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 13, 2019 on the following proposed amendments to the Ohio Rules of Civil Procedure (6, 7, 33, 34, 36, 47, 53, 54, and 56), the Ohio Rules of Criminal Procedure (4, 6, 10, 11, 12, 16, and 37), the Ohio Rules of Evidence (615 and 801), Ohio Rules of Appellate Procedure (3 and 5), the Ohio Rules of Juvenile Procedure (22, 24, 26, 29, and 34), and the Ohio Traffic Rules (Multi-Count Uniform Traffic Ticket). This round of public comment follows a previous round that ended on September 26, 2018.

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 Jesse 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 13, 2019. Please include your full name and regular mailing address in any comment submitted by e-mail. Copies of all comments submitted will be provided to each member of the Commission on the Rules of Practice and Procedure and each Justice of the Supreme Court.

Comment Deadline: Comments must be submitted no later than February 13, 2019.

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

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

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

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

In the fall of each year, the Commission submits to the Supreme Court proposed amendments to the rules of practice and procedure that it recommends take effect the following July 1. The Supreme Court then authorizes the publication of the rules for public comment. The authorization by the Court of the publication of the proposed amendments is neither an endorsement of, nor a declaration of, intent to approve the proposed amendments. It is an invitation to the judiciary, the practicing bar, and the public at large to provide thoughtful and meaningful feedback on the legal and practical effect of the proposed amendments. The public comments are reviewed by the Commission which may withdraw, amend, or resubmit all or any provision of the proposed amendments to the Supreme Court. Pursuant to Article IV, Section 5(B) of the Ohio Constitution, if the proposed amendments are to take effect by July 1, the Supreme Court is required to file the proposed amendments with the General Assembly by January 15. Amendments to the Ohio Traffic Rules do not need to be filed with the General Assembly.

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

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

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

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

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

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

The previous version of these amendments also limited the number of requests for admission to 40. Following public comment, the Commission recommends that this provision be removed.

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

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

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

Following public comment, the Commission added a staff note meant to clarify whether a juror is "dismissed" or "retained."

- *Magistrates Decisions/Orders*
(**Civ.R. 53**)

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

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

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

2. OHIO RULES OF CRIMINAL PROCEDURE

- *Pretrial Procedure and Arraignment*
(**Crim.R. 4 and 10**)

The Commission proposes an amendment to Crim.R. 4 to specify that – in misdemeanor arrests – the arresting officer may release the defendant "unless it appears that issuance of a summons will not reasonably assure the person's appearance." The current language allows issuance of a summons when it "appears reasonably calculated to assure the person's appearance."

The Commission also proposes an amendment which specifies that if a defendant has not been released on bail when appearing in court at their arraignment, then the court shall review the defendant's bail at that time.

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

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

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

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

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

Following public comment, the Commission changed the proposal to be clear that any decision issued by a court on such a request by an indigent defendant would be filed under seal.

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

The Commission proposes amendments to Crim.R. 6 that clarify certain aspects of the grand jury rule, without making true substantive changes. First, the amendment makes clear that a sign language interpreter may be present during deliberations, as set forth in Sup.R. 88.

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

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

3. OHIO RULES OF EVIDENCE

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

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

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

The Commission recommends amendments to Evid.R. 801. Under the current rule, a prior sworn statement must have been subject to ***cross-examination*** by the party against whom the statement is offered. This amendment would only require ***examination***. This change is intended to close a loophole through which a witness could testify at an ex parte hearing, later change their

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

4. OHIO RULES OF APPELLATE PROCEDURE

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

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

- *Accelerated Calendar and Cross-Appeals*
(App.R. 3)

The Commission recommends amendments to App.R. 3 so as to clarify that notices of cross-appeals need to be filed with the clerk of the trial court. This is intended to prevent confusion and an appellee from accidentally missing a filing deadline for such a cross-appeal. The amendment also fixes a loophole wherein a case could potentially be placed on the accelerated calendar *after* the expiration of the deadline to object to such a placement. This amendment ensures a party at least has the ability to object and still be in compliance with the rule.

5. OHIO JUVENILE RULES

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

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

6. OHIO TRAFFIC RULES

- *Multi-Count Uniform Traffic Ticket*

The Commission also recommends two amendments to the Multi-Count Uniform Traffic Ticket ("MUTT"), found in the Ohio Traffic Rules. The first proposed amendment comes at the request of the Ohio Department of Public Safety, which is seeking to implement a pilot program allowing the Ohio State Highway Patrol to indicate on a traffic citation if audio or video evidence

of a traffic stop is available. In order to make such a notation, the traffic rules require a change to the MUTT.

The second proposed amendment updates some language on a portion of the MUTT was never updated to match a previous amendment to Traf.R. 13. This amendment just conforms the ticket language to the language in the rule.

PROPOSED AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE

OHIO RULES OF CIVIL PROCEDURE

RULE 6. Time

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

(C) Time: Motions

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

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

(3) Modification for good cause upon motion. Upon motion of a party in an action, and for good cause, the court may reduce or enlarge the periods of time provided in Divisions (C)(1) and (C)(2) of this rule.

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

Proposed Staff Notes (2019 Amendment)

Division 6(C)

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

Division (C)(1)

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

Division (C)(2)

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

Division (C)(3)

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

RULE 7. Pleadings and Motions

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

(B) Motions

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

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

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

Proposed Staff Notes (2019 Amendment)

Division (B)(2)

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

RULE 33. Interrogatories to Parties.

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

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

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

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

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

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

Proposed Staff Note (2019 Amendment)

Division (A)

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

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

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

(B) Procedure. Without leave of court, the request may be served upon the plaintiff after commencement of the action and upon any other party after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual

item or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced, but may not require the production of the same information in more than one form. The party serving the request shall serve an electronic copy of the request on a shareable medium and in an editable format by electronic mail, or by other means agreed to by the parties. A party who is unable to provide an electronic copy of the interrogatories may seek leave of court to be relieved of this requirement.

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

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

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

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

Proposed Staff Notes (2019 Amendment)

Division (B)

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

RULE 36. Requests for Admission.

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

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

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

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

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

Proposed Staff Notes (2019 Amendment)

Division (A)

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

RULE 47. Jurors.

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

(D) Alternate Jurors

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

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

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

Proposed Staff Note (2019 Amendment)

Division (D)

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

The language of the existing rule addressing the selection and powers of alternate jurors, including the language relating to the procedure for selecting alternate jurors and the use of peremptory challenges in the selection of alternate jurors, is moved, unchanged, to Division (D)(1).

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

Retention. A retained alternate juror has not been discharged. A retained (i.e. not "discharged") alternate juror continues to be subject to the court's instructions and admonitions, and thus may not discuss the case with anyone "until that alternate replaces a juror or is discharged." The rule does not address whether a "retained" alternate juror may be free to leave — a matter left to the court's discretion — but good practice suggests that the court ensure that a retained alternate juror remain readily available to appear before the court to replace an alternate juror if necessary.

Discharge. "Discharge" occurs when the court does not retain, but instead "discharges" an alternate juror. A discharged (i.e. not "retained") alternate juror cannot be recalled as a juror.

RULE 53. Magistrates.

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

(D) Proceedings in Matters Referred to Magistrates.

(1) *Reference by court of record.*

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

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

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

(a) *Magistrate's order.*

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

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

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

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

(a) *Magistrate's decision.*

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

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

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

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

Proposed Staff Notes (2019 Amendments)

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

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

RULE 54. Judgments; Costs.

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

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

Proposed Staff Notes (2019 Amendment)

Division (A)

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

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

RULE 56. Summary Judgment.

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

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

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

Proposed Staff Notes (2019 Amendment)

Division (C)

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

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

OHIO RULES OF CRIMINAL PROCEDURE

RULE 4. Warrant or Summons; Arrest

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

(F) Release after arrest. In misdemeanor cases where a person has been arrested with or without a warrant, the arresting officer, the officer in charge of the detention facility to which the person is brought or the superior of either officer, without unnecessary delay, may release the arrested person by issuing a summons ~~when~~ unless it appears that issuance of a summons ~~appears~~ will not reasonably ~~calculated to~~ assure the person's appearance. The officer issuing such summons shall note on the summons the time and place the person must appear and, if the person was arrested without a warrant, shall file or cause to be filed a complaint describing the offense. No warrant or alias warrant shall be issued unless the person fails to appear in response to the summons.

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

RULE 6. The Grand Jury

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

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

(1) Challenges. The prosecuting attorney, or the attorney for a defendant who has been held to answer in the court of common pleas, may challenge the array of grand jurors or an individual grand juror on the ground that the grand jury or individual grand juror was not selected,

drawn, or summoned in accordance with the statutes of this state. Challenges shall be made before the administration of the oath to the grand jurors and shall be tried by the court.

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

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

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

(E) Secrecy of proceedings and disclosure. Deliberations of the grand jury and the vote of any grand juror shall not be disclosed. Disclosure of other matters occurring before the grand jury may be made to the prosecuting attorney for use in the performance of his duties only pursuant to this rule. A grand juror, prosecuting attorney, interpreter, ~~stenographer, operator of a recording device~~, court reporter, or typist who transcribes recorded testimony, may disclose other matters occurring before the grand jury, ~~other than the deliberations of a grand jury or the vote of a grand juror, but may disclose such matters~~ only when so directed by the court preliminary to or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No grand juror, officer of the court, or other person shall disclose that an indictment has been found against a person before such indictment is filed and the case docketed. The court may direct that an indictment shall be kept secret until the defendant is in custody or has been released pursuant to Rule 46. In that event the clerk shall seal the indictment, the indictment shall not be docketed by name until after the apprehension of the accused, and no person shall disclose the finding of the indictment except when necessary for the issuance of a warrant or summons. No obligation of secrecy may be imposed upon any person except in accordance with this rule.

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

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

(H) Alternate grand jurors. The court may order that ~~not more than five~~ grand jurors, in addition to the regular grand jury, be called, impaneled and sit as alternate grand jurors. Unless provided otherwise by local court rule, the number of alternate grand jurors shall not exceed five. Alternate grand jurors, in the order in which they are called, shall replace grand jurors who, prior to the time the grand jury votes on an indictment, are found to be unable or disqualified to perform their duties. Alternate grand jurors shall be drawn in the same manner, shall have the same qualifications, shall be subjected to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular grand jurors. Alternate grand jurors may sit with the regular grand jury, but shall not be present when the grand jury deliberates and votes.

Proposed Staff Notes (2019 Amendment)

Crim.R. 6

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

RULE 10. Arraignment

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

(A) Arraignment procedure. Arraignment shall be conducted in open court, and shall consist of reading the indictment, information or complaint to the defendant, or stating to the defendant the substance of the charge, and calling on the defendant to plead thereto. The defendant may in open court waive the reading of the indictment, information, or complaint. The defendant

shall be given a copy of the indictment, information, or complaint, or shall acknowledge receipt thereof, before being called upon to plead. If a defendant appears in court and has not yet been released on bail, the court shall review the defendant's bail at arraignment.

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

RULE 11. Pleas, Rights Upon Plea

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

(F) Negotiated Plea ~~in Felony~~ Cases. When ~~in felony cases,~~ a negotiated plea of guilty or no contest to one or more offenses charged or to one or more other or lesser offenses is offered, the underlying agreement upon which the plea is bases shall be stated on the record in open court. To the extent required by Article I, Section 10a of the Ohio Constitution or by the Revised Code, before accepting the plea, the trial court shall allow an alleged victim of the crime to raise any objection to the terms of the plea agreement.

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

Proposed Staff Notes (2019 Amendment)

Crim.R. 11(F)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed Staff Notes (2019 Amendment)

Crim.R. 12(L)

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

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

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

(L) Regulation of discovery.

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

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

(3) In cases in which the attorney-client relationship is terminated prior to trial for any reason, any material that is designated "counsel only", or limited in dissemination by protective

order, must be returned to the state. Any work product derived from said material shall not be provided to the defendant.

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

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

Proposed Staff Notes (2019 Amendment)

Crim.R. 16(L)

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

RULE 37. Notice to Victims; Victim's Rights

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

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

Proposed Staff Notes (2019 Amendment)

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

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

OHIO RULES OF EVIDENCE

RULE 615. Separation and Exclusion of Witnesses.

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

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

(1) a party who is a natural person;

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

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

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

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

Proposed Staff Note (2019 Amendment)

Evid.R. 615

The amendment to Evid.R. 615 was made to comply with the 2017 amendment to Article I, Section 10a of the Ohio Constitution, also known as Marsy's Law.

RULE 801 Definitions

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

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

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

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

Proposed Staff Notes (2019 Amendment)

Evid.R. 801(D)(1)

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

OHIO RULES OF APPELLATE PROCEDURE

RULE 3. Appeals as of Right – How Taken

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

(G) Docketing Statement

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

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

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

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

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

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

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

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

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

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

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

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

Proposed Staff Note (July 1, 2019 Amendment)

App.R. 3

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

RULE 5. Appeals by Leave of Court in Criminal Cases

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

(C) Motion by prosecution for leave to appeal. When leave is sought by the prosecution from the court of appeals to appeal ~~a judgment or~~ an order of the trial court, a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the ~~judgment and~~ order sought to be appealed (or, if that order is not a final order, within thirty days of the final order into which it merges) and shall set forth the errors that the movant claims occurred in the proceedings of the trial court. The motion shall be accompanied by affidavits, or by the parts of the record upon which the movant relies, to show the probability that the errors claimed did in fact occur, and by a brief or memorandum of law in support of the movant's claims. Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App. R. 3 and file a copy of the notice of appeal in the court of appeals. The movant also shall furnish a copy of the motion and a copy of the notice of appeal to the clerk of the court of appeals who shall serve the notice of appeal and a copy of the motion for leave to appeal upon the attorney for the defendant who, within thirty days from the filing of the motion, may file affidavits, parts of the record, and brief or memorandum of law to refute the claims of the movant.

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

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

Proposed Staff Notes (July 1, 2019 Amendment)

The amendment to App.R. 5(C) regarding the prosecution's motion for leave to appeal an order that was not final when it was made, but subsequently merged into a final order, is intended to address only the required timing of such a motion. The amendment does not affect the threshold determination of whether an order is, in fact, a final order, which is determined with reference to the relevant Ohio statutes.

The additional amendments to App.R. 5(C) and 5(D)(1) remove references to a "judgment or order" and a "judgment and order," instead referring solely to an "order." These amendments bring the rules into conformity with the language of App.R. 4(A), which was similarly amended in 2014. As noted in the July 1, 2014 Staff Note to App.R. 4, these changes are not substantive.

OHIO RULES OF JUVENILE PROCEDURE

RULE 22. Pleadings and Motions; Defenses and Objections

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

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

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

RULE 24. Discovery

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

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

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

RULE 26. Rights of Alleged Victims of Crime

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

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

RULE 29. Adjudicatory Hearing

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

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

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

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

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

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

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

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

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

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

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

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

RULE 34. Dispositional Hearing

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

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

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

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

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

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

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