

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 1, 2017, on the following proposed amendments to the Ohio Rules of Civil Procedure (4.2, 19.1, 30, 33, 34, 36, 62, and Civil Form 1), the Ohio Rules of Criminal Procedure (5, 32.2, and proposed 42), the Ohio Rules of Evidence (103), the Ohio Rules of Appellate Procedure (11.1 and 19), and the Ohio Traffic Rules (16). This round of public comment follows a previous round which ended on February 1, 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 1, 2017. 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 1, 2017.

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. 4.2—Allowing Service Through Secretary of State in Certain Instances

The Commission recommends amendments to Civ.R. 4.2 to allow for service to be made upon certain persons by serving the Secretary of State. These certain persons would be address confidentiality “program participants” as defined by the recently enacted R.C. 111.41 to 111.99. Program participants include victims of domestic violence and other persons who would be at risk of harm should their address be disclosed.

Civ.R. 19.1—Adding Adult Emancipated Child Loss of Consortium Cases to Compulsory Joinder List

The Commission recommends the amendment of Civ.R. 19.1 so as to include adult emancipated children making claims for loss of consortium with an injured parent. Parties holding such a claim would be joined in any personal injury case involving injury to the parent.

Civ.R. 30(C)—Any Party May Examine Deponent, at Any Deposition

The Commission recommends amendments to Civ.R. 30(C) which clarify that any party at a deposition may examine the deponent, regardless of who actually called the deposition. The proposed amendment also strengthens language requiring that any objections be made in a nonargumentative and nonsuggestive manner.

Civ.R. 33, 34, and 36 —Eliminating the Service of Written Discovery at Same Time as Complaint

The Commission recommends amendments to Civ.R. 33, 34, and 36 that would disallow the service of written discovery requests contemporaneous with service of the initial complaint. Under the current rules, a party may submit to a clerk’s office their complaint and any written discovery request to be served simultaneously. The proposed amendments would require that the initial complaint be served before any written discovery requests could be initiated.

Civ.R. 62—Allowing for Immediate Stay of Judgment

The Commission recommends amendments to Civ.R. 62 to provide that a court may issue a stay of judgment – or stay of proceedings to enforce that judgment – upon a party’s motion any time after the judgment was issued. Under the current rule, a judgment cannot be stayed until a party files a motion for a new trial, judgment notwithstanding the verdict, or relief from judgment

under Civ.R. 60(B). These amendments would allow the trial court to stay a judgment without a party having to prepare a full post-judgment motion.

Civil Form 1—Summons

The Commission recommends that the Civil Form summons be amended to include information about attorney referral services and legal aid. Furthermore, portions of the form were translated into multiple languages. This form is found below in both a “strikethrough” version that shows any removed language and a “clean” version that shows only the proposed amendments.

2. OHIO RULES OF CRIMINAL PROCEDURE

Crim.R. 5—Clarifying a Full Transcript is Unnecessary in Bindover to Common Pleas Court

The Commission proposes an amendment to Crim.R. 5(B)(7) that would clarify that, in cases bound over from Municipal Court to Common Pleas Court, a verbatim written record of any proceedings is not required to be transmitted. This is done by replacing the term “transcript” with “record.” A staff note is also proposed to elaborate on the reason for the word change.

Crim.R. 32.2—Allowing for Waiver of Presentence Investigation

The Commission proposes an amendment to Crim.R. 32.2 that would allow the waiver of a presentence investigation upon the agreement of the defendant and the prosecutor before the imposition of community control sanctions. The trial court would retain the ability to order a presentence investigation regardless of whether the parties agreed to waive. This amendment was proposed at the request of the General Assembly, which recently passed legislation allowing for such a waiver of the presentence investigation.

Crim.R. 42—Post-Conviction Review of Capital Cases; Appointment of Experts

The Commission recommends the creation of Crim.R. 42 to establish clear procedures for receiving and ruling upon motions for post-conviction relief in capital cases. This proposed rule makes clear the level of access parties would have to discovery materials in post-conviction capital cases.

The rule would also establish a new procedure for indigent defendants to request the appointment of experts in capital cases. The defendant would make the request for an expert – under seal and ex parte should they request as much – to the trial court. The trial court would then rule on the request and would be required to make specific written findings should they deny a request. Any appeal of an order related to appointed experts would be governed by App.R. 11.1, set forth below.

3. OHIO RULES OF EVIDENCE

Evid.R. 103—No Need to Repeat Objection Once Court Rules on the Record

The Commission recommends amendments to Evid.R. 103 to make explicitly clear that, once a court has ruled on an objection, on the record either before or after trial, that there no need to renew the objection for purposes of appeal.

4. OHIO RULES OF APPELLATE PROCEDURE

App.R. 11.1—Accelerated Appeal of Order for Experts in Death Penalty Case

The Commission presents proposed amendment to App.R. 11.1 that requires that any order appointing experts in a death penalty case, under the newly proposed Crim.R. 42, be placed on the appellate court’s accelerated calendar. It also requires such an appeal, upon defense counsel’s request, to be under seal and conducted ex parte.

App.R. 19—No Page/Word Limits for Appeals of Post-Conviction Review in Death Penalty Cases

The Commission presents proposed amendment to App.R. 19 that requires that no page limits or word counts be placed on briefs in proceedings for post-conviction review of a capital case, as defined in newly-proposed Crim.R. 42. Crim.R. 42 expressly excludes direct appeal to the Supreme Court from the definition of “post-conviction review of a capital case.”

5. OHIO TRAFFIC RULES

Traf.R. 16—Addressing Judicial Conduct of Mayors Operating Mayor’s Courts

The Commission recommends amendment of Traf.R. 16 so as to remove reference to the Ohio Code of Judicial Conduct. Instead, the amendment would require that all mayors comply with Mayor’s Court Education and Procedure Rules 3(A)(1)(f) and 4(A)(1)(h). These are the specific rules that require ethics training for mayors who hear criminal cases in a mayor’s court.

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

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4 **OHIO RULES OF CIVIL PROCEDURE**

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6 **RULE 4.2 Process: Who May be Served**

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

9 (O) Upon any governmental entity not mentioned above by serving the person, officer,
10 group or body responsible for the administration of that entity or by serving the appropriate legal
11 officer, if any, representing the entity. Service upon any person who is a member of the "group"
12 or "body" responsible for the administration of the entity shall be sufficient.

13 Service of process pursuant to Civ.R. 4 through 4.6, except service by publication as
14 provided in Civ.R. 4.4(A), may be made upon an address confidentiality "program participant" as
15 defined by R.C. 111.41(G), by serving the Secretary of State.

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17 **Proposed Staff Note (July 1, 2017 Amendment)**

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19 At the request made by the Legislature in Section 3 of 2016 Sub.H.B. No. 359, the 2017
20 amendment adds a final paragraph to the rule to allow service of process to be made upon an
21 address confidentiality "program participant," as defined by R.C. 111.41(G), by serving the
22 Secretary of State as the program participant's agent. "Program participants" include victims of
23 domestic violence and other persons who would be at risk of harm should their addresses be
24 disclosed.

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26
27 **RULE 19.1 Compulsory Joinder**

28 (A) **Persons to be joined.** A person who is subject to service of process shall be joined
29 as a party in the action, except as provided in division (B) of this rule, if the person has an interest
30 in or a claim arising out of the following situations:

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

34 (2) Personal injury or property damage to a spouse and a claim of the other spouse for
35 loss of consortium or expenses or property damage if caused by the same wrongful act;

36 (3) Personal injury or property damage to a minor and a claim of the parent or guardian
37 of the minor for loss of consortium or expenses or property damage if caused by the same wrongful
38 act;

39 (4) Personal injury or property damage to an employee or agent and a claim of the
40 employer or principal for property damage if caused by the same wrongful act;

82 ~~any other means designated in accordance with division (B)(3) of this rule. If requested by one of~~
83 ~~the parties, the testimony shall be transcribed. After putting the deponent under oath or affirmation,~~
84 ~~the officer shall record the testimony by the method designated under Civ.R. 30(B)(3). The~~
85 ~~testimony shall be recorded by the officer personally or by a person acting in the presence and~~
86 ~~under the direction of the officer.~~

87 ~~(2) Objections. All objections made~~ An objection made at the time of the examination to
88 ~~the qualifications of the officer taking the deposition, or to the manner of taking it, or to the~~
89 ~~evidence presented, or to the conduct of any party, and any other objection to the proceedings,~~
90 ~~whether to evidence, a party's conduct, to the officer's qualifications, to the manner of taking the~~
91 ~~deposition, or to any other aspect of the deposition shall be noted by the officer upon the deposition.~~
92 ~~Evidence objected to shall be taken subject to the objections~~ on the record, but the examination
93 still proceeds, the testimony taken subject to any objection. An objection shall be stated concisely
94 in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer
95 only when necessary to preserve a privilege, to enforce a limitation ordered by a court, or to present
96 a motion under Civ.R. 30(D).

97 ~~(3) Participating through written questions. In lieu~~ Instead of participating in the oral
98 examination, ~~parties~~ a party may serve written questions in a sealed envelope on the party ~~taking~~
99 ~~noticing the deposition, and require him to transmit who must deliver them to the officer, who shall~~
100 ~~propound them to the witness. The officer must ask the deponent those questions and record the~~
101 ~~answers verbatim.~~

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

103

104 Staff Notes (July 1, 2017 Amendments)

105

106 Civ.R. 30(C). Examination and cross-examination; objections.

107

108 The 2017 amendments adopt the 2007 stylistic changes to Fed.R.Civ.P. 30(c), including a
109 nonsubstantive substitution of “deponent” for “witness.” Deponents include both parties and non-
110 parties. See Civ.R. 30(A).

111

112 The amendments provide that the Rules of Evidence shall apply at a deposition, except Evid.R.
113 103 and Evid.R. 615. The Federal Rules first included this provision in 1993. With respect to the
114 exception of Evid.R. 615, the Notes of the Federal Advisory Committee included the following
115 comments which are approved and re-stated in this Staff Note:

116 “[T]he revision addresses a recurring problem as to whether other potential deponents can attend
117 a deposition. Courts have disagreed, some holding that witnesses should be excluded through
118 invocation of Rule 615 of the evidence rules, and others holding that witnesses may attend unless
119 excluded by an order under [Rule 26(c)]. The revision provides that other witnesses are not
120 automatically excluded from a deposition simply by the request of a party. Exclusion, however,
121 can be ordered under [Rule 26(c)] when appropriate; and, if exclusion is ordered, consideration

122 should be given as to whether the excluded witnesses likewise should be precluded from reading,
123 or being otherwise informed about, the testimony given in the earlier depositions. The revision
124 addresses only the matter of attendance by potential deponents, and does not attempt to resolve
125 issues concerning attendance by others, such as members of the public or press.

126
127 In adopting those the 2007 federal stylistic changes, the amendments ~~also add~~ include provisions
128 of the federal rule addressing the manner of making objections and the circumstances under which
129 an instruction not to answer a question may be given. These additional provisions are consistent
130 with the guidelines entitled: *Professionalism Dos and Don'ts: Depositions*, first published by the
131 Ohio Supreme Court's Commission on Professionalism in 2012.

132
133 The amendments also add an introductory sentence to Civ.R. 30(C), which specifies that each
134 party at the deposition may examine the deponent without regard to which party served notice or
135 called the deposition. Although this introductory sentence is not found in the current federal rule,
136 the provision is consistent with federal practice. See, *Powell v. Time Warner Cable, Inc.*, Case No.
137 2:09-CV-00600 (S.D.Ohio Nov. 2, 2010) (order partially granting motion to compel); *Smith v.*
138 *Logansport Community School*, 139 F.R.D. 637, 642 (N.D.Ind 1991).

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140
141 **RULE 33. Interrogatories to Parties**

142 (A) **Availability; procedures for use.** Any party, without leave of court, may serve
143 upon any other party up to forty written interrogatories to be answered by the party served. A
144 party serving interrogatories shall serve the party with an electronic copy of the interrogatories.
145 The electronic copy shall be reasonably useable for word processing and provided on computer
146 disk, by electronic mail, or by other means agreed to by the parties. A party who is unable to
147 provide an electronic copy of the interrogatories may seek leave of court to be relieved of this
148 requirement. A party shall not propound more than forty interrogatories to any other party without
149 leave of court. Upon motion, and for good cause shown, the court may extend the number of
150 interrogatories that a party may serve upon another party. For purposes of this rule, any subpart
151 propounded under an interrogatory shall be considered a separate interrogatory.

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

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

159 (3) Each interrogatory shall be answered separately and fully in writing under oath,
160 unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer.
161 The party upon whom the interrogatories have been served shall quote each interrogatory
162 immediately preceding the corresponding answer or objection. When the number of

163 interrogatories exceeds forty without leave of court, the party upon whom the interrogatories have
164 been served need only answer or object to the first forty interrogatories. The answers are to be
165 signed by the person making them, and the objections signed by the attorney making them. The
166 party upon whom the interrogatories have been served shall serve a copy of the answers and
167 objections within a period designated by the party submitting the interrogatories, not less than
168 twenty-eight days after the service of the interrogatories or within such shorter or longer time as
169 the court may allow.

170 **(B) Scope and use at trial.** Interrogatories may relate to any matters that can be
171 inquired into under Civ. R. 26(B), and the answers may be used to the extent permitted by the rules
172 of evidence.

173 The party calling for such examination shall not thereby be concluded but may rebut it by
174 evidence.

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Proposed Staff Note (July 1, 2017 Amendments)

178

179 Civ.R. 33(A)(2). Service of interrogatories.

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181 The rule is amended to permit service of interrogatories on parties other than the plaintiff
182 only after service of the summons and complaint upon that party and to disallow service of
183 interrogatories with service of the summons and complaint.

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185

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

188

189 **(A) Scope.** Subject to the scope of discovery provisions of Civ. R. 26(B), any party
190 may serve on any other party a request to produce and permit the party making the request, or
191 someone acting on the requesting party's behalf (1) to inspect and copy any designated documents
192 or electronically stored information, including writings, drawings, graphs, charts, photographs,
193 sound recordings, images, and other data or data compilations stored in any medium from which
194 information can be obtained that are in the possession, custody, or control of the party upon whom
195 the request is served; (2) to inspect and copy, test, or sample any tangible things that are in the
196 possession, custody, or control of the party upon whom the request is served; (3) to enter upon
197 designated land or other property in the possession or control of the party upon whom the request
198 is served for the purpose of inspection and measuring, surveying, photographing, testing, or
199 sampling the property or any designated object or operation on the property.

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

205 performing the related acts. The request may specify the form or forms in which electronically
206 stored information is to be produced, but may not require the production of the same information
207 in more than one form.

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

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212 **Proposed Staff Note (July 1, 2017 Amendments)**

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Civ.R. 34(B). Service of requests for production.

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The rule is amended to permit service of requests for production on parties other than the
217 plaintiff only after service of the summons and complaint upon that party and to disallow service
218 of requests for production with service of the summons and complaint.

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221 **RULE 36. Requests for Admission**

222 **(A) Availability; procedures for use.** A party may serve upon any other party a written
223 request for the admission, for purposes of the pending action only, of the truth of any matters
224 within the scope of Civ.R. 26(B) set forth in the request, that relate to statements or opinions of
225 fact or of the application of law to fact, including the genuineness of any documents described in
226 the request. Copies of documents shall be served with the request unless they have been or are
227 otherwise furnished or made available for inspection and copying. The request may, without leave
228 of court, be served upon the plaintiff after commencement of the action and upon any other party
229 ~~with or~~ after service of the summons and complaint upon that party. A party serving a request for
230 admission shall serve the party with an electronic copy of the request for admission. The electronic
231 copy shall be reasonably useable for word processing and provided on computer disk, by electronic
232 mail, or by other means agreed to by the parties. A party who is unable to provide an electronic
233 copy of a request for admission may seek leave of court to be relieved of this requirement.

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

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237 **Proposed Staff Note (July 1, 2017 Amendments)**

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Civ.R. 36(A). Requests for admission.

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The rule is amended to permit service of requests for admission on parties other than the
242 plaintiff only after service of the summons and complaint upon that party and to disallow service
243 of requests for admission with service of the summons and complaint.

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248 **RULE 62. Stay of Proceedings to Enforce a Judgment**

249 (A) **Stay on motion for new trial or for after judgment.** In its discretion and on such
250 conditions for the security of the adverse party as are proper, the court may, upon motion made
251 any time after judgment, stay the execution of ~~any that~~ judgment or stay any proceedings to enforce
252 the judgment pending the disposition of a motion until the time for moving for a new trial under
253 Civ.R. 59, or a motion moving for relief from a judgment or order made pursuant to Rule under
254 Civ.R. 60, or of a motion moving for judgment notwithstanding the verdict made pursuant to Rule
255 under Civ. R. 50, or filing a notice of appeal, and during the pendency of any motion under Civ.R.
256 50, Civ.R. 59, or Civ.R. 60.

257 (B) **Stay upon appeal.** When an appeal is taken the appellant may obtain a stay of
258 execution of a judgment or any proceedings to enforce a judgment by giving an adequate
259 supersedeas bond. The bond may be given at or after the time of filing the notice of appeal. The
260 stay is effective when the supersedeas bond is approved by the court.

261 (C) **Stay in favor of the government.** When an appeal is taken by this state or political
262 subdivision, or administrative agency of either, or by any officer thereof acting in his representative
263 capacity and the operation or enforcement of the judgment is stayed, no bond, obligation or other
264 security shall be required from the appellant.

265 (D) **Power of appellate court not limited.** The provisions in this rule do not limit any
266 power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency
267 of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal
268 or to make any order appropriate to preserve the status quo or the effectiveness of the judgment
269 subsequently to be entered.

270 (E) **Stay of judgment as to multiple claims or multiple parties.** When a court has
271 ordered a final judgment under the conditions stated in Rule 54(B), the court may stay enforcement
272 of that judgment until the entering of a subsequent judgment or judgments and may prescribe such
273 conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment
274 is entered.

275
276 **Proposed Staff Note (July 1, 2017 Amendments)**

277
278 Civ.R. 62(A). Stay on motion after judgment.

279
280 The rule is amended to allow a party to move to stay execution of judgment, or any
281 proceedings to enforce the judgment, at any time after entry of judgment, including before any
282 relief under Civ.R. 50, 59, or 60 is sought or an appeal is filed, as well as during the pendency of
283 any motion seeking relief under Civ.R. 50, 59, or 60.

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289 **OHIO RULES OF CRIMINAL PROCEDURE**

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291 **RULE 5. Initial Appearance, Preliminary Hearing**

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

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294 **(B) Preliminary hearing in felony cases; procedure.**

295 (1) In felony cases a defendant is entitled to a preliminary hearing unless waived in
296 writing. If the defendant waives preliminary hearing, the judge or magistrate shall forthwith order
297 the defendant bound over to the court of common pleas. Except upon good cause shown, any
298 misdemeanor, other than a minor misdemeanor, arising from the same act or transaction involving
299 a felony shall be bound over or transferred with the felony case. If the defendant does not waive
300 the preliminary hearing, the judge or magistrate shall schedule a preliminary hearing within a
301 reasonable time, but in any event no later than ten consecutive days following arrest or service of
302 summons if the defendant is in custody and not later than fifteen consecutive days following arrest
303 or service of summons if the defendant is not in custody. The preliminary hearing shall not be
304 held, however, if the defendant is indicted. With the consent of the defendant and upon a showing
305 of good cause, taking into account the public interest in the prompt disposition of criminal cases,
306 time limits specified in this division may be extended. In the absence of such consent by the
307 defendant, time limits may be extended only as required by law, or upon a showing that
308 extraordinary circumstances exist and that delay is indispensable to the interests of justice.

309 (2) At the preliminary hearing the prosecuting attorney may state orally the case for the
310 state, and shall then proceed to examine witnesses and introduce exhibits for the state. The
311 defendant and the judge or magistrate have full right of cross-examination, and the defendant has
312 the right of inspection of exhibits prior to their introduction. The hearing shall be conducted under
313 the rules of evidence prevailing in criminal trials generally.

314 (3) At the conclusion of the presentation of the state's case, defendant may move for
315 discharge for failure of proof, and may offer evidence on the defendant's own behalf. If the
316 defendant is not represented by counsel, the court shall advise the defendant, prior to the offering
317 of evidence on behalf of the defendant:

318 (a) That any such evidence, if unfavorable to the defendant in any particular, may be
319 used against the defendant at later trial.

320 (b) That the defendant may make a statement, not under oath, regarding the charge, for
321 the purpose of explaining the facts in evidence.

322 (c) That the defendant may refuse to make any statement, and such refusal may not be
323 used against the defendant at trial.

324 (d) That any statement the defendant makes may be used against the defendant at trial.

325 (4) Upon conclusion of all the evidence and the statement, if any, of the accused, the
326 court shall do one of the following:

327 (a) Find that there is probable cause to believe the crime alleged or another felony has
328 been committed and that the defendant committed it, and bind the defendant over to the court of
329 common pleas of the county or any other county in which venue appears.

330 (b) Find that there is probable cause to believe that a misdemeanor was committed and
331 that the defendant committed it, and retain the case for trial or order the defendant to appear for
332 trial before an appropriate court.

333 (c) Order the accused discharged.

334 (d) Except upon good cause shown, any misdemeanor, other than a minor
335 misdemeanor, arising from the same act or transaction involving a felony shall be bound over or
336 transferred with the felony case.

337 (5) Any finding requiring the accused to stand trial on any charge shall be based solely
338 on the presence of substantial credible evidence thereof. No appeal shall lie from such decision
339 and the discharge of defendant shall not be a bar to further prosecution.

340 (6) In any case in which the defendant is ordered to appear for trial for any offense
341 other than the one charged the court shall cause a complaint charging such offense to be filed.

342 (7) Upon the conclusion of the hearing and finding, the court or the clerk of such court,
343 shall, within seven days, complete all notations of appearance, motions, pleas, and findings on the
344 criminal docket of the court, and shall transmit a ~~transcript~~ record of the appearance docket entries,
345 together with a copy of the original complaint and affidavits, if any, filed with the complaint, the
346 journal or docket entry of reason for changes in the charge, if any, together with the order setting
347 bail and the bail including any bail deposit, if any, filed, to the clerk of the court in which defendant
348 is to appear. Such ~~transcript~~ record shall contain an itemized account of the costs accrued.

349 (8) A municipal or county court retains jurisdiction on a felony case following the
350 preliminary hearing, or a waiver thereof, until such time as a ~~transcript~~ record of the appearance,
351 docket entries, and other matters required for transmittal are filed with the clerk of the court in
352 which the defendant is to appear.

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354 **Proposed Staff Note (July 1, 2017 Amendments)**

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356 Crim. R. 5(B)(7)

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358 The term “record” has been substituted for the previous term “transcript” in describing the
359 compilation of appearance docket entries that the court or clerk of courts shall transmit in
360 connection with a felony bindover. This is not a substantive change. The previous term
361 “transcript” was potentially confusing because it was not being used in the common parlance of a
362 verbatim written record of the words actually spoken in court.

363

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365

366 **RULE 32.2 Presentence Investigation**

367 ~~In~~ Unless the defendant and the prosecutor in the case agree to waive the presentence
368 investigation report, the court shall, in felony cases the court shall, and in misdemeanor cases the
369 court may, order a presentence investigation and report before imposing community control
370 sanctions or granting probation. The court may order a presentence investigation report
371 notwithstanding the agreement to waive the report. In misdemeanor cases the court may order a
372 presentence investigation before granting probation.

373

374 **RULE 42. Capital Cases and Post-Conviction Review of Capital Cases**

375

376 **(A) Definitions.** As used in this rule:

377

378 (1) “Capital cases” means all cases in which an indictment or count in an indictment
379 charges the defendant with aggravated murder and contains one or more specifications of
380 aggravating circumstances listed in R.C. 2929.03(A).

381

382 (2) “Post-conviction review of a capital case” means any post-conviction proceedings
383 reviewing the conviction or sentence in any case in which the death penalty has been imposed,
384 other than direct appeal to the Supreme Court of Ohio.

385

386 **(B) General.**

387

388 (1) This rule shall apply to all capital cases and post-conviction review of a capital
389 case.

390

391 (2) The clerk shall accept for filing, and the court shall rule on, any properly presented
392 motion.

393

394 (3) In all proceedings involving a post-conviction review of a capital case, both of the
395 following shall apply:

396

397 (a) The court shall state specifically why each claim was either denied or granted;

398

399 (b) There shall be no page limitations or word count limitations for the petition filed
400 with the common pleas court.

401

402 **(C) Access file material.** In a capital case and post-conviction review of a capital case,
403 the prosecuting attorney and the defense attorney shall, upon request, be given full and complete
404 access to all documents, statements, writings, photographs, recordings, evidence, reports, or any
405 other file material in possession of the state related to the case, provided materials not subject to
406 disclosure pursuant to Crim.R 16(J) shall not be subject to disclosure under this rule.

407

408 **(D) Pretrial and post-trial conferences.** In a capital case and post-conviction review
409 of a capital case, the trial court shall conduct all pretrial and post-trial conferences on the record.

449 (C) **Hearing of jury**

450 In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent
451 inadmissible evidence from being suggested to the jury by any means, such as making statements
452 or offers of proof or asking questions in the hearing of the jury.

453 (D) **Plain error**

454 Nothing in this rule precludes taking notice of plain errors affecting substantial rights
455 although they were not brought to the attention of the court.

456
457

458 **OHIO RULES OF APPELLATE PROCEDURE**

459

460 **RULE 11.1 Accelerated Calendar**

461

462 (A) **Applicability.** If a court of appeals has adopted an accelerated calendar by local
463 rule, cases designated by its rule shall be placed on an accelerated calendar. The Ohio Rules of
464 Appellate Procedure shall apply with the modifications or exceptions set forth in this rule.

465

466 The accelerated calendar is designed to provide a means to eliminate delay and unnecessary
467 expense in effecting a just decision on appeal by the recognition that some cases do not require as
468 extensive or time consuming procedure as others.

469

470 In all capital cases, as defined in Crim.R. 42, the appeal of an order regarding appointment
471 of experts shall, upon request by defense counsel, be under seal and conducted ex parte and shall
472 be handled pursuant to an accelerated calendar under this rule and local rules adopting an
473 accelerated calendar.

474

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

476

477

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

479

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

490

491

492 Without prior leave of court, no initial brief of appellant or cross-appellant and no answer
493 brief of appellee or cross-appellee shall exceed thirty-five pages in length, and no reply brief shall
494 exceed fifteen pages in length, exclusive of the table of contents, table of cases, statutes and other
495 authorities cited, and appendices, if any. A court of appeals, by local rule, may adopt shorter or
496 longer page limitations. In all proceedings involving post-conviction review of a capital case, as
497 defined in Crim.R. 42, there shall be no page limitations or word count limitations.
498

499 The front covers of the briefs, if separately bound, shall contain: (1) the name of the court
500 and the number of the case; (2) the title of the case [see App. R. 11(A)]; (3) the nature of the
501 proceeding in the court (e.g., Appeal) and the name of the court below; (4) the title of the document
502 (e.g., Brief for Appellant); and (5) the names and addresses of counsel representing the party on
503 whose behalf the document is filed.
504

505 **[Existing language unaffected by the amendments is omitted to conserve space]**
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508 OHIO TRAFFIC RULES

509 RULE 16. Judicial Conduct

510
511
512
513 ~~The Code of Judicial Conduct as adopted by the Supreme Court applies to all judges and~~
514 ~~mayors.~~
515

516 It shall be the obligation of each mayor to conduct his court and his any professional and
517 personal relationships in accordance with the same standards as are required of judges of courts of
518 record. Mayors shall comply with Mayor's Court Education and Procedure Rules 3(A)(1)(f) and
519 4(A)(1)(h).

566 plaintiff(s). A copy of the complaint is attached hereto. The name and address of the plaintiff's
567 attorney is _____
568 _____
569 _____

570 _____ You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the
571 plaintiff, if he has no attorney of record, a copy of an answer to the complaint within twenty-eight
572 days after service of this summons on you, exclusive of the day of service. Your answer must be
573 filed with the Court within three days after the service of a copy of the answer on the plaintiff's
574 attorney.

575 _____
576 _____ If you fail to appear and defend, judgment by default will be rendered against you for the
577 relief demanded in the complaint.
578 _____

579 You must deliver to the Plaintiff's attorney (or the Plaintiff if not represented by an attorney)
580 a written Answer to the Complaint within 28 days; Civil Rule 5 explains the ways that you may
581 deliver the Answer (<http://www.supremecourt.ohio.gov/LegalResources/Rules/civil/Civil>
582 [Procedure.pdf](http://www.supremecourt.ohio.gov/LegalResources/Rules/civil/Civil)). You must then file a copy of the Answer with this Court within three days after
583 you serve it on the Plaintiff(s). If you fail to serve and file an Answer, the Court may enter
584 judgment against you for the relief requested in the Complaint.
585 _____

586 You may wish to hire an attorney to represent you. Because this is a civil suit, the Court
587 cannot appoint an attorney for you. If you need help to find a lawyer, contact a local bar association
588 and request assistance.
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593 _____ Clerk, Court of Common Pleas,
594 _____ County, Ohio
595 _____

596 Date: _____ By Clerk: _____
597 Deputy
598 _____

599 ***Multilingual notice:

600 _____
601 You have been named as a defendant in this Court. You must file an answer within 28 days;
602 if you fail to answer, the Court may enter judgment against you for the relief stated in the
603 Complaint. Seek assistance from both an interpreter and an attorney. Your inability to understand,
604 write, or speak English will not be a defense to possible judgment against you.
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612 **1. Spanish (US)**

613

614 ***Aviso multilingüe:

615

616 Este Tribunal lo ha declarado como acusado. Debe presentar una respuesta en un plazo de 28
617 días. Si no contesta en dicho plazo, el Tribunal podrá dictar sentencia en su contra por el amparo
618 que se detalla en la demanda. Solicite la ayuda de un intérprete y de un abogado. Su incapacidad
619 para comprender, escribir o hablar inglés no se considerará como defensa ante una posible
620 sentencia en su contra.

621

622 **2. Somali**

623

624 ***Ogeysiis luqadda badan ah:

625

626 Waxaa lagu magacaabay sida eedeysane gudaha Maxkamadan. Waa in aad ku soo gudbisaa
627 jawaab 28 maalmood gudahood; haddii aad ku guuldareysto jawaabta, Maxkamada laga yaabo in
628 ay gasho xukun adiga kaa soo horjeedo ee ka nasashada lagu sheegay Cabashada. Raadi caawinta
629 ka timid labadaba turjubaanka iyo qareenka. Karti la'aantaada aad ku fahmo, ku qoro, ama ku
630 hadasho Af Ingiriisiga ma noqon doonto difaacida xukunkaaga suuralka ah ee adiga kugu lidka
631 ah.

632

633 **3. Russian**

634

635 ***Уведомление на разных языках:

636

637 Вы были названы в качестве ответчика в данном суде. Вы должны предоставить ответ
638 в течение 28 дней; если Ваш ответ не будет получен, суд может вынести решение против
639 Вас и удовлетворить содержащиеся в жалобе требования. Воспользуйтесь услугами
640 переводчика и адвоката. Тот факт, что Вы не понимаете английскую речь и не можете
641 читать и писать по-английски, не является препятствием для возможного вынесения
642 судебного решения против Вас.

643

644 **4. Arabic**

645

646 ***ملاحظة متعددة اللغات:

647

648 لقد تم اعتبارك مدعى عليه في هذه المحكمة. يجب أن تقدم ردًا خلال 28 يومًا؛ وإذا لم تقم بالرد، فقد تصدر المحكمة حكمًا
649 ضدك بالتعويض المنصوص عليه في هذه الشكوى القضائية. اطلب المساعدة من مترجم فوري ومحام. فلن تُعد عدم قدرتك
650 على فهم اللغة الإنجليزية أو كتابتها أو تحدثها دفاعًا لك أمام الحكم المحتمل ضدك.

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658 **5. Chinese (Simplified)**

659

660 ***多語版本通知：

661

662 您在本法庭已被列为被告。您必须于 28 日内递交答辩状；如果没有递交答辩状，法
663 庭会针对诉状中声明的补救措施对您作出不利判决。请向口译人员和律师寻求帮助。您无
664 法理解、书写或说英语的情况不能作为对您可能作出不利判决的辩护理由。

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Note

669 The caption above designates the particular paper as a "SUMMONS." The particular
670 pleading or paper should contain an appropriate designation, thus: "COMPLAINT," "ANSWER,"
671 etc. A more specific designation in a caption is also appropriate, thus: "MOTION TO
672 INTERVENE AS A DEFENDANT."

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

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FORM 1. CAPTION AND SUMMONS

COURT OF COMMON PLEAS
_____ COUNTY, OHIO

_____) Case No. _____
[Street Address]) Judge _____
[City, State Zip])
Plaintiff)
v.) SUMMONS
_____)
[Street Address])
[City, State Zip])
Defendant)

To the following named defendant(s):

Name: Address:

You have been named as a defendant in this Court. The Plaintiff(s) has filed a lawsuit against you. A copy of the Complaint is attached. The Plaintiff's attorney and that attorney's address are: _____

You must deliver to the Plaintiff's attorney (or the Plaintiff if not represented by an attorney) a written Answer to the Complaint within 28 days; Civil Rule 5 explains the ways that you may deliver the Answer (<http://www.supremecourt.ohio.gov/LegalResources/Rules/civil/CivilProcedure.pdf>). You must then file a copy of the Answer with this Court within three days after you serve it on the Plaintiff(s). If you fail to serve and file an Answer, the Court may enter judgment against you for the relief requested in the Complaint.

You may wish to hire an attorney to represent you. Because this is a civil suit, the Court cannot appoint an attorney for you. If you need help to find a lawyer, contact a local bar association and request assistance.

Date: _____ Clerk: _____

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1. Spanish (US)

*****Aviso multilingüe:**

Este Tribunal lo ha declarado como acusado. Debe presentar una respuesta en un plazo de 28 días. Si no contesta en dicho plazo, el Tribunal podrá dictar sentencia en su contra por el amparo que se detalla en la demanda. Solicite la ayuda de un intérprete y de un abogado. Su incapacidad para comprender, escribir o hablar inglés no se considerará como defensa ante una posible sentencia en su contra.

2. Somali

*****Ogeysiis luqadda badan ah:**

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