverable through traffic violations bureau.

If you are charged with offenses other than those listed above, you may, at any time prior to arraignment, **plead guilty** to the offenses charged and dispose of the case without court appearance by:

- (1) appearing personally at the traffic violations bureau, signing the waiver printed below and paying the fines and costs or
- (2) signing the waiver printed below and mailing it with the approved payment form, for the total of the fines and costs to the traffic violations bureau at the following address:

Traffic Violations Bureau Address:

INSURANCE WARNING

Under Ohio Law you are required to show proof of financial responsibility or insurance. If you did not do so at the time of receiving this ticket, **you must submit proof** of insurance when you appear in court on these offenses.

If you do not submit the required proof:

- your driver's license will be suspended and,
- you may be subject to additional fees and insurance sanctions.

If you have any questions regarding the proof filing, you may call the traffic violations bureau at the telephone indicated.

For information regarding your **Duty To Appear** or the **Fines and Costs** amount(s), call:

Telephone Number(s) _____ Court Web Address _____

Contested Case; Court Appearance Required.

If you desire to **contest the offenses** or if court **appearance is required**, you must appear at the time and place stated in the summons.

Notice to Defendant under age eighteen.

You **must appear** before the Juvenile Court at the time and place determined by the Court. The Juvenile Court will notify you when and where to appear. This ticket will be filed with the Juvenile Court and may be used as a juvenile complaint.

_____ Court Address

For information regarding your **Duty to Appear** at Court call:

Telephone Number(s) _____ Court Web Address _____

Guilty Pleas, No Contest Pleas, Waiver of Trial, Payment of Fines and Costs

I, the undersigned defendant, do hereby enter my written pleas of guilty to the offenses charged in this ticket. I realize that by signing these guilty pleas, I admit my guilt of the offenses charged and waive my right to contest the offenses in a trial before the court or jury. Further, I realize that a record of this plea will be sent to the Ohio Bureau of Motor Vehicles. I have not been convicted of, pleaded guilty to, or forfeited bond for two or more prior moving traffic offenses within the last 12 months. I plead guilty to the offense (s) charged.

FINES \$ _____ Defendant's Signature _____

COSTS \$ _____ Address _____

TOTAL \$ _____

Ticket Number : _____