

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

Comments requested: The Supreme Court of Ohio will accept public comments until October 29, 2015 on the following proposed amendments to the Ohio Rules of Appellate Procedure (16), the Ohio Rules of Civil Procedure (4.1, 4.2, 4.4, 5, 10, 19.1, 37, 54, 62, and 65.1), the Ohio Rules of Criminal Procedure (11 and 16), the Ohio Rules of Evidence (601 and 803), and the Ohio Rules of Juvenile Procedure (20).

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

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

Comment Contact: Comments on the proposed amendments must be submitted in writing to Michael Farley, Judicial & Legislative Affairs Counsel, Supreme Court of Ohio, 65 South Front Street, 7th Floor, Columbus, Ohio 43215-3431 or Michael.Farley@sc.ohio.gov and received no later than October 29, 2015. Please include your full name and regular mailing address in any comment submitted by e-mail. Copies of all comments submitted will be provided to each member of the Commission on the Rules of Practice and Procedure and each Justice of the Supreme Court.

Comment Deadline: Comments must be submitted no later than October 29, 2015.

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

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

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

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

In the fall of each year, the Commission submits to the Supreme Court proposed amendments to the rules of practice and procedure that it recommends take effect the following July 1. The Supreme Court then authorizes the publication of the rules for public comment. *The authorization by the Court of the publication of the proposed amendments is neither an endorsement of, nor a declaration of, intent to approve the proposed amendments. It is an invitation to the judiciary, the practicing bar, and the public at large to provide thoughtful and meaningful feedback on the legal and practical effect of the proposed amendments.* The public comments are reviewed by the Commission which may withdraw, amend, or resubmit all or any provision of the proposed amendments to the Supreme Court. Pursuant to Article IV, Section 5(B), if the proposed amendments are to take effect by July 1, the Supreme Court is required to file the proposed amendments with the General Assembly by January 30.

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

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

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

SUMMARY

Ohio Rules of Appellate Procedure

App.R. 16—limited combining of Statement of the Case and Statement of the Facts

The Commission presents proposed amendments to App.R. 16 to allow a party to combine the Statement of the Case with the Statement of the Facts—when circumstances warrant such a combination. The likely scenario for such a combination arises where the case before the appellate court involves a trial-court procedural question not dependant on the parties' underlying factual dispute.

Ohio Rules of Civil Procedure

Civ.R. 4.1—Commercial Carrier Service

The Commission recommends an amendment to Civ.R. 4.1. Civ.R. 4.1(A)(1)(b) was adopted in 2012 to provide the clerk with an option to make service of process by a commercial carrier service as an alternative to service by United States certified or express mail. The proposed amendment permits the serving party to provide written instruction to the clerk that service be made by United States certified or express mail pursuant to Civ.R. 4.1(A)(1)(a). This change removes the ability of the clerk to use a commercial carrier for service, when the serving party desires to use the United States mail service.

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

The Commission recommends amendments to Civ.R. 4.2 and Civ.R. 19.1 be amended as gender neutral where appropriate to comply with the decision of U.S. Supreme Court in *Obergefell*

v. Hodges, 576 U.S. ____ (2015). The proposed changes are limited to making the rules gender neutral, with the exception of non-substantive stylistic changes in Civ.R. 19.1.

Civ.R. 4.4—Publication Service of Process

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

Civ.R. 5—Service and Filing of Pleadings

The Commission recommends amendments to Civ.R. 5 to conform to the stylistic changes made to the Federal Rules of Civil Procedure in 2007. Civ.R. 5(D) is the general rule for timing of filing; the recommended amendments make this general rule subject to, and superseded by, any provisions in other civil rules, local rules, or orders of court that set a different time of filing. The recommended amendments to Civ.R. 5 maintain the current requirement that any “paper” (restyled from “documents” in the current rule) “be filed within three days after service.” The Federal Rules of Civil Procedure require only that the paper be “filed within a reasonable time after service.” The Commission discussed this difference and decided to recommend that the Civ.R. 5 maintain the three-day requirement. Furthermore, the Commission recommends a change to Juv.R. 20 that substantially conforms to the proposed changes in Civ.R. 5; Juv.R. 20 is discussed below.

Civ.R. 10—Pleadings and Interaction with Rules of Evidence

The Commission recommends amendments to Civ.R.10 that correct an inaccuracy in the prior rule which cited Evid.R. 601(D) under the proposition that Evid.R. 601(D) applies to the qualification of an affiant for all medical, dental, optometric, and chiropractic claims. Evid.R. 702 applies to these medical professions and Evid.R. 601(D) only applies to the qualifications of an affiant for more limited medical claims. Civ.R. 10 interfaces with R.C. 2305.113 and the need for a claim to be accompanied by a certificate of expert review. The Commission’s proposed amendments will clear up confusion that exists with medical liability claims.

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

The Commission recommends amendments to Civ.R. 37. These amendments adopt the 2007 changes to Fed. R. Civ. P. 37. The 2007 changes include some substantive changes. The proposal includes a provision allowing a party to move for an order compelling a designation from a corporation or other entity which had previously failed to make the designation. The proposed amendments add to the exceptions in amended Civ.R. 37(A)(5), “the movant filed the motion before attempting in good faith to obtain the discovery without court action.” The amended rule

allows the court to issue any protective order permissible under Civ.R. 26(C) in addition to remedies available under existing Civ.R. 37(A)(5)(b) and Civ.R. 37(A)(5)(c). The amended rule creates Civ.R. 37(C)(1); the new language addresses the failure to supplement an earlier response and sanctions available for failure to supplement.

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

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

Civ.R. 62—Stay of Proceedings to Enforce a Judgment

The Commission recommends amendments to Civ.R. 62 creating a new division (A)(1) that will allow for a 14-day automatic stay of execution of judgment after the judgment’s entry; orders or judgments in an action for an injunction or receivership are not subject to automatic stay. This recommended change is consistent with Fed. R. Civ. P. 62(a). The current rule gives the court the discretion to issue such a stay to enforce judgment pending the disposition of various post-judgment motions (i.e., motion for a new trial, motion for relief from a judgment etc.). The proposed amendment maintains the current discretionary ability to grant a stay, but incorporates a mandatory 14-day initial period. The court could extend the period beyond the 14-days without additional restrictions.

Civ.R.65.1—Civil Protection Orders

The Commission recommends amendments to Civ.R. 65.1. The amendments provide direction regarding the methods of service in civil protection order proceedings. The initial attempt at service by the clerk is to be by personal service. If personal service is ineffective, the amendments recognize other methods of service of process available elsewhere in the Rules of Civil Procedure. The amendments, consistent with R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214, allow for any of the methods of service found in Civ.R. 4 through Civ.R. 4.6, when the matter concerns a motion to renew, modify, or terminate a full hearing civil protection order or an approved consent agreement. The proposed amendments clarify ambiguities regarding objections and appeal of a court’s adoption, modification, or rejection of a magistrate’s denial or granting of a protection order after a full hearing.

Ohio Rules of Criminal Procedure

Crim.R. 11—Pleas; Negotiated Pleas in Felony Cases

The Commission proposes an amendment to Crim.R. 11 that would require a determination by the court, on the record, that a factual basis supporting the charges exists—prior to accepting

the plea agreement. The proposed amendment only applies to felony matters. Fed. R. Crim. 11 applies to both felonies and misdemeanors.

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

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

Ohio Rules of Evidence

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

The Commission recommends amendments to Evid.R. 601(D) to clarify the intent of the rule and to harmonize operation with the Ohio Revised Code. Nonsubstantive revisions are made to Evid.R. 601(D) to make clear that the rule applies only to expert testimony as to liability in any medical claim, as defined by R.C. 2305.113, asserted against a physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist. The rule does not apply to expert testimony for any other medical claims, or for any dental, optometric, or chiropractic claims, as defined by R.C. 2305.113.

The structure and provisions of Evid.R. 601(D) are also revised to more-closely resemble the structure of R.C. 2743.43 and to incorporate the provisions of that statute that are not inconsistent with the provisions of the current rule. One area that remains different between the rule and the statute is that amount of a person's professional time to the active clinical practice of medicine in order to be deemed competent. The rule requires one-half of one's professional time; while the statute requires three-fourths of one's professional time.

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

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

Ohio Rules of Juvenile Procedure

Juv.R. 20—Service and Filing of Papers

The Commission recommends amendment of Juv.R. 20 to harmonize with proposed amendments to Civ.R. 5. The current rule requires “(a)ll papers required to be served upon a party shall be filed *simultaneously with or immediately after service*” (emphasis added). The proposed amendments to Juv.R. 20 now directly incorporate the three-day requirement consistent with the existing requirement in Civ.R. 5. This recommended amendment further harmonizes with the Civ.R. 5 and proposed amendments to Civ.R. 5 by making this general rule of filing subject to, and superseded by, any provision in other juvenile rules, local rules, or orders of court that set a different time for filing.

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

3
4 **RULE 16. Briefs**

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

8
9 (1) A table of contents, with page references.

10
11 (2) A table of cases alphabetically arranged, statutes, and other authorities cited, with
12 references to the pages of the brief where cited.

13
14 (3) A statement of the assignments of error presented for review, with reference to the
15 place in the record where each error is reflected.

16
17 (4) A statement of the issues presented for review, with references to the assignments
18 of error to which each issue relates.

19
20 (5) A concise statement of the case briefly describing the nature of the case, the course
21 of proceedings, and the disposition in the court below.

22
23 (6) A statement of facts relevant to the assignments of error presented for review, with
24 appropriate references to the record in accordance with division (D) of this rule. When the appeal
25 involves only a question of trial-court procedure that does not depend on the parties' underlying
26 factual dispute, the statement of facts may be combined with the statement of the case.

27
28 (7) An argument containing the contentions of the appellant with respect to each
29 assignment of error presented for review and the reasons in support of the contentions, with
30 citations to the authorities, statutes, and parts of the record on which appellant relies. The argument
31 may be preceded by a summary.

32 **OHIO RULES OF CIVIL PROCEDURE**

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34 **RULE 4.1 Process: Methods of Service**

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36 All methods of service within this state, except service by publication as provided in Civ.R.
37 4.4(A), are described in this rule. Methods of out-of-state service and for service in a foreign
38 country are described in Civ.R. 4.3 and 4.5.

39
40 **(A) Service by clerk.**

41
42 **(1) Methods of service.**

43
44 **(a) Service by United States certified or express mail.** Evidenced by
45 return receipt signed by any person, service of any process shall be by
46 United States certified or express mail unless otherwise permitted by these
47 rules. The clerk shall deliver a copy of the process and complaint or other
48 document to be served to the United States Postal Service for mailing at the
49 address set forth in the caption or at the address set forth in written
50 instructions furnished to the clerk as certified or express mail return receipt
51 requested, with instructions to the delivering postal employee to show to
52 whom delivered, date of delivery, and address where delivered.

53
54 **(b) Service by commercial carrier service.** ~~As an alternative to~~
55 Unless the serving party furnishes written instructions to the clerk that
56 service under be made pursuant to Civ.R. 4.1(A)(1)(a), the clerk may make
57 service of any process by a commercial carrier service utilizing any form of
58 delivery requiring a signed receipt. The clerk shall deliver a copy of the
59 process and complaint or other document to be served to a commercial
60 carrier service for delivery at the address set forth in the caption or at the
61 address set forth in written instructions furnished to the clerk, with
62 instructions to the carrier to return a signed receipt showing to whom
63 delivered, date of delivery, and address where delivered.

64
65 **[Existing language unaffected by the amendments is omitted to conserve space]**

66
67 **Staff Notes (July 1, 2016 Amendment)**

68
69 Rule 4.1(A)(1)(b) was adopted in 2012 to provide the clerk with an option to make service of process
70 by a commercial carrier service as an alternative to service by United States certified or express mail.
71 Under certain circumstances, the serving party may prefer that service be made by U.S. mail. Therefore,
72 the provisions of Civ.R. 4.1(A)(1)(b) are amended to permit the serving party to furnish written instructions
73 to the clerk that service be made by United States certified or express mail pursuant to Civ.R. 4.1(A)(1)(a),
74 in which case the commercial carrier option is not available to the clerk.

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

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

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

Staff Note (July 1, 2016 Amendment)

Division (A): Residence unknown.

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

The service of process by publication by way of posting of a civil protection order shall not impact the prompt entry of such an order into the protection order file of the National Crime Information Center.

RULE 5. Service and Filing of Pleadings and Other Papers Subsequent to the Original Complaint

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

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

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

177 **Staff Note (July 1, 2016 Amendments)**

178
179 Division 5(D), the general rule for the time for filing, is amended to conform the language to the
180 2007 stylistic changes to Fed.R.Civ.P. 5(d) to the extent that the substance of the Ohio and Federal Rules
181 are the same, and to make this general rule for the time for filing subject to, and superseded by, any
182 provision in other civil rules, local rules, or orders of court that set a different time for filing.
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186 **RULE 10. Form of Pleadings**

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

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

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

196
197 (2) *Affidavit of merit; medical, dental, optometric, and chiropractic liability ~~claim~~*
198 *claims.*

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200 (a) Except as provided in division (D)(2)(b) of this rule, a complaint that contains a
201 medical claim, dental claim, optometric claim, or chiropractic claim, as defined in ~~section R.C.~~
202 ~~2305.113 of the Revised Code~~, shall ~~include~~ be accompanied by one or more affidavits of merit
203 relative to each defendant named in the complaint for whom expert testimony is necessary to
204 establish liability. Affidavits of merit shall be provided by an expert witness ~~pursuant to~~
205 ~~Rules 601(D) and~~ meeting the requirements of Evid.R. 702 of the Ohio Rules of Evidence and, if
206 applicable, also meeting the requirements of Evid.R. 601(D). Affidavits of merit shall include all
207 of the following:

- 208
209 (i) A statement that the affiant has reviewed all medical records reasonably available
210 to the plaintiff concerning the allegations contained in the complaint;
211
212 (ii) A statement that the affiant is familiar with the applicable standard of care;
213
214 (iii) The opinion of the affiant that the standard of care was breached by one or more of
215 the defendants to the action and that the breach caused injury to the plaintiff.
216

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

218
219 **Staff Notes (July 1, 2016 Amendments)**

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221 Rule 10(D)(2) applies to medical, dental, optometric, and chiropractic claims, as defined by R.C.
222 2305.113, and was adopted in 2005 to require that, at the time of the filing of a complaint asserting any
223 such claims, the complaint must be accompanied by certificates of expert review. The rule is amended to
224 remedy an inaccuracy in the prior rule which incorrectly indicated that Evid.R. 601(D) applies to the
225 qualifications of an affiant for all medical, dental, optometric, and chiropractic claims. While Evid.R. 702

226 applies to the qualifications of an affiant for all medical, dental, optometric, and chiropractic claims, Evid.R.
227 601(D) applies only to the qualifications of an affiant for certain medical claims. See Evid.R. 601(D).
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231 **RULE 19.1 Compulsory Joinder**
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233 **(A) Persons to be joined.** A person who is subject to service of process shall be joined
234 as a party in the action, except as provided in ~~subdivision~~ division (B) of this rule, if the person
235 has an interest in or a claim arising out of the following situations:
236

237 (1) Personal injury or property damage to the person or property of the decedent which
238 survives the decedent's death and a claim for wrongful death to the same decedent if caused by the
239 same wrongful act;
240

241 (2) Personal injury or property damage to a ~~husband or wife~~ spouse and a claim of the
242 other spouse for loss of consortium or expenses or property damage if caused by the same wrongful
243 act;
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245 (3) Personal injury or property damage to a minor and a claim of the parent or guardian
246 of the minor for loss of consortium or expenses or property damage if caused by the same wrongful
247 act;
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249 (4) Personal injury or property damage to an employee or agent and a claim of the
250 employer or principal for property damage if caused by the same wrongful act.
251

252 If ~~he~~ the person has not been so joined, the court, subject to ~~subdivision~~ division (B) ~~hereof~~
253 of this rule, shall order that ~~he~~ the person be made a party upon timely assertion of the defense of
254 failure to join a party as provided in Rule Civ.R. 12(B)(7). If the defense is not timely asserted,
255 waiver is applicable as provided in Rule Civ.R. 12(G) and (H). If ~~he~~ the person should join as a
256 plaintiff but refuses to do so, ~~he~~ the person may be made a defendant, or, in a proper case, an
257 involuntary plaintiff. In the event that such joinder causes the relief sought to exceed the
258 jurisdiction of the court, the court shall certify the proceedings in the action to the court of common
259 pleas.
260

261 **(B) Exception to compulsory joinder.** If a party to the action or a person described in
262 ~~subdivision~~ division (A) shows good cause why that person should not be joined, the court shall
263 proceed without requiring joinder.
264

265 **(C) Pleading reasons for nonjoinder.** A pleading asserting a claim for relief shall
266 state the names, if known to the pleader, of any persons as described in ~~subdivision~~ divisions
267 (A)(1), (2), (3), or (4) ~~hereof~~ of this rule who are not joined, and the reasons why they are not
268 joined.
269

270 **(D) Exception of class actions.** This rule is subject to the provisions of Rule 23.
271
272

273
274 The rule is amended to make gender neutral language changes, including at division 19.1(A)(2)
275 where "spouse " is substituted for "husband or wife" as a person to be joined in particular actions. The
276 amendments are made accordance with the July 26, 2015 Administrative Action of the Ohio Supreme Court,
277 06/26/2015 Administrative Actions, 2015-Ohio-2568, which ordered that the Ohio Rules of Civil Procedure
278 be construed and amended as gender neutral where appropriate to comply with the decision of U.S.
279 Supreme Court in Obergefell v. Hodges, 576 U.S. ____ (2015). The amendments also make non-
280 substantive stylistic changes to the rule.

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283
284 **RULE 37. Failure to Make Discovery; Sanctions**

285
286 **(A) Motion for an order compelling discovery.** ~~Upon reasonable notice to other~~
287 ~~parties and all persons affected thereby, a party may move for an order compelling discovery as~~
288 ~~follows:~~

289
290 **(1) In general.** On notice to other parties and all affected persons, a party may move
291 for an order compelling discovery. The motion shall include a certification that the movant has in
292 good faith conferred or attempted to confer with the person or party failing to make discovery in
293 an effort to obtain it without court action.

294
295 **(2) Appropriate court.** A motion for an order to a party or a deponent shall be made
296 to the court ~~in which~~ where the action is pending.

297
298 ~~(2)~~ **(3) Specific motions.**

299
300 **(a) To compel a discovery response.** A party seeking discovery may move for an
301 order compelling an answer, designation, production, or inspection. This motion may be made if:

302
303 **(i)** ~~If a~~ A deponent fails to answer a question ~~propounded or submitted~~ asked under
304 Rule Civ.R. 30 or Rule Civ.R. 31, or a;

305
306 **(ii)** A corporation or other entity fails to make a designation under Civ.R. 30(B)(5) or
307 Civ.R. 31(A);

308
309 **(iii)** A party fails to answer an interrogatory submitted under Rule Civ.R. 33, or if a;

310
311 **(iv)** ~~A party, in response to a request for inspection submitted under Rule 34, fails to~~
312 ~~respond that inspection will be permitted—or fails to permit inspection—as requested or fails to~~
313 ~~permit inspection as requested, the discovering party may move for an order compelling an answer~~
314 ~~or an order compelling inspection in accordance with the request.~~

315
316 **(b)** ~~On matters relating~~ Related to a deposition ~~on oral examination.~~ When taking an
317 oral deposition, the proponent of the party asking a question may complete or adjourn the
318 examination before he applies moving for an order.

319

320 ~~(3)~~**(4) Evasive or incomplete answer or response.** For purposes of ~~this subdivision~~
321 division (A), an evasive or incomplete answer ~~is~~ or response shall be treated as a failure to answer
322 or respond.

323
324 ~~(4) Award~~ **(5) Payment of expenses of motion; protective orders.**

325
326 **(a) If the motion is granted.** If the motion is granted, the court shall, after ~~opportunity~~
327 ~~for hearing~~ giving an opportunity to be heard, require the party or deponent ~~who opposed~~ whose
328 conduct necessitated the motion ~~or~~, the party or attorney advising such that conduct, or both ~~of~~
329 ~~them~~ to pay ~~to the moving party~~ the movant's reasonable expenses incurred in ~~obtaining the order~~
330 making the motion, including attorney's fees, ~~unless the court finds that the opposition to the~~
331 motion. But the court shall not order this payment if:

332
333 **(i) The movant filed the motion before attempting in good faith to obtain the discovery**
334 without court action;

335
336 **(ii) The opposing party's response or objection** was substantially justified; ~~or that other~~

337
338 **(iii) Other** circumstances make an award of expenses unjust.

339
340 **(b) If the motion is denied.** If the motion is denied, the court may issue any protective
341 order authorized under Civ.R. 26(C) and shall, after giving an opportunity for hearing to be heard,
342 require the moving party or movant, the attorney advising filing the motion, or both of them to pay
343 to the party or deponent who opposed the motion the its reasonable expenses incurred in opposing
344 the motion, including attorney's fees, ~~unless the court finds that the making of.~~ But the court shall
345 not order this payment if the motion was substantially justified or ~~that~~ other circumstances make
346 an award of expenses unjust.

347
348 **(c) If the motion is granted in part and denied in part.** If the motion is granted in
349 part and denied in part, the court may issue any protective order authorized under Civ.R. 26(C)
350 and may, after giving an opportunity to be heard, apportion the reasonable expenses incurred in
351 relation to the motion among the parties and persons in a just manner for the motion.

352
353 **(B) Failure to comply with order; sanctions.**

354
355 **(1)** If a deponent fails to be sworn or to answer a question after being directed to do so
356 ~~by the court, the failure may be considered a contempt of that court.~~

357
358 **(2)**(1)** For not obeying a discovery order.** If ~~any~~ a party or an a party's officer, director,
359 ~~or managing agent of a party or a person~~ witness designated under Rule Civ.R. 30(B)(5) or Rule
360 Civ.R. 31(A) to testify on behalf of a party fails to obey an order to provide or permit discovery,
361 including an order made under ~~subdivision (A) of this rule and Rule Civ.R. 35 or Civ.R. 37(A),~~
362 the court ~~in which the action is pending~~ may make such issue further just orders in regard to the
363 failure as are just, and among others. They may include the following:

364

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

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

373 (c) ~~An order striking out pleadings or parts thereof~~ Striking pleadings in whole or in
375 part; or staying

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

377 (e) Dismissing the action or proceeding ~~or any part thereof~~ in whole or in part, or
380 rendering;

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

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

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

393 (3) **Payment of expenses.** Instead of or in
394 addition thereto to the orders above, the court shall require the party failing to obey the order or
395 the disobedient party, the attorney advising ~~him~~ that party, or both to pay the reasonable expenses,
396 including attorney's fees, caused by the failure, unless ~~the court expressly finds that~~ the failure was
397 substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

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

399 (1) **Failure to supplement.** If a party fails to provide information or identify a witness
401 as required by Civ.R. 26(E), the party is not allowed to use that information or witness to supply
402 evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is
403 harmless. In addition to or instead of this sanction, the court, on motion and after giving an
404 opportunity to be heard:

405 (a) may order payment of the reasonable expenses, including attorney's fees, caused by
406 the failure;

411 (b) may inform the jury of the party's failure; and

412

413 (c) may impose other appropriate sanctions, including any of the orders listed in Civ.R.
414 37(B)(1)(a) through (f).

415

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

424

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

426

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

429

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

432

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

434

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

437

438 ~~If~~ **(1) In general.**

439

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

441

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

446

447 (2) ~~to serve answers or objections to interrogatories submitted under Rule 33, after~~
448 ~~proper service of the interrogatories, or (3) to serve a written response to a request for inspection~~
449 ~~submitted under Rule 34, after proper service of the request, the court in which the action is~~
450 ~~pending on motion and notice may make such orders in regard to the failure as are just, and among~~
451 ~~others it may take any action authorized under subsections (a), (b), and (c) of subdivision (B)(2)~~
452 ~~of this rule~~ (ii) A party, after being properly served with interrogatories under Civ.R. 33 or a
453 request for inspection under Civ.R. 34, fails to serve its answers, objections, or written response.

454

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

458
459 (2) **Unacceptable excuse for failing to act.** A failure described in Civ.R. 37(D)(1)(a)
460 is not excused on the ground that the discovery sought was objectionable, unless the party failing
461 to act has a pending motion for a protective order under Civ.R. 26(C).

462
463 (3) **Types of sanctions.** Sanctions may include any of the orders listed in Civ.R.
464 37(B)(1)(a) through (f). ~~In lieu~~ Instead of any order or in addition thereto to these sanctions,
465 the court shall require the party failing to act or, the attorney advising him that party, or both to pay
466 the reasonable expenses, including attorney's fees, caused by the failure, unless the court expressly
467 finds that the failure was substantially justified or that other circumstances make an award of
468 expenses unjust.

469
470 ~~The failure to act described in this subdivision may not be excused on the ground that the~~
471 ~~discovery sought is objectionable unless the party failing to act has applied for a protective order~~
472 ~~as provided by Rule 26(C).~~

473
474 ~~(E) Before filing a motion authorized by this rule, the party shall make a reasonable~~
475 ~~effort to resolve the matter through discussion with the attorney, unrepresented party, or person~~
476 ~~from whom discovery is sought. The motion shall be accompanied by a statement reciting the~~
477 ~~efforts made to resolve the matter in accordance with this section.~~

478
479 ~~(F) Electronically~~ (E) **Failure to provide stored information.**

480
481 Absent exceptional circumstances, a court may not impose sanctions under these rules on
482 a party for failing to provide electronically stored information lost as a result of the routine, good-
483 faith operation of an electronic information system. The court may consider the following factors
484 in determining whether to impose sanctions under this division:

- 485
486 (1) Whether and when any obligation to preserve the information was triggered;
487
488 (2) Whether the information was lost as a result of the routine alteration or deletion of
489 information that attends the ordinary use of the system in issue;
490
491 (3) Whether the party intervened in a timely fashion to prevent the loss of information;
492
493 (4) Any steps taken to comply with any court order or party agreement requiring
494 preservation of specific information;
495
496 (5) Any other facts relevant to its determination under this division.

502
503 The rule is amended to adopt the 2007 stylistic changes to Fed.R.Civ.P. 37. In adopting those
504 federal stylistic changes, the amendments also add provisions of the Federal rule that make the following
505 substantive changes to existing Civ.R. 37:

506
507 1. Including within the scope of amended Civ.R. 37(A)(3), "a corporation or other entity fails
508 to make a designation under Civ.R. 30(B)(5) or Civ.R. 31(A)";

509
510 2. Adding to the exceptions to amended Civ.R. 37(A)(5), "the movant filed the motion before
511 attempting in good faith to obtain the discovery without court action";

512
513 3. Adding to the remedies available under amended Civ.R. 37(A)(5)(b) and Civ.R. 37(A)(5)(c),
514 "the court may issue any protective order authorized under Rule 26(C)"; and

515
516 4. Adding amended Civ.R. 37(C)(1) addressing failure to supplement an earlier response.

517
518 The 2016 amendments to the Ohio rule do not incorporate the 2015 changes made to Fed.R.Civ.P.
519 37.

520 521 522 523 **RULE 54. Judgments; Costs; Attorney Fees**

524
525 **[Existing language unaffected by the amendments is omitted to conserve space]**

526
527 **(E) Attorney Fees.** Whenever a provision of these rules authorizes a court to award
528 attorney fees, including attorney fees described in the provision as "caused" or "incurred," the court
529 may award the reasonable value of the time spent by the attorney, whether or not the party
530 represented by that attorney actually paid or is obligated to pay the attorney for such time.

531 532 **Staff Notes (July 1, 2016 Amendment)**

533
534 A new division (E) is added to supersede any application of the decision in *State ex rel. Citizens*
535 for Open, Responsive & Accountable Govt. v. Register, 116 Ohio St.3d 88, 2007–Ohio–5542 to an award
536 of attorney fees by specifying that when any provision of the rules authorizes an award of attorney fees, the
537 court may award the reasonable value of the time spent by the attorney, whether or not the party actually
538 paid or is obligated to pay the attorney for such time.

539 540 541 542 **RULE 62. Stay of Proceedings to Enforce a Judgment**

543
544 **(A) Stay Automatic stay; stay on motion for new trial or for judgment.**

545
546 (1) Except as stated in this rule, no execution may issue on a final judgment, nor may
547 proceedings be taken to enforce it, until 14 days have passed after its entry. But unless the court
548 orders otherwise, an order or judgment in an action for an injunction or receivership is not
549 automatically stayed, even if an appeal is taken.

550
551 (2) In its discretion and on such conditions for the security of the adverse party as are
552 proper, the court may stay the execution of any judgment or stay any proceedings to enforce

553 judgment pending the disposition of a motion for a new trial, or a motion for relief from a judgment
554 or order made pursuant to Rule 60, or of a motion for judgment notwithstanding the verdict made
555 pursuant to Rule 50.

556
557 **[Existing language unaffected by the amendments is omitted to conserve space]**

558
559 **Staff Note (July 1, 2016 Amendments)**

560
561 The rule is amended by adding new division (A)(1) allowing for a 14-day automatic stay of execution
562 of judgment after the judgment's entry. Now consistent with Fed.R.Civ.P. 62(a), division (A)(1) gives the
563 party with an adverse judgment a period of time within which to decide whether to pursue postjudgment
564 remedies without risking an immediate execution on the judgment.

565
566
567
568 **RULE 65.1. Civil Protection Orders**

569
570 **[Existing language unaffected by the amendments is omitted to conserve space]**

571
572 **(C) Service.**

573
574 **[Existing language unaffected by the amendments is omitted to conserve space]**

575
576 **(2) Initial service.** Initial service, and service of any ex parte protection order that is
577 entered, shall be made in accordance with the provisions for personal service of process within the
578 state under Civ. R. 4.1(B) or outside the state under Civ. R. 4.3(B)(2). Upon failure of such
579 personal service, or in addition to such personal service, service may be made in accordance with
580 any applicable provision of Civ. R. 4 through Civ. R. 4.6.

581
582 **(3) Subsequent service.** After service has been made in accordance with division
583 (C)(2) of this rule, any additional service required to be made during the course of the proceedings
584 on Respondent and, if applicable, on the parent, guardian, or legal custodian of Respondent, shall
585 be made in accordance with the provisions of Civ.R. 5(B).

586
587 **(4) Modification; contempt; renewal; termination.**

588
589 **(a) Service of a motion for modification, contempt, renewal, or termination of a civil**
590 **protection order issued after a full hearing or an approved consent agreement shall be made in the**
591 **manner provided for service of process under Civ. R. 4 through Civ. R. 4.6 .**

592
593 **(b) After service has been made in accordance with division (C)(4)(a) of this rule, any**
594 **additional service required to be made on the Respondent and, if applicable, on the parent,**
595 **guardian, or legal custodian of the Respondent, shall be made in accordance with provisions of**
596 **Civ. R. 5(B).**

597
598 **(5) Confidentiality.** Upon request of the Petitioner, any method of service provided
599 by Civ. R. 4 through 4.6 or by Civ. R. 5(B) may be limited or modified by the court to protect the
600 confidentiality of the Petitioner's address in making service under this division.

601
602 [Existing language unaffected by the amendments is omitted to conserve space]

603
604 (F) Proceedings in matters referred to magistrates.

605
606 [Existing language unaffected by the amendments is omitted to conserve space]

607
608 (3) Full hearing proceedings. The following shall apply when these special statutory
609 proceedings are referred to a magistrate for full hearing and determination:

610
611 [Existing language unaffected by the amendments is omitted to conserve space]

612
613 (e) Motions for modification, contempt, renewal, or termination of civil protection
614 orders. When a motion for modification, contempt, renewal, or termination of a civil protection
615 order is referred to a magistrate for determination, the provisions of this division (F)(3) relating to
616 full hearing proceedings shall apply unless such provisions would by their nature be clearly
617 inapplicable.

618
619 (G) Final order; objections prior to appeal; stay of appeal. Notwithstanding the
620 provisions of any other rule, an order entered by the court under division (F)(3)(c) or division
621 (F)(3)(e) of this rule, with or without the subsequent filing of objections, is a final, appealable
622 order that can be appealed upon issuance of the order. The timely filing of However, a party must
623 timely file objections to such an order under division (F)(3)(d) of this rule prior to filing an appeal,
624 and the timely filing of such objections shall stay the running of the time for appeal until the filing
625 of the court's ruling on the objections.

626
627
628
629 **Staff Notes (July 1, 2016 Amendment)**

630
631 **Division (C): Service**

632
633 It is well-established that all proceedings under R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214
634 must follow the Rules of Civil Procedure. See, e.g., State v. Smith, 136 Ohio St. 3d 1, 2013-Ohio-1698 at
635 ¶21. Accordingly, division (C) provides clear direction regarding the methods of service in civil protection
636 order proceedings. Division (C)(2) directs the clerk of court to cause the first attempt at initial service in
637 these proceedings, including service of a copy of the petition and an ex parte order, by personal service of
638 process. This method of service provides the respondent expeditious notice consistent with the urgent
639 nature of these proceedings. Notwithstanding, division (C)(2) also recognizes, only upon failure of personal
640 service, the other methods of service of process in the Rules of Civil Procedure, i.e., Civ R. 4 through 4.6,
641 provide similar reliable form of notice for the initial service.

642
643 The plain language of division (C)(3) indicates that subsequent service in civil protection order
644 proceedings after the petition and ex parte order has been served, including service of a protection order
645 entered after full hearing, must follow Civ.R. 5(B). In following the authority of Civ.R. 5(B), division (C)(3)
646 fosters consistency regarding service subsequent to the original complaint, provides a clear direction and
647 discretion regarding the methods of service appropriate for subsequent service in civil protection order
648 proceedings under Civ.R. 5(B), and ensures the Respondent receives reliable notice of full hearing civil
649 protection orders. Additionally, Civ.R. 5(B)(3) requires a proof of service record be created, which includes
650 the date and specific manner by which the service was made under Civ.R. 5(B)(2).

651

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

657
658 Division (C)(4)(b) aligns with division (C)(3) of the rule and clarifies that subsequent service in
659 proceedings for renewal, contempt, modification, or termination of a full hearing civil protection order or an
660 approved consent agreement is to be made in accordance with Civ.R. 5(B).

661
662 **Division (F): Proceedings in matters referred to magistrates.**

663
664 A new division (F)(3)(e) is also added to address issues discussed in *Schneider v. Razek*, 2015-
665 Ohio-410 (8th Dist.) relating to proceedings on motions for renewal, contempt, modification, or termination
666 of civil protection orders.

667
668 **Division (G): Final order; objections prior to appeal; stay of appeal.**

669
670 Division (G) is amended to require that a party must file objections prior to filing an appeal from a
671 trial court's otherwise appealable adoption, modification, or rejection of a magistrate's ruling. This
672 amendment is grounded on two key principles. First, it promotes the fair administration of justice, including
673 affording the trial court an opportunity to review the transcript and address any insufficiency of evidence or
674 abuse of discretion that would render the order or a term of the order unjust. Second, it creates a more
675 robust record upon which the appeal may proceed.

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OHIO RULES OF CRIMINAL PROCEDURE

RULE 11. Pleas, Rights Upon Plea

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

(F) Negotiated plea in felony cases. When, in felony cases, a negotiated plea of guilty or no contest to one or more offenses charged or to one or more other or lesser offenses is offered, the underlying agreement upon which the plea is based shall be stated on the record in open court. The court must determine on the record the existence of a factual basis supporting the charges prior to accepting the plea agreement.

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

RULE 16.

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

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

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

Staff Notes (July 1, 2016 Amendment)

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

717 OHIO RULES OF EVIDENCE

718
719 **RULE 601. General Rule of Competency**

720
721 Every person is competent to be a witness except:

722
723 **[Existing language unaffected by the amendments is omitted to conserve space]**

724
725 (D) A person giving expert testimony on the issue of liability in any medical claim, as
726 defined in R.C. 2305.113, asserted in any civil action against a physician, podiatrist, or hospital
727 arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist, unless
728 ~~the:~~

729
730 (1) The person testifying is licensed to practice medicine and surgery, osteopathic
731 medicine and surgery, or podiatric medicine and surgery by the state medical board or by the
732 licensing authority of any state, and unless the;

733
734 (2) The person devotes at least one-half of his or her professional time to the active
735 clinical practice in his or her field of licensure, or to its instruction in an accredited school; and

736
737 (3) The person practices in the same or a substantially similar specialty as the
738 defendant. The court shall not permit an expert in one medical specialty to testify against a health
739 care provider in another medical specialty unless the expert shows both that the standards of care
740 and practice in the two specialties are similar and that the expert has substantial familiarity between
741 the specialties.

742
743 If the person is certified in a specialty, the person must be certified by a board recognized
744 by the American board of medical specialties or the American board of osteopathic specialties in
745 a specialty having acknowledged expertise and training directly related to the particular health care
746 matter at issue.

747
748 Nothing in this division shall be construed to limit the power of the trial court to adjudge
749 the testimony of any expert witness incompetent on any other ground, or to limit the power of the
750 trial court to allow the testimony of any other witness, on a matter unrelated to the liability issues
751 in the medical claim, when that testimony is relevant to the medical claim involved.

752
753 This division shall not prohibit other medical professionals who otherwise are competent
754 to testify under these rules from giving expert testimony on the appropriate standard of care in
755 their own profession in any claim asserted in any civil action against a physician, podiatrist,
756 medical professional, or hospital arising out of the diagnosis, care, or treatment of any person.

757
758 **[Existing language unaffected by the amendments is omitted to conserve space]**

759
760
761
762
763

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

765
766 Nonsubstantive revisions are made to Evid.R. 601(D) to make clear that the rule applies only to
767 expert testimony as to liability in any medical claim, as defined by R.C. 2305.113, asserted against a
768 physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person by a physician
769 or podiatrist. The rule does not apply to expert testimony for any other medical claims, or for any dental,
770 optometric, or chiropractic claims, as defined by R.C. 2305.113.

771
772 The structure and provisions of Evid.R. 601(D) are also revised to more-closely resemble the
773 structure of R.C. 2743.43 and to incorporate the provisions of that statute that are not inconsistent with the
774 provisions of the current rule. Pursuant to authority of Article IV, Section 5(B) of the Ohio Constitution, the
775 provisions of R.C. 2743.43 are superseded in their entirety by the amended rule.

776
777
778
779 **RULE 803. Exceptions to the Rule Against Hearsay Exceptions; Availability of**
780 **Declarant Immaterial —Regardless of Whether the Declarant Is Available as a Witness.**

781
782 The following are not excluded by the hearsay-rule against hearsay, even though regardless
783 of whether the declarant is available as a witness:

784
785 **[Existing language unaffected by the amendments is omitted to conserve space]**

786
787 **(10) Absence of public record or entry.** ~~To prove the absence of a record, report,~~
788 ~~statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of~~
789 ~~which a record, report, statement, or data compilation, in any form, was regularly made and~~
790 ~~preserved by a public office or agency, evidence in the form of a certification in accordance with~~
791 ~~Rule 901(B)(10) or testimony, that diligent search failed to disclose the record, report, statement,~~
792 ~~or data compilation, or entry Testimony—or a certification under Evid.R. 901(B)(10)—that a~~
793 ~~diligent search failed to disclose a public record or statement if:~~

794
795 (a) the testimony or certification is admitted to prove that

796
797 (i) the record or statement does not exist; or

798
799 (ii) a matter did not occur or exist, if a public office regularly kept a record or statement
800 for a matter of that kind; and

801
802 (b) in a criminal case, a prosecutor who intends to offer a certification provides written
803 notice of that intent at least 14 days before trial, and the defendant does not object in writing within
804 7 days of receiving the notice — unless the court sets a different time for the notice or the objection.

805
806 **[Existing language unaffected by the amendments is omitted to conserve space]**

807
808 **Staff Note (July 1, 2016 Amendment)**

809
810 The amendment adopts the 2011 federal stylistic changes made to the introductory language of
811 Fed.R.Evid. 803 and to Fed.R.Evid. 803(10).

812

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

RULE 20. Service and Filing of Papers When Required Subsequent to Filing of Complaint.

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

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

(C) Filing. ~~All papers~~ Unless otherwise provided by these rules, by local rule, or by order of the court, any paper after the complaint that is required to be served upon a party shall be filed simultaneously with or immediately with the court within three days after service. The following discovery requests and responses shall not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry on land, and requests for admission. Papers filed with the court shall not be considered until proof of service is endorsed thereon or separately filed. The proof of service shall state the date and the manner of service and shall be signed and filed in the manner provided in Civil Rule 5(D).

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

Staff Note (July 1, 2016 Amendments)

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