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

Comments requested: The Supreme Court of Ohio will accept public comments until September 26, 2018 on the following proposed amendments to the Ohio Rules of Civil Procedure (4, 4.1, 4.3, 4.7, 6, 7, 33, 34, 36, 47, 53, 54, 56, and Proposed Civil Form), the Ohio Rules of Criminal Procedure (4, 6, 10, 11, 12, 16, 37, and 46), the Ohio Rules of Evidence (615, 801, and 803), Ohio Rules of Appellate Procedure (3 and 5), and the Ohio Rules of Juvenile Procedure (22, 24, 26, 29, and 34).

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, Policy 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 September 26, 2018. 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 September 26, 2018.

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, 4.3, 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.

- *Motions Briefing Schedule*
(**Civ.R. 6, 7, and 56**)

The Commission recommends this series of amendments in order to create a motion briefing schedule that is more consistent across the state. Under current Civ.R. 6, a response to a motion is due 14 days from the motion being filed and any replies are due seven days after a response. This schedule, however, can be altered by local rule – creating uncertainty as to the briefing schedule county-to-county. This rule amendment would remove the ability of a court to alter this schedule through local rule, and instead require a specific showing of good cause in each particular case.

The briefing schedule for Summary Judgment motions is unchanged under these amendments.

- *Discovery*
(**Civ.R. 33, 34, and 36**)

The Commission recommends this series of amendments so as to require any written discovery requests – such as requests for admissions, interrogatories, or requests for production – also include a copy of the request in a word processing format. This is intended to allow the responding party to more quickly compile the information and respond, as they can type their answers directly into the document.

These amendments also limit to 40 the number of requests for admissions that can be made without leave of court. Under the current rule, there is no limitation.

- *Alternate Jurors*
(**Civ.R. 47**)

The Commission recommends amendments to Civ.R. 47 so as to clarify that any alternate juror that is dismissed before the beginning of deliberations is not eligible to be recalled at a later time in the case. Under the current rule, there is no guidance as to whether dismissed alternates may be recalled should a juror need to be replaced in the middle of deliberations.

As is the case with the current rule, a trial court has discretion as to whether alternate jurors are to be dismissed before deliberations begin.

- *Magistrates Jury Trials; Decisions/Orders*
(**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 are 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).

The commission also proposes an amendment to clarify that a magistrate's decision is required on any motion that could be *potentially* dispositive. The commission was made aware of some discrepancy between courts as to whether a denied motion for summary judgment was treated as a magistrate's decision or a magistrate's order. Some courts – since the case was not disposed of – treated a denied summary judgment as an *order*, which uses a separate objection process.

- *Judgments*
(**Civ.R. 54**)

The Commission recommends amendments to Civ.R. 54 to remove language from the rule that defines judgment with a specific reference to R.C. 2505.02 – the final order statute. The reason for this is that not *all* judgments are necessarily final orders, and some judgments are final under other statutes entirely. The amendment also removes language that limited certain information – such as a recitation of the pleadings or a record of prior proceedings – from being in the judgment. The Commission feels there are instances when such information is appropriately placed in a judgment, and courts should have the ability to do so.

2. OHIO RULES OF CRIMINAL PROCEDURE

- *Bail and Bond*
(**Crim.R. 4, 10, and 46**)

The Commission proposes this series of amendments in relation to the setting of bail in criminal cases. The amendment includes requirements 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.

The proposal would also require the use of an objective risk assessment tool – but only if that tool is deemed credible by the court or by statute and is also reasonably available to the court. The rule also specifies that such a risk assessment tool shall be utilized, but only without causing "unreasonable delay" to the court's bail determination.

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.

- *Marsy's Law – Ohio Constitution, Art. I, Sec. 10a*
(**Crim.R. 11, 12, 16, and 37**)

The Commission proposes this series of amendments in response to the recently enacted provisions of Art. I, Sec. 10a of the Ohio Constitution, commonly referred to as Marsy's Law. These amendments make it clear that an alleged victim has a right to be present during public proceedings, file certain pretrial motions, and be heard as to sentencing and plea bargains, among other things.

- *Appointment of Experts/Investigators*
(**Crim.R. 12**)

The Commission proposes amendments to Crim.R. 12 that would allow an indigent criminal defendant to request – *ex parte and under seal* – that an investigator or expert be appointed for their defense. The thinking behind the proposed amendment is to allow the defendant to make such a request without apprising the prosecuting attorney as to the theory of their case.

A similar provision was added last year in Crim.R. 42, but that amendment only covered indigent defendants in capital cases. This amendment would apply to all indigent defendants.

- *Grand Jury*
(**Crim.R. 6**)

The Commission proposes amendments to Crim.R. 6 that clarify certain aspects of the grand jury rule, without making true substantive changes. First, the amendment makes clear that a sign language interpreter may be present during deliberations, as set forth in Sup.R. 88. Additionally, the amended language makes expressly clear that votes or deliberations of the grand jury can never be disclosed. While the commission believes this to be existing law, the commission also believed the current language to be potentially confusing and unclear as to the secrecy of deliberations and votes.

This amendment would also allow a court to increase the number of alternate grand jurors by local rule, as some larger counties face difficulties in securing enough grand jurors.

Finally, the amendment makes several cosmetic changes such as changing "juror" to "grand juror" and "foreman" to "foreperson."

3. OHIO RULES OF EVIDENCE

- *Marsy's Law – Separation of Witnesses*
(**Evid.R. 615**)

The Commission recommends amendments to Evid.R. 615 so as to clarify that an alleged victim has a right under the Ohio constitution to be present at all public proceedings in a case. Evid.R. 615 allows for the separation of witnesses, meaning that trial courts will need to be aware of this right in cases where the victim is a potential witness.

- *Learned Treatises*
(**Evid.R. 803**)

The Commission recommends amendments to Evid.R. 803 so as to permit a trial court discretion to admit statements from a learned treatise as exhibits. The current version of the rule allows such statements to be read as testimony, but not admitted as exhibits – meaning they would not be available for a jury in deliberations.

It was the Commission's intent that a court would have discretion to admit just the read *statement* and not be required to submit the entire treatise as an exhibit. This would, for example, prevent a jury from reading irrelevant portions of an encyclopedia during its deliberations.

- *Prior Inconsistent Statements*
(**Evid.R. 801**)

The Commission recommends amendments to Evid.R. 801. Under the current rule, a prior sworn statement must have been subject to ***cross-examination*** by the party against whom the statement is offered. This amendment would only require ***examination***. This change is intended

to close a loophole through which a witness could testify at an ex parte hearing, later change their sworn testimony, and have their prior sworn statement be inadmissible as to the truth of the matter because there was no *cross-examination* at the ex parte hearing – only direct examination. The commission could determine no viable reason why *cross-examination* – as opposed to any type of examination – must have been available.

4. OHIO RULES OF APPELLATE PROCEDURE

- *Clarifying the Time Frame for State May Appeal in Criminal Case*
(App.R. 5)

The Commission recommends amendments to App.R. 5 so as to clarify that, in a criminal case, the state must move for leave to appeal within 30 days of a final order. If the order from which the state wishes to appeal is *not* a final order, then leave must be requested within 30 days of the subsequent final order into which it merges.

- *Accelerated Calendar and 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. The amendment also fixes a loophole wherein a case could potentially be placed on the accelerated calendar *after* the expiration of the deadline to object to such a placement. This amendment ensures a party at least has the ability to object and still be in compliance with the rule.

5. OHIO JUVENILE RULES

- *Marsy's Law*
(**Juv.R. 22, 24, 26, 29, and 34**)

The Commission recommends this series of amendments which mirror the proposed amendments in the Criminal Rules in regards to Marsy's Law. Just as in the criminal rules, these amendments make clear that an alleged victim has certain rights as set forth in the Ohio Constitution.

PROPOSED AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE

OHIO RULES OF CIVIL PROCEDURE

RULE 4. Process: Summons

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

(D) Waiver of service of summons. Service of summons may be waived in writing pursuant to Rule 4.7 by any person entitled thereto under Rule 4.2 who is at least eighteen years of age and not under disability.

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

Proposed Staff Note (2019 Amendment)

Division (D)

Division (D) of the rule is amended to include a reference to the specific provisions for waiver of service of summons provided for in Civ.R. 4.7.

RULE 4.1 Process: Methods of Service

All methods of service within this state, except service by publication as provided in Civ.R. 4.4(A), are described in this rule. Methods of out-of-state service and for service in a foreign country are described in Civ.R. 4.3 and 4.5. Provisions for waiver of service are described in Civ.R. 4.7 and should be attempted before service is attempted pursuant to the methods of service described in this rule.

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

Proposed Staff Note (2019 Amendment)

The introductory paragraph of Civ.R. 4.1 is amended to include a reference to the specific provisions for waiver of service of summons provided for in Civ.R. 4.7 and to specify that waiver of service pursuant to the provisions of Civ.R. 4.7 should be attempted before attempting service within the state pursuant to the methods described in Civ.R. 4.1.

RULE 4.3 Process: Out-of-State Service

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

(B) Methods of Service.

Methods of service outside this state, except service by publication as provided in Civ.R. 4.4(A), are described in this rule. Provisions for waiver of service are described in Civ.R. 4.7 and should be attempted before service is attempted pursuant to the methods of service described in this rule.

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

Proposed Staff Note (2019 Amendment)

Division (B)

An introductory paragraph is added to Civ.R. 4.3(B) to include a reference to the specific provisions for waiver of service of summons provided for in Civ.R. 4.7 and to specify that waiver of service pursuant to the provisions of Civ.R. 4.7 should be attempted before attempting service outside the state pursuant to the methods described in Civ.R. 4.3.

RULE 4.7 Process: Waiving Service

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

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

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

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

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

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

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

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

(B) Failure to Waive. In actions exceeding the jurisdiction of municipal and county courts, if a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff, then the court must impose on the defendant:

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

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

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

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

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

Proposed Staff Notes (2019 Amendments)

Rule 4.7 is new and is based on the federal rule permitting waiver of service. Division (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. Section (B) provides a cost-shifting provision for failure to waive service in actions exceeding the jurisdiction of municipal and county courts. 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 Civ.R. 4(D), only those persons who are identified in Civ.R.4.2 and who are eighteen years of age or older and not under a disability may waive service.

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

A defendant failing to comply with a request for waiver in an action exceeding the jurisdiction of municipal and county courts shall be given an opportunity to show good cause for the failure, which is the case under Division (B), but sufficient cause should be rare. It is not a good cause for failure to waive service that the claim is unjust or that the court lacks jurisdiction. Sufficient cause not to shift the cost of service would exist, however, if the defendant did not receive the request, was insufficiently literate in English to understand it, or in some cases, defending the action pro se. It should be noted that the provisions for shifting the cost of service apply only if action the action exceeds the jurisdiction of municipal and county courts and only if the defendant is located within the United States.

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

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

Division (D) clarifies the effective date of service when service is waived. The device of requested waiver of service is not suitable if a limitations period which is about to expire is not tolled by filing the action. Unless there is ample time, the plaintiff should proceed directly to the formal methods for service identified in Civ.R. 4 through 4.6.

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

Division (E) is explicit that a timely waiver of service of a summons does not prejudice the right of a defendant to object by means of a motion authorized by Civ.R. 12(B) to the absence of jurisdiction, or to assert improper venue under Civ.R. 12(B)(3). The only issues eliminated are those involving the sufficiency of the summons or the sufficiency of the method by which it is served.

RULE 6. Time

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

(C) Time: Motions

(1) ~~motion~~ Motion responses and movants' replies ~~to motions~~ generally. ~~Unless otherwise provided by these rules, by local rule, or by order of the court, a responses~~ Responses to ~~a~~ written ~~motions~~ motions, other than ~~a motion that may be heard ex parte~~ motions for summary judgment, ~~shall~~ may be served within fourteen days after service of the motion~~, and a.~~ Responses to motions for summary judgment may be may be served within twenty-eight days after service of the motion. A movant's reply to a response to any written motion may be served within seven days after service of the response to the motion.

(2) Motions prior to hearing or trial. Unless a different period is fixed under these rules or by order of the court, a written motion for purposes of a hearing that is not a trial shall be served no later than fourteen days prior to the hearing, and a written motion for purposes of a trial shall be served no later than twenty-eight days prior to the start of trial. Responses to such motions may be served as provided by Civ.R. 6(C); however, a movant's reply to the response is not permitted

(3) Modification for good cause upon motion. Upon motion of a party in an action, and for good cause, the court may reduce or enlarge the periods of time provided in Division (C) of this rule.

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

Proposed Staff Notes (2019 Amendment)

Division 6(C)

The amendment separates Civ.R. 6(C) into three divisions.

Division (C)(1)

The provisions of Division (C)(1) supersede and replace the differing deadlines for responding to motions imposed by the numerous local rules of Ohio trial courts, thereby eliminating confusion and creating consistency by providing uniform statewide deadlines. The division establishes a twenty-eight- day deadline for service of responses to motions for summary judgment, and a fourteen-day deadline for service of responses to all other motions. A movant's reply to a response to any motion may be served within seven days after service of the response.

Division (C)(2)

The provisions of Division (C)(2) establish deadlines for serving written motions for purposes of a hearing or trial (e.g., motions in limine, motions to bifurcate, etc.). Unless a different period is fixed under another Rule of Civil Procedure or by order of the court (e.g. an scheduling order entered in accordance with Civ.R. 16) written motions for purposes of a hearing must be served not later than fourteen days prior to the hearing, while motions for purposes of trial must be served not later than twenty-eight days prior to trial.

Division (C)(3)

The provisions of Division (C)(3) permit the court to modify the periods of time provided in Division (C)(1) and Division (C)(2) in an individual action upon the filing of a motion of a party and for good cause. For example, expediting interlocutory rulings in an action for injunctive relief might constitute good cause for reducing the time for responding to certain motions in that action.

RULE 7. Pleadings and Motions

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

(B) Motions

(1) An application to the court for an order shall be by motion which, unless made during a hearing or a trial, shall be made in writing. A motion, whether written or oral, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. A written motion, and any supporting affidavits, shall be served in accordance with Civ.R. 5 unless the motion may be heard ex parte.

(2) To expedite its business, the court may make provision by rule or order not inconsistent with these rules for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

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

Proposed Staff Notes (2019 Amendment)

Division (B)(2)

Division (B)(2) of the rule is amended to ensure that any local rule or order of the court relating to the submission and determination of motions is not inconsistent with the provisions of any other Rule of Civil Procedure (e.g., Civ.R. 6).

RULE 33. Interrogatories to Parties.

(A) Availability; procedures for use. Any party, without leave of court, may serve upon any other party up to forty written interrogatories to be answered by the party served. ~~A~~ The party serving the interrogatories shall serve ~~the party with~~ an electronic copy of the interrogatories ~~The electronic copy shall be~~ on a shareable medium and in an editable format ~~reasonably useable for word processing and provided on computer disk,~~ by electronic mail, or by other means agreed

to by the parties. A party who is unable to provide an electronic copy of the interrogatories may seek leave of court to be relieved of this requirement. A party shall not propound more than forty interrogatories to any other party without leave of court. Upon motion, and for good cause shown, the court may extend the number of interrogatories that a party may serve upon another party. For purposes of this rule, any subpart propounded under an interrogatory shall be considered a separate interrogatory.

(1) If the party served is a public or private corporation or a partnership or association, the organization shall choose one or more of its proper employees, officers, or agents to answer the interrogatories, and the employee, officer, or agent shall furnish information as is known or available to the organization.

(2) Interrogatories, without leave of court, may be served upon the plaintiff after commencement of the action and upon any other party after service of the summons and complaint upon the party.

(3) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The party upon whom the interrogatories have been served shall quote each interrogatory immediately preceding the corresponding answer or objection. When the number of interrogatories exceeds forty without leave of court, the party upon whom the interrogatories have been served need only answer or object to the first forty interrogatories. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections within a period designated by the party submitting the interrogatories, not less than twenty-eight days after the service of the interrogatories or within such shorter or longer time as the court may allow.

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

Proposed Staff Note (2019 Amendment)

Division (A)

Recognizing the advancements in technology that have occurred since the 2004 amendment to the rule, the amendment to Division (A) changes the description of the type of electronic copy that shall be served from a copy that is "reasonably useable for word processing and provided on computer disk" to a copy "on a shareable medium and in an editable format."

RULE 34. Producing documents, electronically stored information, and tangible things, or entering onto land, for inspection and other purposes.

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

(B) Procedure. Without leave of court, the request may be served upon the plaintiff after commencement of the action and upon any other party after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the

related acts. The request may specify the form or forms in which electronically stored information is to be produced, but may not require the production of the same information in more than one form. The party ~~making~~ serving the request shall ~~include~~ serve an electronic copy of the request on a shareable medium and in an editable format ~~that is reasonably useable for word processing and provided on computer disk,~~ by electronic mail~~,~~ or by other means agreed to by the parties. A party who is unable to provide an electronic copy of the interrogatories may seek leave of court to be relieved of this requirement.

(1) The party upon whom the request is served shall serve a written response within a period designated in the request that is not less than twenty-eight days after the service of the requestor within a shorter or longer time as the court may allow. With respect to each item or category, the response shall state that inspection and related activities will be permitted as requested, unless it is objected to, including an objection to the requested form or forms for producing electronically stored information, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. If objection is made to the requested form or forms for producing electronically stored information, or if no form was specified in the request, the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Civ. R. 37 with respect to any objection to or other failure to respond to the request or any part of the request, or any failure to permit inspection as requested.

(2) A party who produces documents for inspection shall, at its option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the request.

(3) If a request does not specify the form or forms for producing electronically stored information, a responding party may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the parties, a party need not produce the same electronically stored information in more than one form.

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

Proposed Staff Notes (2019 Amendment)

Division (B)

Division (B) of the rule is amended to include a requirement that the party serving this form of discovery requests include an electronic copy in a word-processing format. This requirement is already found in Civ.R. 33(A) and Civ.R. 36(A) for interrogatories and requests for admissions, respectively. Its inclusion here recognizes the reality that practitioners typically respond to this form of discovery requests in writing in addition to any accompanying responsive materials.

RULE 36. Requests for Admission.

(A) Availability; procedures for use. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Civ.R. 26(B) set forth in the request, that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party after service of the summons and complaint upon that party. ~~A~~ The party serving ~~a~~ the request for admission shall serve ~~the party with~~ an electronic copy of the request ~~for admission. The electronic copy shall be~~ on a shareable medium and in an editable format ~~reasonably useable for word processing and provided on computer disk,~~ by electronic mail~~,~~ or by other means agreed to by the parties. A party who is unable to provide an electronic copy of a request for admission may seek leave of court to be relieved of this requirement. A party shall not propound more than forty requests for admission to any other party without leave of court, which the court may grant for good cause shown. For purposes of this rule, any subpart propounded under a request for admission shall be considered a separate request for admission.

(1) Each matter of which an admission is requested shall be separately set forth. The party to whom the requests for admissions have been directed shall quote each request for admission immediately preceding the corresponding answer or objection. The matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service of the request or within such shorter or longer time as the court may allow, party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.

(2) If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer, or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Civ.R. 37(C), deny the matter or set forth reasons why the party cannot admit or deny it.

(3) The party who has requested the admissions may move for an order with respect to the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Civ.R. 37(A)(5) apply to the award of expenses incurred in relation to the motion.

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

Proposed Staff Notes (2019 Amendment)

Division (A)

Division (A) is amended to limit the number of requests for admission to forty, consistent with provisions of Civ.R. 33(A), which similarly limits the number of interrogatories. The same approach to counting is adopted, i.e., each subpart constitutes a separate request.

RULE 47. Jurors.

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

(D) Alternate Jurors

(1) Selection; Powers. The court may direct that no more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. Each party is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, and two peremptory challenges if three or four alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror.

(2) **Retention; Discharge.** The court may retain alternate jurors after the jury retires. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. If the court does not retain alternate jurors after the jury retires and instead discharges the alternate jurors, the alternate jurors cannot be recalled as jurors. ~~Each party is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impaneled, and two peremptory challenges if three or four alternate jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror.~~

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

Proposed Staff Note (2019 Amendment)

Division (D)

The amendment divides the prior, undivided Division (D) into two parts.

Division (D)(1) retains the language of the existing rule addressing the selection and powers of alternate jurors.

Division (D)(2) retains the language of the existing rule permitting the court to retain alternate jurors when the jury retires to deliberate, but also adds a provision addressing a situation not addressed by the existing rule — the recalling of alternate jurors who are discharged after the jury retires to deliberate. The amendment specifically prohibits the court from recalling discharged alternate jurors.

RULE 53. Magistrates.

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

(C) Authority.

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

(a) Determine any motion in any case;

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

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

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

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

(2) *Jury trials before magistrates under Section (C)(1)(c)*. Notwithstanding any other provision of these rules, in jury trials presided over by magistrates pursuant to Section (C)(1)(c) of the rule, the factual findings of the jury shall be conclusive as in any trial before a judge of the court. All motions presented following the unanimous written consent of the parties, including those under Civ.R. 26, 37, 50, 51, 56, 59, 60, and 62, shall be heard and decided by the magistrate. No objections shall be entertained to the factual findings of a jury, or to the motion or legal rulings made by the magistrate except on appeal to the appropriate appellate court after entry of a final order. At the conclusion of all trial and post-trial proceedings, the magistrate shall journalize an entry in accordance with the jury's factual findings and the magistrate's rulings. The trial judge to whom the matter was originally assigned before the parties consented to trial before a magistrate shall enter judgment consistent with the magistrate's journalized entry pursuant to Civ.R. 58, but shall not otherwise review or alter the jury's factual findings or the magistrate's rulings.

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

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

(b) Ruling upon the admissibility of evidence;

(c) Putting witnesses under oath and examining them;

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

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

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

(D) Proceedings in Matters Referred to Magistrates.

(1) *Reference by court of record.*

(a) *Purpose and method*. A court of record may, for one or more of the purposes described in Civ. R. 53(C)(1), refer a particular case or matter or a category of cases or matters to a magistrate by specific or general order of reference or by rule.

(b) *Limitation*. A court of record may limit a reference by specifying or limiting the magistrate's powers, including but not limited to, directing the magistrate to determine only particular issues, directing the magistrate to perform particular responsibilities, directing the magistrate to receive and report evidence only, fixing the time and place for beginning and closing any hearings, or fixing the time for filing any magistrate's decision on the matter or matters referred.

(2) *Magistrate's order; motion to set aside magistrate's order.*

(a) *Magistrate's order.*

(i) *Nature of order*. Subject to the terms of the relevant reference, a magistrate may enter orders without judicial approval if necessary to regulate the proceedings ~~and~~ if <u>the matter is</u> not <u>potentially</u> dispositive of a claim or defense of a party.

(ii) *Form, filing and service of magistrate's order*. A magistrate's order shall be in writing, identified as a magistrate's order in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys.

(b) *Motion to set aside magistrate's order*. Any party may file a motion with the court to set aside a magistrate's order. The motion shall state the moving party's reasons with particularity and shall be filed not later than then days after the magistrate's order is filed. The pendency of a motion to set aside does not stay the effectiveness of the magistrate's order, though the magistrate or the court may by order stay the effectiveness of a magistrate's order.

(3) *Magistrate's decision; objections to magistrate's decision*.

(a) *Magistrate's decision.*

(i) *When required*. Subject to the terms of the relevant reference, a magistrate shall prepare a magistrate's decision respecting any matter referred under Civ. R. 53(D)(1).

(ii) *Findings of fact and conclusions of law*. Subject to the terms of the relevant reference, a magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law. A request for findings of fact and conclusions of law shall be made before the entry of a magistrate's decision or within seven days after the filing of a magistrate's decision. If a request for findings of fact and conclusions of law is timely made, the magistrate may require any or all of the parties to submit proposed findings of fact and conclusions of law.

(iii) *Form; filing, and service of magistrate's decision*. A magistrate's decision shall be in writing, identified as a magistrate's decision in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys no later than three days after the decision is filed. A magistrate's decision shall indicate conspicuously that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

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

Proposed Staff Notes (2019 Amendments)

Division (C)(2)

A major improvement to federal practice in the last half century was the authorization given magistrate judges to conduct civil jury trials. F.R.C.P. 73. Following the lead of the federal courts, Ohio magistrates also now conduct civil jury trials with written consent of all parties as authorized by Civ.R.

53(C)(1)(c). Yet, as demonstrated in *Gilson v. American Institute of Alternative Medicine*, 10th Dist. Case No. 15AP-548, 2016-Ohio-1324, ¶¶ 28-29, 103, Ohio procedure remains cumbersome after jury trials conducted by magistrates, and may require the trial court to unnecessarily review factual findings of the jury and certain interlocutory rulings of a magistrate. This is unnecessarily time consuming and costly.

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

Division (D)(2)(a)(i)

Division (D)(2)(a)(i) is amended to make clear that the authority of a magistrate to enter orders to regulate the proceedings without judicial approval does not include the authority to enter an order with respect to a matter which is potentially dispositive of a claim or defense of a party, such as a ruling on a dispositive motion for summary judgment. When a matter which is potentially dispositive of a claim or defense of a party is referred to a magistrate pursuant to Division (D)(1), the magistrate must enter a magistrate's decision pursuant to Division (D)(3)(a)(1), even though the decision that is rendered may not be dispositive of the claim or defense, e.g., a decision denying a dispositive motion for summary judgment.

RULE 54. Judgments; Costs.

(A) Definition; Form. "Judgment" as used in these rules ~~includes a decree and any order from which an appeal lies as provided in section 2505.02 of the Revised Code~~ means a written entry ordering or declining to order a form of relief, signed by a judge, and journalized on the docket of the court or other tribunal. ~~A judgment shall not contain a recital of pleadings, the magistrate's decision in a referred matter, or the record of prior proceedings.~~

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

Proposed Staff Notes (2019 Amendment)

Division (A)

The amendment to division (A) deletes the circular reference to the final-order statute, which often could not be reconciled with how the term "judgment" is used in the civil rules or with evolving final-order jurisprudence. Not every judgment constitutes a final order, and some judgments are final under statutes other than R.C. 2505.02. The amendment now places the finality analysis squarely on the apposite statutes, where it rightly belongs.

The amendment also deletes the last sentence of the rule, which unnecessarily circumscribed the contents of a judgment. The original purpose of this language appears, at least in part, to be to distinguish between decisions (which "announce[] what the judgment will be") and judgments (which "unequivocally order[] the relief"). *See*, *e.g.*, *Downard v. Gilliland*, 4th Dist. Jackson No. 10CA2, 2011-Ohio-1783, ¶ 11, citing *St. Vincent Charity Hosp. v. Mintz*, 33 Ohio St.3d 121, 123, 515 N.E.2d 917 (1987). The amendment now specifies that a judgment must order or decline to order a form of relief; what a judgment includes beyond that requirement should be left in the discretion of the issuing court.

RULE 56. Summary Judgment.

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

C) Motion and proceedings. The motion together with all affidavits and other materials in support shall be served in accordance with Civ.R. 5. ~~Unless otherwise provided by local rule or by order of the court, the adverse party may serve responsive~~ Responsive arguments~~,~~ ~~and opposing~~ together with all affidavits and other materials in opposition ~~within twenty-eight days after service of the motion,~~ and ~~the~~ a movant's ~~may serve~~ reply arguments may be served ~~within fourteen days after service of the adverse party's response~~ as provided by Civ.R. 6(C). Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

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

Proposed Staff Notes (2019 Amendment)

Division (C)

Recognizing that provisions of Civ.R.6(C) govern the requirements for service of responses to motions for summary judgment and for service of a movant's reply to such responses, the amendment to Civ.R. 56(C) eliminates the prior provisions addressing those matters.

Division (C) is also amended to specify that the materials in support of a motion for summary judgment shall be served when the motion is served.

OHIO RULES OF CRIMINAL PROCEDURE

RULE 4. Warrant or Summons; Arrest

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

(F) Release after arrest. In misdemeanor cases where a person has been arrested with or without a warrant, the arresting officer, the officer in charge of the detention facility to which the person is brought or the superior of either officer, without unnecessary delay, may release the arrested person by issuing a summons ~~when~~ unless it appears that issuance of a summons ~~appears~~ will not reasonably ~~calculated to~~ assure the person's appearance. The officer issuing such summons shall note on the summons the time and place the person must appear and, if the person was

arrested without a warrant, shall file or cause to be filed a complaint describing the offense. No warrant or alias warrant shall be issued unless the person fails to appear in response to the summons.

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

RULE 6. The Grand Jury

(A) Summoning grand juries. The judge of the court of common pleas for each county, or the administrative judge of the general division in a multi-judge court of common pleas or a judge designated by ~~him~~ the administrative judge, shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of nine members, including the ~~foreman~~ foreperson, ~~plus not more than five~~ and a number of alternates as provided in division (H) of this rule.

(B) Objections to grand jury and to grand jurors.

(1) Challenges. The prosecuting attorney, or the attorney for a defendant who has been held to answer in the court of common pleas, may challenge the array of grand jurors or an individual grand juror on the ground that the grand jury or individual grand juror was not selected, drawn, or summoned in accordance with the statutes of this state. Challenges shall be made before the administration of the oath to the grand jurors and shall be tried by the court.

(2) Motion to dismiss. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified, if it appears from the record kept pursuant to subdivision (C) that seven or more grand jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(C) ~~Foreman~~ Foreperson and deputy ~~foreman~~ foreperson. The court may appoint any qualified elector or one of the grand jurors to be ~~foreman~~ foreperson and one of the grand jurors to be deputy ~~foreman~~ foreperson. The foreperson shall be a member of the grand jury for all purposes, including voting. The ~~foreman~~ foreperson shall have power to administer oaths and affirmations and shall sign all indictments. ~~He~~ The foreperson or another grand juror designated by ~~him~~ the foreperson shall keep a record of the number of grand jurors concurring in the finding of every indictment and shall upon the return of the indictment file the record of concurrence with the clerk of court~~, but the record shall not be made public except on order of the court~~. During the absence or disqualification of the ~~foreman~~ foreperson, the deputy ~~foreman~~ foreperson shall act as ~~foreman~~ foreperson.

(D) Who may be present. The prosecuting attorney, the witness under examination, interpreters when needed and, a court reporter or other person designated by the court for the purpose of taking the evidence~~, a stenographer or operator of a recording device~~ and preparing a record of the proceedings may be present while the grand jury is in session, but no person other than the grand jurors and an interpreter for a grand juror pursuant to Sup.R. 88 may be present while the grand jury is deliberating or voting.

(E) Secrecy of proceedings and disclosure. Deliberations of the grand jury and the vote of any grand juror shall ~~not~~ never be disclosed. Disclosure of other matters occurring before the grand jury may be made to the prosecuting attorney for use in the performance of his duties only pursuant to this rule. A grand juror, prosecuting attorney, interpreter, ~~stenographer, operator of a recording device~~, court reporter, or typist who transcribes recorded testimony, may disclose other matters occurring before the grand jury, ~~other than the deliberations of a grand jury or the vote of a grand juror, but may disclose such matters~~ only when so directed by the court preliminary to or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No grand juror, officer of the court, or other person shall disclose that an indictment has been found against a person before such indictment is filed and the case docketed. The court may direct that an indictment shall be kept secret until the defendant is in custody or has been released pursuant to Rule 46. In that event the clerk shall seal the indictment, the indictment shall not be docketed by name until after the apprehension of the accused, and no person shall disclose the finding of the indictment except when necessary for the issuance of a warrant or summons. No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(F) Finding and return of indictment. An indictment may be found only upon the concurrence of seven or more grand jurors. When so found the ~~foreman~~ foreperson or deputy ~~foreman~~ foreperson shall sign the indictment as ~~foreman~~ foreperson or deputy ~~foreman~~ foreperson. The indictment shall be returned by the ~~foreman~~ foreperson or deputy ~~foreman~~ foreperson to a judge of the court of common pleas and filed with the clerk who shall endorse thereon the date of filing and enter each case upon the appearance and trial dockets. If the defendant is in custody or has been released pursuant to ~~Rule~~ Crim.R. 46 and seven grand jurors do not concur in finding an indictment, the ~~foreman~~ foreperson shall so report to the court forthwith.

(G) Discharge and excuse. A grand jury shall serve until discharged by the court. A grand jury may serve for four months, but the court upon a showing of good cause by the prosecuting attorney may order a grand jury to serve more than four months but not more than nine months. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a grand juror either temporarily or permanently, and in the latter event the court may impanel another eligible person in place of the grand juror excused.

(H) Alternate grand jurors. The court may order that ~~not more than five~~ grand jurors, in addition to the regular grand jury, be called, impaneled and sit as alternate grand jurors. Unless provided otherwise by local court rule, the number of alternate grand jurors shall not exceed five. Alternate grand jurors, in the order in which they are called, shall replace grand jurors who, prior

to the time the grand jury votes on an indictment, are found to be unable or disqualified to perform their duties. Alternate grand jurors shall be drawn in the same manner, shall have the same qualifications, shall be subjected to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular grand jurors. Alternate grand jurors may sit with the regular grand jury, but shall not be present when the grand jury deliberates and votes.

Proposed Staff Notes (2019 Amendment)

Crim.R. 6

The changes to this Rule were made to make the Rule gender neutral. Further, language was added to subsection (D) so that the Rule would comply with Sup. R 88 and would allow an interpreter to remain in the grand jury room during deliberation and voting. Subsection (E) was changed to clarify that the deliberations and the vote of the grand jury are secret; it was meant to give emphasis to what is already recognized law in Ohio, and it was not meant to be a substantive change.

RULE 10. Arraignment

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

(A) Arraignment procedure. Arraignment shall be conducted in open court, and shall consist of reading the indictment, information or complaint to the defendant, or stating to the defendant the substance of the charge, and calling on the defendant to plead thereto. The defendant may in open court waive the reading of the indictment, information, or complaint. The defendant shall be given a copy of the indictment, information, or complaint, or shall acknowledge receipt thereof, before being called upon to plead. If a defendant appears in court and has not yet been released on bail, the court shall review the defendant's bail at arraignment.

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

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 bases shall be stated on the record in open court. To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, before accepting the plea, the trial court shall allow an alleged victim of the crime to raise any objection to the terms of the plea agreement.

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

Proposed Staff Notes (2019 Amendment)

Crim.R. 11(F)

The amendment to Crim R 11(F) was made to comply with the 2017 amendment to Article I, Section 10a of the Ohio Constitution, also known as Marsy's Law.

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

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

(C) Pretrial motions. Prior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue. The following must be raised before trial:

(1) Defenses and objections based on defects in the institution of the prosecution;

(2) Defenses and objections based on defects in the indictment, information, or complaint (other than failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding);

(3) Motions to suppress evidence, including but not limited to statements and identification testimony, on the ground that it was illegally obtained. Such motions shall be filed in the trial court only.

(4) Requests for discovery under Crim. R. 16;

(5) Requests for severance of charges or defendants under Crim. R. 14.

(6) Requests for the appointment of expert witnesses in cases where the defendant is unable to afford the cost of the requested expert assistance. Upon request by defense counsel, a motion in this regard may be made in camera and ex parte, and, if granted, the order concerning this appointment shall be under seal.

(7) Requests for the appointment of investigators in cases where the defendant is unable to afford the cost of the requested investigative assistance. Upon request by defense counsel, a motion in this regard may be made in camera and ex parte, and, if granted, the order concerning the appointment shall be under seal.

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

(L) Motions by Alleged Victim. To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall allow an alleged victim of the crime to file pretrial motions in accordance with the time parameters in subsection (D).

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

Proposed Staff Notes (2019 Amendment)

Crim.R. 12(L)

Section (L) was added to comply with the 2017 amendment to Article I, Section 10a of the Ohio Constitution, also known as Marsy's Law.

RULE 16. Pleadings and Motions Before Trial: Defenses and Objections

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

(L) Regulation of discovery.

(1) The trial court may make orders regulating discovery not inconsistent with this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may make such other order as it deems just under the circumstances.

(2) The trial court specifically may regulate the time, place, and manner of a pro se defendant's access to any discoverable material not to exceed the scope of this rule.

(3) In cases in which the attorney-client relationship is terminated prior to trial for any reason, any material that is designated "counsel only", or limited in dissemination by protective order, must be returned to the state. Any work product derived from said material shall not be provided to the defendant.

(4) To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall allow an alleged victim of the crime, who has so requested, to be heard regarding objections to pretrial disclosure.

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

Proposed Staff Notes (2019 Amendment)

Crim.R. 16(L)

Section (L)(4) was added to comply with the 2017 amendment to Article I, Section 10a of the Ohio Constitution, also known as Marsy's Law.

RULE 37. Notice to Victims; Victim's Rights

To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall ensure that the alleged victim, upon request, be given notice of all public proceedings involving the alleged criminal offense against the victim and the opportunity to be present at all such proceedings. In this regard, the trial court may direct the prosecuting attorney to provide such notice to the alleged victim.

To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall, upon request, provide the alleged victim the opportunity to be heard in any public proceeding in which a right of the alleged victim is implicated, including but not limited to public proceedings involving release, plea, sentencing, or disposition.

Proposed Staff Notes (2019 Amendment)

Crim.R 37-Victim's Opportunity to be Heard

Previously reserved, this new rule was added to comply with the 2017 amendment to Article I, Section 10a of the Ohio Constitution, also known as Marsy's Law.

RULE 46. ~~Bail~~ Pretrial Release and Detention

(A) Pretrial detention. A prosecutor may file a motion seeking pretrial detention of a defendant pursuant to the standards and procedures set forth in the Revised Code.

(B) Types and amounts of bail. Any person who is entitled to release shall be released upon one or more of the following types of bail in the amount set by the court:

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

(2) A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;

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

Unless the court orders the defendant detained under division (A) of this rule, the court shall release the defendant on the least restrictive conditions that, in the judgment of the court, will reasonably ensure the defendant's appearance in court, the protection of the safety of any person or the community, and that the defendant will not obstruct the criminal justice process. If the court orders monetary conditions of release, the court shall impose an amount and type which are least costly to the defendant while also sufficient to reasonably ensure the defendant's future appearance in court.

~~(B)~~(C) Conditions of bail. The court may impose any of the following conditions of bail:

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

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) Place the person under a house arrest, electronic monitoring, or work release program;

(4) Regulate or prohibit the person's contact with the victim;

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

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

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

(8) Any other constitutional condition considered reasonably necessary to ensure appearance or public safety.

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

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

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

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

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

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

(6) An evaluation of the defendant's likelihood of appearance and risk to public safety, as determined by an objective risk-assessment tool recognized as reliable by statute or by the court, when reasonably available to the court. As soon as possible without causing unreasonable delay to the court's bail determination, this risk-assessment tool shall be employed by the court on its own initiative for any defendant not yet released on bail, either before or after the defendant's initial appearance.

~~(D)~~(E) Appearance pursuant to summons. When summons has been issued and the defendant has appeared pursuant to the summons, absent good cause, a recognizance bond shall be the preferred type of bail.

~~(E)~~**(F)** ~~**Amendments**~~ **Continuation of Bail.** ~~A court, at any time, may order additional or different types, amounts, or conditions of bail.~~ Unless otherwise ordered by the court pursuant to this subsection, bail shall continue until the return of a verdict or the entry of a guilty plea, and may continue thereafter pending sentence or disposition of the case on review. At any time, a court may eliminate or lessen any condition of bail that the court believes is no longer necessary to reasonably ensure the defendant's appearance in court, the protection of the safety of any person or the community, and that the defendant will not obstruct the criminal justice process.

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

~~(G)~~**(H) Bond schedule.**

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

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

(3) When a person fails to post a bond established by a bail bond schedule, a judicial officer shall conduct a bail hearing no later than the second court day after that person has been arrested.

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

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

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

(I) Failure to appear; breach of conditions. Any person who fails to appear before any court as required is subject to the punishment provided by the law, and any bail given for the person's release may be forfeited. If there is a breach of condition of bail, the court may amend the bail.

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

OHIO RULES OF EVIDENCE

RULE 615. Separation and Exclusion of Witnesses.

(A) Except as provided in division (B) of this rule, at the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. An order directing the "exclusion" or "separation" of witnesses or the like, in general terms without specification of other or additional limitations, is effective only to require the exclusion of witnesses from the hearing during the testimony of other witnesses.

(B) This rule does not authorize exclusion of any of the following persons from the hearing:

(1) a party who is a natural person;

(2) an officer or employee of a party that is not a natural person designated as its representative by its attorney;

(3) a person whose presence is shown by a party to be essential to the presentation of the party's cause;

(4) in a criminal proceeding, a victim of the charged offense to the extent that the victim's presence is authorized by the Ohio Constitution or by statute enacted by the General Assembly. As used in this rule, "victim" has the same meaning as in the provisions of the Ohio Constitution providing rights for victims of crimes.

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

RULE 801 Definitions

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

(D) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at trial or hearing and is subject to ~~cross-~~examination concerning the statement, and the statement is (a) inconsistent with declarant's testimony, and was given under oath subject to ~~cross-~~examination by the party against whom the statement is offered and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) consistent with declarant's testimony and is offered to rebut an express or implied charge against declarant of recent fabrication or improper influence or motive, or (c) one of identification of a person soon after perceiving the person, if the circumstances demonstrate the reliability of the prior identification.

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

Proposed Staff Notes (2019 Amendment)

Evid.R. 801(D)(1)

Since its inception, Evid. R. 801(D)(1)(a) has required that, for a prior sworn statement of a witness that was given at a prior trial, hearing or proceeding to be offered for its truth, the statement must have been subject to cross-examination at the time it was made. Thus, for example, as written, a police officer's grand jury testimony, if inconsistent with the officer's testimony at trial and exculpatory of the criminal defendant, could only be used by the defendant to impeach and not for the truth of the matter asserted – because the prosecution examined the witness in the grand jury but did not *cross-examine* the witness in the grand jury. Similarly, in a civil case, a defendant who desires to impeach a plaintiff's witness with prior testimony from a prior ex parte hearing at which the witness was subject to examination, but not cross-examination, by the plaintiff, is, under the letter of the Rule, not entitled to have that statement offered for its truth. Such a literal reading of the rule defeats its purpose – to allow a party to use a prior inconsistent statement for its truth so long as the opposing party had the opportunity to question that witness during the prior testimony, regardless of whether that opportunity presented itself on cross-, as opposed to direct, examination. The proposed amendment removes the requirement that the prior examination be a *cross-*examination. *Accord, State v. York,* 8th Dist. No. 49952, 1985 WL 8502 (allowing prior inconsistent statement of police officer given on direct examination at preliminary hearing, to be offered by defense at trial as substantive evidence).

RULE 803. Hearsay Exceptions; Availability of Declarant Immaterial.

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

(18) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence ~~but~~ and if the court permits may ~~not~~ be received as exhibits.

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

OHIO RULES OF APPELLATE PROCEDURE

RULE 3. Appeals as of Right – How Taken

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

(C) Cross-Appeal

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

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

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

(G) Docketing Statement

(1) If a court of appeals has adopted an accelerated calendar by local rule pursuant to Rule 11.1, the appellant shall file a docketing statement with the Clerk of the trial court with the notice of appeal. (See Form 2, Appendix of Forms.)

The purpose of the docketing statement is to determine whether an appeal will be assigned to the accelerated or the regular calendar.

A case may be assigned to the accelerated calendar if any of the following apply:

(a) No transcript is required (e.g., summary judgment or judgment on the pleadings);

(b) The length of the transcript is such that its preparation time will not be a source of delay;

(c) An agreed statement is submitted in lieu of the record;

(d) The record was made in an administrative hearing and filed with the trial court;

(e) All parties to the appeal approve an assignment of the appeal to the accelerated calendar; or

(f) The case has been designated by local rule for the accelerated calendar.

The court of appeals by local rule may assign a case to the accelerated calendar at any stage of the proceeding. The court of appeals may provide by local rule for an oral hearing before a full panel in order to assist it in determining whether the appeal should be assigned to the accelerated calendar.

Upon motion of appellant or appellee for a procedural order pursuant to App.R. 15(B) filed within seven days after ~~the notice of appeal is filed with the clerk of the trial court~~ a case is placed upon the accelerated calendar, a case may be removed for good cause from the accelerated calendar and assigned to the regular calendar. Demonstration of a unique issue of law which will be of substantial precedential value in the determination of similar cases will ordinarily be good cause for transfer to the regular calendar

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

Proposed Staff Notes (2019 Amendment)

App.R. 3

The amendment to App.R. 3(C)(1) makes three clarifications. First, it clarifies that an appellee may file a cross-appeal whether or not that appellee seeks to defend the order the appellant challenges. Second, it clarifies that the cross-appellant must file the notice of cross-appeal in the trial court, not in the appellate court—but is encouraged also to file in the appellate court a courtesy copy of the notice; this change is designed to avoid confusion and the harsh result that can follow when a cross-appellee mistakenly files the notice in the appellate court. *See*, *e.g.*, *Thompson v. Knobeloch*, 10th Dist. Franklin No. 16AP–809, 2017-Ohio-66. Third, the amendment removes the references to "judgment" and leaves only "order"; this change is not substantive but merely recognizes that there is no need to use both terms, since every judgment is also a final order. *See*, *e.g.*, Civ.R. 54(A); R.C. 2505.02(B)(1). A similar change was made to App.R. 4(A)(1) in 2014.

The amendment to App.R. 3(G) is designed to ensure that a party who wishes to challenge the assignment of an appeal to the accelerated calendar has adequate notice of the assignment before the seven-day deadline for moving to transfer to the regular calendar begins to run. Also, as with App.R. 3(C)(1), the amendment removes the word "judgment."

RULE 5. Appeals by Leave of Court in Criminal Cases

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

(C) Motion by prosecution for leave to appeal. When leave is sought by the prosecution from the court of appeals to appeal ~~a judgment or~~ an order of the trial court, a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the ~~judgment and~~ order sought to be appealed (or, if that order is not a final order, within thirty days of the final order into which it merges) and shall set forth the errors that the movant claims occurred in the proceedings of the trial court. The motion shall be accompanied by affidavits, or by the parts of

the record upon which the movant relies, to show the probability that the errors claimed did in fact occur, and by a brief or memorandum of law in support of the movant's claims. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the motion and a copy of the notice of appeal to the clerk of the court of appeals who shall serve the notice of appeal and a copy of the motion for leave to appeal upon the attorney for the defendant who, within thirty days from the filing of the motion, may file affidavits, parts of the record, and brief or memorandum of law to refute the claims of the movant.

(D)(1) Motion by defendant for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C). When leave is sought from the court of appeals for leave to appeal consecutive sentences pursuant to R.C. 2953.08(C), a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the ~~judgment and~~ order sought to be appealed and shall set forth the reason why the consecutive sentences exceed the maximum prison term allowed. The motion shall be accompanied by a copy of the ~~judgment and~~ order stating the sentences imposed and stating the offense of which movant was found guilty or to which movant pled guilty. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App.R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the notice of appeal and a copy of the motion to the clerk of the court of appeals who shall serve the notice of appeal and the motion upon the prosecuting attorney.

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

OHIO RULES OF JUVENILE PROCEDURE

RULE 22. Pleadings and Motions; Defenses and Objections

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

(G) Motions by Alleged Victim. To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall allow an alleged victim of a crime to file pretrial motions in accordance with the time parameters in subsection (E).

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

RULE 24. Discovery

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

(D) Rights of Alleged Victims. To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall allow an alleged victim of a crime, who has so requested, to be heard regarding objections to pretrial disclosure.

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

RULE 26. Rights of Alleged Victims of Crime

To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall ensure that the alleged victim of a crime, upon request, be given notice of all public proceedings involving the alleged criminal offense against the victim and the opportunity to be present at all such proceedings. In this regard, the trial court may direct the prosecuting attorney to provide such notice to the alleged victim.

To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, the trial court shall, upon request, provide the alleged victim of a crime the opportunity to be heard in any public proceeding in which a right of the alleged victim is implicated, including but not limited to public proceedings involving release, plea, sentencing, or disposition.

RULE 29. Adjudicatory Hearing

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

(F) Procedure upon determination of the issues. Upon the determination of the issues, the court shall do one of the following:

(1) If the allegations of the complaint, indictment, or information were not proven, dismiss the complaint;

(2) If the allegations of the complaint, indictment, or information are admitted or proven, do any one of the following, unless precluded by statute:

(a) Enter an adjudication and proceed forthwith to disposition;

(b) Enter an adjudication and continue the matter for disposition for not more than six months and may make appropriate temporary orders;

(c) Postpone entry of adjudication for not more than six months;

(d) Dismiss the complaint if dismissal is in the best interest of the child and the community.

(3) Upon request make written findings of fact and conclusions of law pursuant to Civ. R. 52.

(4) Ascertain whether the child should remain or be placed in shelter care until the dispositional hearing in an abuse, neglect, or dependency proceeding. In making a shelter care determination, the court shall make written finding of facts with respect to reasonable efforts in accordance with the provisions in Juv. R. 27(B)(1) and to relative placement in accordance with Juv. R. 7(F)(3).

(5) To the extent required by Article I, Section 10a of the Ohio Constitution or by the

Revised Code, before disposition, the trial court shall allow an alleged victim of a crime to be heard.

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

RULE 34. Dispositional Hearing

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

(B) Hearing procedure. The hearing shall be conducted in the following manner:

(1) The judge or magistrate who presided at the adjudicatory hearing shall, if possible, preside;

(2) Except as provided in division (I) of this rule, the court may admit evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;

(3) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of all parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

(4) To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, before disposition, the trial court shall allow an alleged victim of a crime to be heard.

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

[Proposed Form 4.7(A)]

RULE 4.7 NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF SUMMONS.

(Caption)

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

WHY ARE YOU GETTING THIS?

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

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

WHAT HAPPENS NEXT?

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

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

Please read the enclosed statement about the duty to avoid unnecessary

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

Date: _____

(Signature of the attorney or unrepresented party)

_____

(Printed name)

_____

(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 Form 4.7(B)]

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)

_____

(Address)

_____

(E-mail address)

_____

(Telephone number)

_____