PROPOSED AMENDMENTS TO THE

RULES OF PRACTICE AND PROCEDURE IN OHIO COURTS

Comments requested: The Supreme Court of Ohio will accept public comments until February 14, 2018, on the following proposed amendments to the Ohio Rules of Civil Procedure (3, 4.4, 5, 11, 50, 59, and 75), the Ohio Rules of Criminal Procedure (4), the Ohio Rules of Evidence (807), and the Ohio Rules of Juvenile Procedure (34). This round of public comment follows a previous round that ended on November 22, 2017.

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 February 14, 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 February 14, 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

Civ.R. 3(B)—Allows "Limited Scope of Appearance" for Attorneys

The Commission recommends amendments to Civ.R. 3(B) which allows an attorney to enter a limited appearance in a case. The amendment requires the attorney to specifically note the scope of their representation in the notice of appearance. Additionally, if the attorney files a notice of their limited appearance being satisfied – and no party objects within ten days – the attorney may end their involvement in the case without leave of court. This proposed amendment comes from recommendations of the Supreme Court of Ohio's Task Force on Access to Justice.

Civ.R. 4.4—Reorganization of Rule for Increased Clarity

The Commission recommends the amendment of Civ.R. 4.4, which reorganizes the rule for better clarity as to who can use which particular methods of service. Most prominently, the rule allows applicants for civil protection orders to use the "post and publish" method of service without first showing indigency. The amendments also allow that service by publication can be sought by parties other than plaintiffs and may be used for filings other than complaints in certain circumstances.

Civ.R. 5—Serving an Attorney on Limited Appearance

The Commission recommends amendments to Civ.R. 5 to work in conjunction with the proposed amendment to Civ.R. 3. This amendment makes clear that a party may be served through their attorney, unless their attorney had filed a notice of limited appearance and the scope of that appearance has ended.

Civ.R. 11—Allowing Attorney to Assist in Drafting Filing without Signature

The Commission recommends amendments to Civ.R. 11 so as to allow an attorney to assist a party in preparing or drafting a filing, but without having to sign the filing as required by the existing rule. Any filing prepared with an attorney's assistance must indicate "prepared with the assistance of counsel" on the document, and the court may order that the party identify the attorney if the court has any concerns about the adequacy of the assistance provided.

Civ.R. 50 —Time to File Post-Trial Motions or Motions for JNOV

The Commission recommends amendments to Civ.R. 50 so as to clarify the time a party has to file a post-trial motion. Under the current rule, a post-trial motion must be filed within 28 days of the judgment being entered. In a scenario where the party never actually receives notice of the judgment, however, this can lead to a harsh result. As such, this amendment makes clear that the 28-day timeframe to file a motion cannot expire if a party is never actually served with notice of the judgment.

Civ.R. 59 —Time to File Motions for New Trials and Other Motions

The Commission recommends amendments to Civ.R. 59 so as to clarify the time a party has to file a post-trial motion. This amendment has the same effect as the amendment to Civ.R. 50. The rule was also amended to make clear that certain other post-trial motions – such as motions for additur, attorney's fees, or prejudgment interest – also must be filed within these time frames.

Civ.R. 75 —Modernization of Language

The Commission recommends amendments to Civ.R. 75 so as to modernize terminology. The term "pendente lite" is replaced with "temporary."

2. OHIO RULES OF CRIMINAL PROCEDURE

Crim.R. 4—Allowing Service by Commercial Carrier

The Commission proposes an amendment to Crim.R. 4 so as to allow a clerk's office to serve a criminal summons by using a commercial carrier, just as is permitted by the civil rules. The amendments make no other substantive change but do contain many edits intended to better align this rule with Civ.R. 4.1, which covers the same subject matter for civil cases.

3. OHIO RULES OF EVIDENCE

Evid.R. 807—New Terminology and Updated Staff Note

The Commission recommends amendments to Evid.R. 807 so as to replace the terms "sexual act" and "physical violence" with terms that are defined and used in the Ohio Revised Code: "Sexual activity" and "physical harm." The Commission also prepared a new staff note stating that while Evid.R. 807 was originally meant to address the U.S. Supreme Court's precedent on the Confrontation Clause, superseding case law has made that unworkable. Accordingly, any analysis of the confrontation clause must be done separately and outside of the rule.

4. OHIO JUVENILE RULES

Juv.R. 34—Updating PPLA Language to Confirm with Amended Statute

The Commission recommends amendments to Juv.R. 34 so as to conform to the statutory language of R.C. 2151.353(A)(5). The revised code sets forth specific requirements for when a juvenile court can order a Permanent Planned Living Arrangement ("PPLA"). The current version of Juv.R. 34 was written to track the statutory language in regards to PPLAs, but that statute was amended in 2014. The proposed amendments to this rule only align with those changes in the statute.

PROPOSED AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE

OHIO RULES OF CIVIL PROCEDURE

RULE 3. Commencement of Action; Venue

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

(B) Limited Appearance by Attorney. An attorney's role may be limited in scope, as authorized by Prof.Cond.R. 1.2(C), if that scope is specifically described in a "Notice of Limited Appearance" stating that the limited appearance has been authorized by the party for whom the appearance is made, and filed and served in accordance with Civ.R. 5 prior to or at the time of any such appearance. The attorney's limited appearance terminates without the necessity of leave of court, upon the attorney filing a "Notice of Completion of Limited Appearance." filed and served upon all parties, including the party for whom the appearance was made, in accordance with Civ.R. 5. If there is no objection within ten days of this notice, then no entry by the court is necessary for the termination of the limited appearance to take effect.

(C) Venue: where proper.

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

~~(C)~~ (D) Change of venue.

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

~~(D)~~ (E) Venue: no proper forum in Ohio.

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

~~(E)~~ (F) Venue: multiple defendants and multiple claims for relief.

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

~~(F)~~ (G) Venue: notice of pending litigation; transfer of judgments.

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

~~(G)~~ (H) Venue: collateral attack; appeal.

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

~~(H)~~ (I) Definitions.

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

Proposed Staff Note (July 1, 2018 Amendment)

New Division (B): Limited Appearance by Attorney.

This and other July 1, 2018 amendments to the Ohio Rules of Civil Procedure and Rules of Professional Conduct encourage attorneys to assist pro se parties on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Supreme Court seeks to enlarge access to justice in Ohio's courts as recommended by a 2006 Report of the Court's Task Force on Pro Se & Indigent Litigants and by a 2015 Report of the Court's Task Force on Access to Justice.

New division 3(B) permits attorneys to enter a limited appearance on behalf of an otherwise unrepresented litigant. The effect of the limited appearance is to permit an attorney to represent a client on one or more matters in a lawsuit but not on all matters. While normally leave of court is required if an attorney seeks to withdraw from representation, under this provision, leave of court is not required for withdrawal from the case at the conclusion of a properly noticed limited appearance, provided the attorney files and serves the proper Notice of Completion of Limited Appearance in accordance with Civ.R. 5.

The benefits of division 3(B) are obtained only by filing a notice of limited appearance identified as such. The notice of limited appearance must clearly describe the scope of the limited representation and state that the limitation of appearance has been authorized by the party for whom the appearance is made. It is intended that any doubt about the scope of the limited representation be resolved in a manner that promotes the interests of justice and those of the client and opposing party.

The remaining divisions of the rule are re-lettered accordingly.

RULE 4.4 Process: Service by Publication

(A) Residence unknown.

(1) **Service by Publication in a Newspaper.** Except in an action or proceeding governed by division (A)(2) of this rule, ~~if the~~ when service of process is required upon a party whose residence ~~of a defendant~~ is unknown, service shall be made by publication in actions where such service is authorized by law. Before service by publication can be made, an affidavit of ~~a~~the party requesting service or ~~his~~ that party's counsel shall be filed with the court. The affidavit shall aver that service of summons cannot be made because the residence of the ~~defendant~~ party to be served is unknown to the affiant, all of the efforts made on behalf of the party to ascertain the residence of the ~~defendant~~ party to be served, and that the residence of the ~~defendant~~ party to be served cannot be ascertained with reasonable diligence.

Upon the filing of the affidavit, the clerk shall cause service of notice to be made by publication in a newspaper of general circulation in the county in which the ~~complaint~~ action or proceeding is filed. If no newspaper is published in that county, then publication shall be in a newspaper published in an adjoining county. The publication shall contain the name and address of the court, the case number, the name of the first party on each side, and the name and last known

address, if any, of the person or persons whose residence is unknown. The publication also shall contain a summary statement of the object of the ~~complaint~~ pleading or other document seeking relief against a party whose residence is unknown, ~~and~~ a summary statement of the demand for relief, and shall notify the ~~person~~ party to be served that ~~he or she~~ such party is required to answer or respond either within twenty-eight days after the publication or at such other time after the publication that is set as the time to appear or within which to respond after service of such pleading or other document. The publication shall be published at least once a week for six successive weeks unless publication for a lesser number of weeks is specifically provided by law. Service of process shall be deemed complete at the date of the last publication.

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

(2) Service by Publication by Posting and Mail.

(a) **Actions and Proceedings other than Civil Protection Order Proceedings.** In ~~a~~ divorce, annulment, or legal separation actions, and in actions pertaining to the care, custody, and control of children whose parents are not married, and in all post-decree proceedings, and ~~in civil protection order proceedings pursuant to Civ. R. 65.1,~~ in such actions:

(i) if the residence of the party upon whom service is sought is unknown; and,

(ii) if the matter is not governed by Civ.R. 65.1; and,

(iii) if ~~the plaintiff~~ a party requesting service upon another party is proceeding ~~in forma pauperis~~ with a poverty affidavit;~~and if the residence of the defendant is unknown,~~

service by publication shall be made by posting and mail. Before service by posting and mail can be made under this division (A)(2)(a), an affidavit of ~~a~~ the party requesting service or ~~the~~ that party's counsel shall be filed with the court. The affidavit shall contain the same averments required by division (A)(1) of this rule and, in addition, shall set forth the defendant's last known address.

Upon the filing of the affidavit, the clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse or courthouses in which the general and domestic relations divisions of the court of common pleas for the county are located and in two additional public places in the county that have been designated by local rule for the posting of notices pursuant to this rule. Alternatively, the postings~~, except for protection orders issued pursuant to Civ.R. 65.1,~~ under this division (A)(2)(a) may be made on the website of the clerk of courts, if available, in a section designated for such purpose. The notice shall contain the same information required by division (A)(1) of this rule to be contained in a newspaper publication. The notice shall be posted ~~in the required locations~~ for six successive weeks.

(b) **Civil Protection Order Proceedings.** In civil protection order proceedings where the residence of the party upon whom service is sought is unknown, service may be made by posting and mail without the necessity of a poverty affidavit. Before service by posting and mail can be made under this division (A)(2)(b), an affidavit of the party requesting service or that party's counsel shall be filed with the court. The affidavit shall contain the same averments required by division (A)(1) of this rule and, in addition, shall set forth the last known address of the party to be served.

Upon the filing of the affidavit, the clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse or courthouses within the county where Civ.R. 65.1 civil protection order proceedings may be filed and in two additional public places in the county that have been designated by local rule for the posting of notices pursuant to this rule. The postings under this division (A)(2)(b) shall not be made on the website of the clerk of courts. The notice shall contain the same information required by division (A)(1) of this rule to be contained in a newspaper publication. The notice shall be posted for six successive weeks.

~~The~~ **(c) Additional Requirement for Mailing.** When service is sought by publication by posting and mail under either division (A)(2)(a) or division (A)(2)(b) of this rule, the clerk shall also cause the ~~complaint and summons~~ documents for service to be mailed by United States ordinary mail, address correction requested, to the ~~defendant's~~ last known address of the party to be served. The clerk shall obtain a certificate of mailing from the United States Postal Service. If the clerk is notified of a corrected or forwarding address of the ~~defendant~~ party to be served within the six-week period that notice is posted pursuant to ~~division~~ (A)(2)(a) or division (A)(2)(b) of this rule, the clerk shall cause the ~~complaint and summons~~ documents for service to be mailed to the corrected or forwarding address. The clerk shall note the name, address, and date of each mailing on the docket.

(d) Docket Entry of Posting; Completion of Service. After the last week of posting under either division (A)(2)(a) or division (A)(2)(b) of this rule, the clerk shall note on the docket where and when notice was posted. Service shall be complete upon the entry of posting.

(B) Residence known. If the residence of a ~~defendant~~ party to be served is known~~,~~ and the action is one in which service by publication is authorized by law, service of process shall be effected by a method other than by publication as provided by:

(1) Rule 4.1, if the ~~defendant~~ party to be served is a resident of this state,

(2) Rule 4.3(B) if ~~defendant~~ the party to be served is not a resident of this state, or

(3) Rule 4.5, in the alternative, if service on ~~defendant~~ the party to be served is to be effected in a foreign country.

If service of process cannot be effected under the provisions of this subdivision or Rule 4.6(C) or Rule 4.6(D), service of process shall proceed by publication.

Proposed Staff Notes (July 1, 2018 Amendment)

Background to the July 1, 2018 Amendments to Civ.R. 4.4.

As initially adopted in 1970, Civ.R. 4.4(A) provided that when the residence of the defendant was unknown, service could be obtained by publication, but only by publication in a newspaper.

In 1991, Civ.R. 4.4(A) was divided into two divisions -- Civ.R. 4.4(A)(1) set forth essentially the same "publication by newspaper" provisions contained in the then-existing rule, while a new Civ.R.4.4(A)(2) allowed an indigent plaintiff in a divorce, annulment, or legal separation action to obtain service by publication "by posting and mail" when the residence of the defendant is unknown. In 2013, the application of the publication "by posting and mail" provisions of Civ.R. 4.4(A)(2) were expanded to include an indigent plaintiff in actions pertaining to the care, custody, and control of children whose parents are not married, and in all post-decree proceedings; and a provision for posting at a website of the clerk of courts was added.

In 2016, the application of the publication "by posting and mail" provisions of Civ.R. 4.4(A)(2) were again expanded to include an indigent plaintiff in a civil protection order proceeding pursuant to Civ.R. 65.1; but such civil protection order plaintiffs were precluded from publishing protection orders at a website of the clerk of courts since such publication is prohibited by 18 U.S.C. Section 2265(d)(3).

After the adoption of the 2016 amendments to the rule, the Supreme Court Advisory Committee on Domestic Violence requested that the rule be further amended to allow any petitioner in a civil protection order proceeding, regardless of indigency, to make use of the publication "by posting and mail" provisions of Civ.R. 4.4(A)(2) when the residence of the defendant is unknown.

The July 1, 2018 amendments amend and reorganize the rule to eliminate confusion resulting from the existing structure and terminology of its provisions, and to address and account for a number of matters related to its application, including the following:

- Service by publication may be sought by parties other than plaintiffs and may be sought against parties other than defendants, particularly in divorce, annulment, or legal separation actions; in actions pertaining to the care, custody, and control of children whose parents are not married; in post-decree proceedings in such actions; and in civil protection order proceedings governed by Civ.R. 65.1;

- Service by publication may be sought for the service of documents other than complaints -- such as petitions, motions, and orders -- in divorce, annulment, or legal separation actions; in actions pertaining to the care, custody, and control of children whose parents are not married; in post-decree proceedings in such actions; and in civil protection order proceedings governed by Civ.R. 65.1;

• A time other than within twenty-eight days of service may be required to respond or appear in response to service of a document other than a complaint -- such as service of a petition, motion, or order in divorce, annulment, or legal separation actions; in actions pertaining to the care, custody, and control of children whose parents are not married; in post-decree proceedings in such actions; and in civil protection order proceedings governed by Civ.R. 65.1.

Although the basis for the 1991 exemption from the payment of court costs due to indigency, and the basis provided by R.C. 3113.31(J) for the exemption from the payment of court costs in civil protection order proceedings are decidedly different, part of the rationale which apparently supported the 1991 adoption of Civ.R. 4.4(A)(2) justifies permitting parties in civil protection order proceedings, regardless of indigency, to obtain service by publication by posting and mail, i.e., those parties are not required to pay the substantial costs of service by publication in a newspaper. See *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) and *State, ex rel. Blevins, v. Mowery*, 45 Ohio St.3d 20, 543 N.E.2d 99 (1989); also see the Staff Notes to the 1998 amendments to Juv.R. 16.

Division (A)(1). Service by Publication in a Newspaper

The rule is amended by replacing the terms "plaintiff" and "defendant" with the terms "party requesting service" and "party to be served."

The rule is amended by replacing "where the complaint is filed" with "where the action or proceeding is filed."

The rule is amended by replacing "object of the complaint" with "object of the pleading or other document."

The rule is amended to provide "within twenty-eight days after the publication or at such other time after the publication that is set as the time to appear or within which to respond after service of such pleading or other document."

Division (A)(2). Service by Publication by Posting and Mail

The rule is amended by further sub-dividing it into division (A)(2)(a) addressing service by publication by posting and mail in actions or proceedings other than civil protection order proceedings, and division (A)(2)(b) addressing service by publication by posting and mail in civil protection order proceedings; division (A)(2)(c) addresses the additional requirement for mailing; and division (A)(2)(d) addresses the docketing of the entry of posting and completion of service.

The rule is amended by replacing "proceeding in forma pauperis" with "proceeding with a poverty affidavit."

The rule is amended by replacing the "defendant" with the "party upon whom service is sought."

Division (A)(2)(b). Civil Protection Order Proceedings

The new division (A)(2)(b) contains the same general requirements of division (A)(2)(a) except:

• The requirement of a poverty affidavit is eliminated.

• "Courthouses within which domestic relations divisions . . . are located" is replaced with "Courthouses within the county where Civ.R. 65.1 civil protection order proceedings may be filed[;]"

• Posting on the website of the clerk of courts is prohibited.

Division (A)(2)(c). Additional Requirements for Mailing

The rule is amended by replacing "complaint and summons" with "documents for service."

The rule is amended by replacing "defendant's last known address" with "last known address of the party to be served."

Division (B). Residence known.

The rule is amended by replacing "defendant" with "party to be served."

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

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

(B) Service: how made.

(1) Serving a party; serving an attorney. Whenever a party is not represented by an attorney, service under this rule shall be made upon the party. If a party is represented by an attorney, service under this rule ~~must~~ shall be made on the attorney unless the court orders service on the party. Whenever an attorney has filed a notice of limited appearance pursuant to Civ.R. 3(B), service shall be made upon both that attorney and the party in connection with the proceedings for which the attorney has filed a notice of limited appearance.

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

Proposed Staff Note (July 1, 2018 Amendment)

Division (B)(1): Serving a party; serving an attorney.

This and other July 1, 2018 amendments to the Ohio Rules of Civil Procedure and Rules of Professional Conduct encourage attorneys to assist pro se parties on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Supreme Court seeks to enlarge access to justice in Ohio's courts as recommended by a 2006 Report of the Court's Task Force on Pro Se & Indigent Litigants and by a 2015 Report of the Court's Task Force on Access to Justice.

The amendment to Civ.R. 5(B)(1) makes clear that when a notice of limited appearance has been filed by an attorney, an opposing party shall continue serving documents upon the party throughout the duration of the limited appearance while also serving the attorney. The purpose of the amendment is to assure appropriate service upon counsel to represented parties, but also to assure that a client being represented on a limited basis has copies of all key documents in the litigation.

RULE 11. Signing of Pleadings, Motions, or Other Documents

Every pleading, motion, or other document of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address, attorney registration number, telephone number, facsimile number, if any, and business e-mail address, if any, shall be stated.

A party who is not represented by an attorney shall sign the pleading, motion, or other document and state the party's address. A party who is not represented by an attorney may further state a facsimile number or e-mail address for service by electronic means under Civ.R. 5(B)(2)(f).

If an attorney who has not filed a notice of limited appearance assists a party by drafting or assisting in drafting any document to be submitted to a court, the attorney is not obligated to sign the document. However, the attorney who has provided such assistance shall indicate "Prepared with the assistance of counsel" on the document. The attorney, in providing such assistance, may rely on the party's recital of the facts, unless the attorney has reason to believe that such recital is false or materially insufficient to sustain that party's claims. The court may order the party to identify the attorney who has provided assistance with the preparation of a document if the court has concerns about the adequacy of the assistance provided by the attorney according to the standards established by the Rules of Professional Conduct.

Except when otherwise specifically provided by these rules, pleadings, as defined by Civ.R. 7(A), need not be verified or accompanied by affidavit.

The signature of an attorney or *pro se* party constitutes a certificate by the attorney or party that the attorney or party who signs the document has read the document; that to the best of ~~the~~ that attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the

purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or *pro se* party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule. Similar action may be taken if scandalous or indecent matter is inserted.

Proposed Staff Note (July 1, 2018 Amendment)

Notice of Limited Appearance.

This and other July 1, 2018 amendments to the Ohio Rules of Civil Procedure and Rules of Professional Conduct encourage attorneys to assist pro se parties on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Supreme Court seeks to enlarge access to justice in Ohio's courts as recommended by a 2006 Report of the Court's Special Task Force on Pro Se & Indigent Litigants and by a 2015 Report of the Court's Special Task Force on Access to Justice.

This amendment to Civ.R. 11 requires a party to acknowledge assistance by counsel in the drafting of a document submitted to the court is intended to avoid misleading the court which might otherwise be under the impression that the person, who appears to be proceeding without assistance from an attorney, has received no such assistance. The phrase "assists a party by drafting or assisting in drafting" contemplates the actual composition of a document and therefore the provisions of this rule would not apply to the mere distribution of standard forms.

RULE 50. Motion for a Directed Verdict, ~~and~~ for Judgment, or for Judgment Notwithstanding the Verdict or in Lieu of Verdict

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

(B) ~~Motion~~ Post-trial motion for judgment or for judgment notwithstanding the verdict or in lieu of verdict.

(1) Whether or not a motion to direct a verdict has been made or overruled ~~and not later than twenty-eight days after entry of judgment~~, a party may serve a motion to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with the party's motion~~; or if~~. Such a motion shall be served within twenty-eight days of the entry of judgment or, if the clerk has not completed service of the notice of judgment within the three-day period described in Civ.R. 58(B), within twenty-eight days of the date when the clerk actually completes service. If a verdict was not returned ~~such~~, a party~~, within twenty-eight days after the jury has been discharged,~~ may serve a motion for judgment in accordance with the party's motion within twenty-eight days of the jury's discharge. A motion for a new trial may be joined with ~~this~~ either motion, or a new trial may be ~~prayed for~~ requested in the alternative.

(2) Unless otherwise provided by local rule or by order of the court, arguments in response to the motion shall be served within fourteen days ~~after~~ of service of the motion, and a movant's reply may be served within seven days ~~after~~ of service of the response to the motion.

(3) If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment. If the judgment is reopened, the court shall either order a new trial or direct the entry of judgment, but no judgment shall be rendered by the court on the ground that the verdict is against the weight of the evidence. If no verdict was returned the court may direct the entry of judgment or may order a new trial.

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

Proposed Staff Note (July 1, 2018 Amendment)

Division (B): Post-trial motion for judgment or for judgment in lieu of verdict.

The amendment provides that if the clerk fails to serve the parties with notice of a judgment in the three-day period contemplated by Civ.R. 58(B), the time to serve a post-trial motion for judgment in favor of the movant does not begin to run until after the clerk does so. The purpose of the amendment is to avoid the harsh result that otherwise can occur if a would-be movant does not receive notice of the judgment. *See, e.g., Wing v. Haaff*, 1st Dist. Hamilton No. C-160257, 2017-Ohio-8258. This amendment brings the timing of post-trial motions under Civ.R. 50 in line with the timing of a notice of appeal in civil cases under App.R. 4(A)(3).

RULE 59. New Trials and Other Post-Trial Motions

(A) Grounds for new trial. A new trial may be granted to all or any of the parties and on all or part of the issues upon any of the following grounds:

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

(B) Time for ~~motion~~ certain post-trial motions, responsive ~~arguments~~ briefs, and replies. ~~A~~ Except as otherwise provided by statute, a motion for a new trial ~~shall be served not later than twenty-eight days after the entry of the judgment~~, remittitur, additur, prejudgment interest, or attorney fees must be served within twenty-eight days of the entry of judgment or, if the clerk has not completed service of the notice of judgment within the three-day period described in Civ.R. 58(B), within twenty-eight days of the date when the clerk actually completes service. Unless otherwise provided by local rule or by order of the court, ~~arguments~~ briefs in response to the motion shall be served within fourteen days ~~after~~ of service of the motion, and a movant's reply may be served within seven days ~~after~~ of service of the response to the motion.

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

Proposed Staff Note (July 1, 2018 Amendment)

Division (B): Time for certain post-trial motions, responsive briefs, and replies.

The amendment makes two substantive changes.

First, it provides that if the clerk fails to serve the parties with notice of a judgment in the three-day period contemplated by Civ.R. 58(B), the time to serve a post-trial motion for judgment in favor of the movant does not begin to run until after the clerk does so. The purpose of the amendment is to avoid the harsh result that otherwise can occur if a would-be movant does not receive notice of the judgment. *See, e.g., Wing v. Haaff*, 1st Dist. Hamilton No. C-160257, 2017-

Ohio-8258. This amendment brings the timing of post-trial motions under Civ.R. 59 in line with the timing of a notice of appeal in civil cases under App.R. 4(A)(3).

Second, the amendment provides that other types of post-trial motions (for remittitur, additur, prejudgment interest, and attorney fees) are subject to the same timing requirements as motions for a new trial unless a statute (*e.g.*, R.C. 2323.51) provides a different time period. The rule change abrogates case law that provided shorter deadlines for some of these motions. *See*, *e.g.*, *Cotterman v. Cleveland Elec. Illuminating Co.*, 34 Ohio St.3d 48, 517 N.E.2d 536 (1987), paragraph one of the syllabus (motion for prejudgment interest due 14 days after judgment).

RULE 75. Divorce, Annulment, and Legal Separation Actions

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

(N) ~~Allowance~~ Temporary Orders of spousal support, child support, and custody ~~pendente lite~~.

(1) When requested in the complaint, answer, or counterclaim, or by motion served with the pleading, upon satisfactory proof by affidavit duly filed with the clerk of the court, the court or magistrate, without oral hearing and for good cause shown, may grant a temporary order regarding spousal support ~~pendente lite~~ to either of the parties for the party's sustenance and expenses during the suit and may make a temporary order regarding the support, maintenance, and allocation of parental rights and responsibilities for the care of children of the marriage, whether natural or adopted, during the pendency of the action for divorce, annulment, or legal separation.

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

Proposed Staff Note (July 1, 2018 Amendment)

Division (N): Temporary Orders.

Reflecting contemporary terminology, the former term "pendent lite" is replaced with the term "temporary."

OHIO RULES OF CRIMINAL PROCEDURE

RULE 4. Warrant or Summons; Arrest

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

(D) Warrant and summons: execution or service; return.

(1) By whom. Warrants shall be executed and summons served by any officer authorized by law. Unless a summons is being issued in lieu of arrest under divisions (A)(2) and (A)(3), a summons may also be served by the clerk.

(2) Territorial limits. Warrants may be executed or summons may be served at any place within this state.

(3) Manner. Except as provided in division (A)(2) of this rule, warrants shall be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest. In such case, the officer shall inform the defendant of the offense charged and of the fact that the warrant has been issued. A copy of the warrant shall be given to the defendant as soon as possible.

Summons may be served upon a defendant who is an individual by delivering a copy to the defendant personally, or by leaving it at the defendant's usual place of residence with some person of suitable age and discretion then residing therein, or, except when the summons is issued in lieu of executing a warrant by arrest, by mailing it to the defendant's last known address by United States certified or express mail with a return receipt requested or by commercial carrier service utilizing any form of delivery requiring a signed receipt. When service of summons is made by United States certified mail or express mail, it shall be served by the clerk in the manner prescribed by ~~Civil Rule~~ Civ. R. 4.1(A)(1)(a). When service of summons is made by a commercial carrier service, it shall be served in the manner prescribed by Civ. R. 4.1(A)(1)(b). Summons issued under division (A)(2) of this rule in lieu of executing a warrant by arrest shall be served by personal or residence service. Summons issued under division (A)(3) of this rule in lieu of arrest and summons issued after arrest under division (F) of this rule shall be served by personal service only.

A summons to a ~~corporation~~ defendant who is not an individual shall be served in the manner provided for service of that type of entity ~~upon corporations~~ in ~~Civil Rules~~ Civ.R.~~4~~ through 4.2 and 4.6(A) and (B), except that the waiver provisions of ~~Civil Rule~~ Civ.R. 4(D) shall not apply. ~~Summons issued under division (A)(2) of this rule in lieu of executing a warrant by arrest shall be served by personal or residence service. Summons issued under division (A)(3) of this rule in lieu of arrest and summons issued after arrest under division (F) of this rule shall be served by personal service only.~~

(4) Return. The officer executing a warrant shall make return of the warrant to the issuing court before whom the defendant is brought pursuant to Crim.R. 5. At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the issuing court and canceled by a judge of that court.

When the copy of the summons has been served by delivering a copy to the defendant personally or by leaving it at the defendant's usual place of residence with some person of suitable age and discretion then residing therein, the person serving summons shall endorse that fact on the summons and return it to the clerk, who shall make the appropriate entry on the appearance docket. When the copy of the summons has been served by mailing it to the defendant's last known address by United States certified or express mail or by a commercial carrier service utilizing any form of delivery requiring a signed receipt, it shall be docketed and returned in the manner prescribed by Civ.R. 4.1(A)(2).

When the person s~~erving~~ attempting to serve summons by delivering a copy to the defendant personally or by leaving it at the defendant's usual place of residence with some person of suitable age and discretion then residing therein is unable to serve a copy of the summons within twenty-eight days of the date of issuance, the person serving summons shall endorse that fact and the reasons for the failure of service on the summons and return the summons and copies to the clerk, who shall make the appropriate entry on the appearance docket. If the return of service of a copy of the summons attempted to be served by United States certified or express mail or by a commercial carrier service utilizing any form of delivery requiring a signed receipt shows failure of delivery, the clerk shall file the return receipt or returned envelope in the records of the case.

At the request of the prosecuting attorney, made while the complaint is pending, a warrant returned unexecuted and not canceled, or a summons returned unserved, or a copy of either, may be delivered by the court to an authorized officer for execution or service.

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

OHIO RULES OF EVIDENCE

Evid R. 807 Hearsay Exceptions; Child Statements in Abuse Cases

(A) An out-of-court statement made by a child who is under twelve years of age at the time of trial or hearing describing any sexual activity ~~act~~ performed, or attempted to be performed, by, with, or on the child or describing any act or attempted act of physical ~~violence~~ harm directed against the ~~child~~ child's person is not excluded as hearsay under Evid.R. 802 if all of the following apply:

(1) The court finds that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness that make the statement at least as reliable as statements admitted pursuant to Evid.R. 803 and 804. The circumstances must establish that the child was particularly likely to be telling the truth when the statement was made and that the test of cross-examination would add little to the reliability of the statement. In making its determination of the reliability of the statement, the court shall consider all of the circumstances surrounding the making of the statement, including but not limited to spontaneity, the internal consistency of the statement, the mental state of the child, the child's motive or lack of motive to fabricate, the child's use of terminology unexpected of a child of similar age, the means by which the statement was elicited, and the lapse of time between the act and the statement. In making this determination, the court shall not consider whether there is independent proof of the sexual ~~act~~ activity or attempted sexual activity, or of the act or attempted act of physical ~~violence~~ harm directed against the child's person;

(2) The child's testimony is not reasonably obtainable by the proponent of the statement;

(3) There is independent proof of the sexual ~~act~~ activity or attempted sexual activity, or of the act or attempted act of physical ~~violence~~ harm directed against the child's person;

(4) At least ten days before the trial or hearing, a proponent of the statement has notified all other parties in writing of the content of the statement, the time and place at which the statement was made, the identity of the witness who is to testify about the statement, and the circumstances surrounding the statement that are claimed to indicate its trustworthiness.

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

Proposed Staff Notes (July 1, 2018 Amendment)

The Rule has been amended to substitute terms defined in the Revised Code for previously undefined terms. As enacted in 1991, the Rule applied to situations involving either a "sexual act" or "physical violence." By substituting the term "sexual activity" for "sexual act," the Rule uses a term defined in R.C. 2907.01(C). Similarly, by substituting the term "physical harm directed against the child's person" for "physical violence," the Rule uses a term defined in R.C. 2901.01(A)(5). As used in the Rule, these terms should be interpreted consistently with their statutory definitions. As amended, the Rule also explicitly includes attempted sexual activity and attempted acts of physical harm as falling under the purview of the hearsay exception.

It should also be noted that the original Staff Note's reference to the Rule being a codification of the Sixth Amendment's Confrontation Clause is no longer accurate. At the time of enactment, the Rule did reflect the Confrontation Clause's test of reliability set forth by the United States Supreme Court in *Idaho v. Wright*, 497 U.S. 805, 110 S.Ct. 3139, 111 L.Ed.2d 638 (1990). At that time, the Supreme Court viewed the Confrontation Clause as a test of reliability derived from the circumstances surrounding the out-of-court statement. More recent United States Supreme Court jurisprudence, beginning with *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), focuses largely on (1) whether the statement is testimonial in nature; and, (2) if so, whether it was either subject to cross-examination or whether it was an out-of-court statement that, at the time the Sixth Amendment was enacted, was traditionally admitted without benefit of cross-examination.

While *Idaho v. Wright* no longer reflects the ongoing Confrontation Clause jurisprudence, *Wright's* reliability analysis nonetheless remains an appropriate guide for Evid. R. 807's function as a hearsay exception.

Of course, in criminal cases, compliance with Sixth Amendment Confrontation Clause requirements and Ohio's corresponding constitutional requirements, Article I, Sec. 10, is necessary in addition to compliance with Evid. R. 807.

OHIO RULES OF JUVENILE PROCEDURE

RULE 34. Dispositional Hearing

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

(D) Dispositional Orders. ~~Where~~ If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

(1) Place the child in protective supervision;

(2) Commit the child to the temporary custody of a public or private agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home or approved foster care;

(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody;

(4) Commit the child to the permanent custody of a public or private agency, if the court determines that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines that the permanent commitment is in the best interest of the child;

(5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if ~~the~~ a public children services agency or private child placing agency requests the court ~~for placement,~~ to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child, that the child is sixteen years of age or older, and ~~if the court finds~~ that one of the following exists:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to R.C. 2151.35;

(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child and the child, as determined in accordance with R.C. 2151.414(D)(1), and the child retains a significant and positive relationship with a parent or relative;

(c) The child ~~is sixteen years of age or older,~~ has been counseled on the permanent placement options available to the child, and is unwilling to accept or unable to adapt to a permanent placement ~~and is in an agency program preparing the child for independent living~~.

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

Proposed Staff Note (July 1, 2018 Amendment)

Division (D)(5): Placement in planned permanent living arrangement.

Division (D)(5) is amended to incorporate the amendments to R.C. 2151.353(A)(5) effective September 17, 2014.