PROPOSED AMENDMENTS TO THE

RULES OF PRACTICE AND PROCEDURE IN OHIO COURTS

Comments requested: The Supreme Court of Ohio will accept public comments until November 22, 2017, on the following proposed amendments to the Ohio Rules of Civil Procedure (3, 4.4, 5, 11, 35, 50, 59, 75, and Proposed Civil Form), the Ohio Rules of Criminal Procedure (4 and 6), the Ohio Rules of Evidence (807), and the Ohio Rules of Juvenile Procedure (34).

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

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

Comment Contact: Comments on the proposed amendments must be submitted in writing to Jess Mosser, Policy Counsel, Supreme Court of Ohio, 65 South Front Street, 7th Floor, Columbus, Ohio 43215-3431 or Jesse.Mosser@sc.ohio.gov and received no later than November 22, 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 November 22, 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. 3(B)—Allows "Limited Scope of Appearance" for Attorneys

The Commission recommends amendments to Civ.R. 3(B) which allows an attorney to enter a limited appearance in a case. The amendment requires the attorney to specifically note the scope of their representation in the notice of appearance. Additionally, if such a notice is filed the attorney may easily end their involvement in the case – without leave of court and after their agreed upon tasks are completed. This proposed amendment comes from recommendations of the Supreme Court of Ohio's Task Force on Access to Justice.

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

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

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

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

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

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

Civ.R. 35 —Allowing Recording Physical and Mental Examinations

The Commission recommends amendments to Civ.R. 35 so as to allow for a party to record a physical or mental examination, if such an examination is requested by another party. Under the current rule, a party may be ordered to submit to an examination but cannot record what occurs at that examination. As such, any testimony of the examining physician cannot be tested for accuracy. This proposed amendment came from the procedural rules used in other states and is intended to provide a fair mechanism for settling disputed facts in regards to any examination.

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

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

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

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

Civ.R. 75 —Modernization of Language

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

2. OHIO RULES OF CRIMINAL PROCEDURE

Crim.R. 4—Allowing Service by Commercial Carrier

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

Crim.R. 6—Reforming the Processes Used to Record Grand Jury Proceedings and Who May Access Those Records

The Commission proposes amendments to Crim.R. 6 that would address various pieces of the grand jury system. First, these amendments would further specify exactly which grand jury

functions – such as testimony, questions, or legal advice to jurors – is considered part of the "grand jury record." The amendments also clarify which office must keep those records.

The amendments would also establish a procedure for obtaining grand jury records, but leave to the general assembly the question as to whom may be permitted to ask for them. In the event that a grand jury does not return an indictment, any person **"authorized to do so by the revised code"** may request that the records from that case be released. Should the court determine the request meets certain benchmarks set forth in the rule, a hearing will be held as to the release of the records. The prosecutor, as well as the subject of the grand jury investigation and any witness who testified, shall have the opportunity to be heard at this hearing, and it will be conducted in camera. At such a hearing, the court will consider various factors set forth by the rule before making a decision on the release of the records.

The most important change between this rule and the version proposed last year is that this rule makes clear that the General Assembly would determine which persons – if any – would have the ability to even request grand jury records. The Commission had concerns that allowing access to such records would create a substantive right, and thus be outside of the purview of the Criminal Rules. While the Commission acknowledges there is uncertainty as to whether granting access to these records affects a substantive right, it opted to propose leaving such a decision in the hands of the general assembly.

3. OHIO RULES OF EVIDENCE

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

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

4. OHIO JUVENILE RULES

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

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

PROPOSED AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE

OHIO RULES OF CIVIL PROCEDURE

RULE 3. Commencement of Action; Venue

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

(B) Limited Appearance by Attorney. An attorney's role may be limited in scope if that scope is specifically described in a "Notice of Limited Appearance" filed and served prior to any such appearance. The attorney's limited appearance terminates without the necessity of leave of court, upon the attorney filing a "Notice of Completion of Limited Appearance." No entry by the court is necessary for the termination of the limited appearance to take effect.

(C) Venue: where proper.

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed Staff Note (July 1, 2018 Amendment)

New Division (B): Limited Appearance by Attorney.

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

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

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

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

RULE 4.4 Process: Service by Publication

(A) Residence unknown.

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

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

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

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

(2) Service by Publication by Posting and Mail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed Staff Notes (July 1, 2018 Amendment)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

• The requirement of a poverty affidavit is eliminated.

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

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

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

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

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

Division (B). Residence known.

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

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

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

(B) Service: how made.

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

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

Proposed Staff Note (July 1, 2018 Amendment)

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

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

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

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

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

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

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

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

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

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

Proposed Staff Note (July 1, 2018 Amendment)

Notice of Limited Appearance.

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

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

RULE 35. Physical and Mental Examination of Persons

(A) ~~Order for examination~~ Examination.

(1) When the ~~mental or~~ physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, a party may request an examination of the person without leave of court by issuing a notice setting forth the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The party to be examined must serve a response which either consents to the proposed examination or states a valid objection. If the parties cannot agree upon the person or persons by whom the examination is to be made, the court shall specify such person or persons.

(2) Where a mental condition of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit ~~himself~~ to a ~~physical or~~ mental examination or to produce for such examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(3) The examiner's oral interrogation of the examinee must be limited to matters specifically relevant to the scope of the examination.

(4) The examinee may record the examination by audio or video means. A third party may be present to perform the recording, but must do so in an unobtrusive manner and without interjecting in any way. A copy of any recording of the examination must be provided to a requesting party upon payment of reasonable costs for copying and delivery.

(B) Examiner's report.

(1) If requested by the party against whom an order is made under Rule 35(A) or the person examined, the party causing the examination to be made shall deliver to such party or person a copy of the detailed written report submitted by the examiner to the party causing the examination to be made. The report shall set out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or, thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that ~~he~~ such party is unable to obtain it. The court on motion may make an order against a party to require delivery of a report on such terms as are just. If an examiner fails or refuses to make a report, the court on motion may order, at the expense of the party causing the examination, the taking of the deposition of the examiner if ~~his~~ the examiner's testimony is to be offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege ~~he~~ that party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine ~~him~~ that party in respect of the same mental or physical condition.

(3) This ~~subdivision~~ division, Civ.R. 35(B), applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise.

Proposed Staff Note (July 1, 2018 Amendment)

Division (A): Examination.

The 2018 amendments to division (A) of the rule are modeled on provisions of the rules of other states relating to physical and mental examinations of parties.

The division is amended is permit examination of a party's physical condition upon notice, with a requirement for a response either consenting or presenting an objection. If the parties cannot agree on the person or persons to make the examination, the court makes that designation.

The requirement in the existing Ohio rule for a court order remains the same for examination of a party's mental condition.

The division is further amended to (1) limit an examiner's oral interrogation to matters specifically relevant to the scope of examination, (2) permit the examinee to record the examination by audio and video means, and (3) require that any recording be provided to a requesting party.

Division (B): Examiner's Report.

The 2018 amendments also make nonsubstantive gender and citation format changes to division (B) of the rule.

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

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

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

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

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

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

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

Proposed Staff Note (July 1, 2018 Amendment)

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

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

RULE 59. New Trials and Other Post-Trial Motions

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

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

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

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

Proposed Staff Note (July 1, 2018 Amendment)

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

The amendment makes two substantive changes.

First, it provides that if the clerk fails to serve the parties with notice of a judgment in the three-day period contemplated by Civ.R. 58(B), the time to serve a post-trial motion for judgment in favor of the movant does not begin to run until after the clerk does so. The purpose of the amendment is to avoid the harsh result that otherwise can occur if a would-be movant does not receive notice of the judgment. *See, e.g., Wing v. Haaff*, 1st Dist. Hamilton No. C-160257, 2017-Ohio-8258. This amendment brings the timing of post-trial motions under Civ.R. 59 in line with the timing of a notice of appeal in civil cases under App.R. 4(A)(3).

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

RULE 75. Divorce, Annulment, and Legal Separation Actions

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

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

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

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

Proposed Staff Note (July 1, 2018 Amendment)

Division (N): Temporary Orders.

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

OHIO RULES OF CRIMINAL PROCEDURE

RULE 4. Warrant or Summons; Arrest

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

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

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

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

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

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

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

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

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

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

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

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

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, ~~plus not more than five~~ and a number of alternates as provided in division (G) 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 jurors or an individual juror on the ground that the grand jury or individual 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 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 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 jurors to be ~~foreman~~ foreperson and one of the 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 juror designated by ~~him~~ the foreperson shall keep a record of the number of 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~~ for inclusion with the record of the proceedings filed pursuant to division (I)(2) of this rule. The record of concurrence shall not be made public except ~~on order of the court~~ as provided in division (J) of this rule. 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 jurors 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. A grand juror, prosecuting attorney, interpreter, stenographer, operator of a recording device, or typist who transcribes recorded testimony, may disclose 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 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 jurors do not concur in finding an indictment, the ~~foreman~~ foreperson shall so report to the court forthwith.

~~(G)~~(F) 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 juror either temporarily or

permanently, and in the latter event the court may impanel another eligible person in place of the juror excused.

~~(H)~~**(G) 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 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.

(H) Secrecy of matters occurring before the grand jury.

(1) General. Except as provided in divisions (H)(2) through (4) and (J)(1) through (3) of this rule, matters occurring before a grand jury shall not be disclosed.

(2) Disclosure by prosecuting attorney. Matters occurring before a grand jury, other than the deliberations of the grand jury and the vote of a juror, may be disclosed by the prosecuting attorney for use in the performance of the duties of the prosecuting attorney.

(3) Disclosure by direction or permission of the court. A grand juror, prosecuting attorney, interpreter, court reporter, operator of a recording device, or typist who transcribes recorded testimony may disclose matters occurring before the grand jury, other than the deliberations of the grand jury and the vote of a juror, when directed by the court in either of the following instances:

(a) Preliminary to or in connection with a judicial proceeding;

(b) 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.

(4) Disclosure of indictment. A juror, officer of the court, or other person shall not disclose that an indictment has been found against a person before the indictment is filed and the case docketed pursuant to division (E) of this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has been released pursuant to Crim.R. 46. No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(I) Record of the Grand Jury Proceedings.

(1) Creation.

(a) A court reporter or other person designated by the court shall prepare a record of the grand jury proceedings. The record shall consist of a recording of the proceedings prepared

by stenographic means, phonogramic means, photographic means, audio electronic recording devices, or video recording systems. The record shall include all of the following information:

(i) The name and number of the proceedings;

(ii) The charge to the grand jury;

(iii) The names of witnesses appearing before the grand jury;

(iv) Instructions given or statements made by the court and the prosecuting attorney;

(v) Each question asked of and response given by a witness;

(vi) Statements or questions made by a juror during the proceeding, provided the name or identity of the juror shall not be recorded.

(b) The record of the grand jury proceedings shall not include a recording of the deliberations of the grand jury, the vote of individual jurors, or the names of the jurors.

(2) Filing. The court reporter or other person designated by the court shall file the record of the grand jury proceedings under seal with the clerk of the court after the conclusion of the proceedings.

(J) Release of the Record of Grand Jury Proceedings.

(1) Public access exemption. The record of the grand jury proceedings shall be exempt from public access pursuant to Sup.R. 44 through 47 and not released, except as provided in divisions (J)(2) and (3) of this rule.

(2) Release to prosecuting attorney. A clerk of the court shall release the record of the grand jury proceedings or portions thereof to the prosecuting attorney for use in the performance of the duties of the prosecuting attorney, provided the prosecuting attorney shall not release the record or portions thereof unless ordered or directed otherwise by a court.

(3) Other release.

(a) After the record of the grand jury proceedings in which a no-true bill was returned or the proceedings concluded without an indictment is filed with a clerk of the court pursuant to division (I)(2) of this rule, any person authorized to do so by the Revised Code may file a written petition seeking the release of the record or portions thereof of the proceedings in which a no-true bill was returned or the proceedings concluded without an indictment. The petition shall state with particularity the reason disclosure is required under division (J)(3)(e) of this rule and shall be filed under seal.

(b) If the prosecutor sought to indict two or more suspects in the grand jury proceedings for the same offense or offenses and at least one suspect is indicted, the court shall not consider

the petition until the offense or offenses have been resolved by dismissal; plea, including a plea to a lesser offense; finding of guilt; or acquittal.

(c) If the court finds the petition does not meet the requirements of division (J)(3)(a) of this rule, the court shall deny the petition.

(d) If the court finds the petition meets the requirements of division (J)(3)(a) of this rule, the court shall schedule a hearing on the petition. The court shall notify the requestor and the prosecuting attorney. The prosecuting attorney shall then provide notice of the hearing to any subject of the grand jury proceeding, any person identified as a victim of any criminal offense that was the subject of the grand jury investigation, and any witness who has testified before the grand jury; such notice shall include advising the subject and witnesses of his or her right, personally or through counsel, to be present at the hearing on the petition. Notice shall be given via one or more of the means of service prescribed in Civ.R. 5. The prosecutor shall advise the court as to whether notice has been successfully effected via a certificate of service that will be filed ex parte and under seal at least five business days before the scheduled hearing. The court shall hold the hearing in camera so as to prevent unnecessary disclosure of a matter occurring before the grand jury. The record of the in camera proceedings shall be filed by the court reporter under seal with the clerk of court at the conclusion of the proceedings. The record of the in camera proceedings shall be exempt from public access pursuant to Sup.R. 44 through 47. The record of the in camera proceedings shall not be released other than as a sealed transmission to the court of appeals in the event the decision to disclose or not disclose under this rule is appealed.

(e) Following the hearing, the court may order release of the record or portions thereof if it finds by clear and convincing evidence that each of the following conditions are met:

(i) The presumption of secrecy is outweighed by a substantial public interest in disclosure and transparency;

(ii) A significant number of members of the general public in the county in which the grand jury was drawn and impaneled are currently aware that a criminal investigation was conducted in connection with the subject matter of the grand jury proceedings;

(iii) A significant number of members of the general public in the county in which the grand jury was drawn and impaneled are currently aware of the identity of the suspect in the grand jury proceedings.

(f) Prior to releasing the record or portions thereof, the court shall give the prosecuting attorney a reasonable opportunity to request redaction of any information the release of which could do any of the following:

(i) Identify grand jurors;

(ii) Endanger the health, safety, or welfare of witnesses appearing before the grand jury, the members of the grand jury, other persons who are part of the proceedings, or other persons who may be endangered by the release of the record;

(iii) Compromise an ongoing criminal investigation or other criminal proceeding that is not yet public;

(iv) Alert the suspect in a grand jury investigation of that investigation or the existence of an indictment not yet perfected;

(v) Create a miscarriage of justice;

(vi) Prejudice the right of a co-defendant to a fair trial.

(g) The court may charge to the requestor its actual costs, as defined by Sup.R. 44(A), incurred in releasing the record of the grand jury proceedings or portions thereof. The court may require a deposit of the estimated actual costs.

OHIO RULES OF EVIDENCE

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

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

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

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

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

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

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

Proposed Staff Notes (July 1, 2018 Amendment)

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

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

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

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

OHIO RULES OF JUVENILE PROCEDURE

RULE 34. Dispositional Hearing

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

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

(1) Place the child in protective supervision;

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

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

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

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

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

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

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

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

Proposed Staff Note (July 1, 2018 Amendment)

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

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

LIMITED SCOPE REPRESENTATION AGREEMENT

TO THE CLIENT: THIS IS A LEGALLY BINDING CONTRACT. PLEASE READ IT CAREFULLY AND MAKE CERTAIN THAT YOU UNDERSTAND ALL OF THE TERMS AND CONDITIONS. YOU MAY TAKE THIS CONTRACT HOME WITH YOU, REVIEW IT WITH ANOTHER ATTORNEY IF YOU WISH. AND ASK ANY QUESTIONS YOU MAY HAVE BEFORE SIGNING.

EMPLOYMENT OF A LAWYER FOR LIMITED SCOPE REPRESENTATION REQUIRES THAT THE LAWYER AND CLIENT CAREFULLY AND THOROUGHLY REVIEW THE DUTIES AND RESPONSIBILITIES EACH WILL ASSUME. ANY LIMITED REPRESENTATION AGREEMENT SHOULD DESCRIBE, IN DETAIL, THE LAWYER'S DUTIES IN THE CLIENT'S INDIVIDUAL CASE.

To help you in litigation, you and a lawyer may agree that the lawyer will represent you in the entire case, or only in certain parts of the case. "Limited representation" occurs if you retain a lawyer only for certain parts of the case. When a lawyer agrees to provide limited scope representation in litigation, the lawyer must act in your best interest and give you competent help. However, when a lawyer and you agree that the lawyer will provide only limited help,

- the lawyer DOES NOT HAVE TO GIVE MORE HELP than the lawyer and you agreed.
- the lawyer DOES NOT HAVE TO help with any other part of your case.

Date: _____

1. CLIENT,_____, retains LAWYER, _____

   to perform limited legal services only in the following matter:

2. Client seeks only the following services from Lawyer (check appropriate box):

   - ☐ Legal advice: office visits, telephone calls, fax, mail, e-mail
     - ☐ This is a one time consultation.
   - ☐ Advice about availability of alternative means to resolving the dispute, including mediation and arbitration including helping you prepare for mediation or arbitration.
   - ☐ Evaluation of client self-diagnosis of the case and advising client about legal rights and responsibilities.
   - ☐ Guidance and procedural information for filing or serving court documents.
   - ☐ Review pleadings and other documents prepared by Client.
   - ☐ Review pleadings and other documents prepared by opposing party/counsel.
   - ☐ Suggest documents for you to prepare.
   - ☐ Draft pleadings, motions, and other documents
     List the documents to be prepared:_____
   - ☐ Factual investigation: contacting witnesses, public record searches, in-depth interview of client.
     If checked Client understands that Lawyer will not make any independent investigation of the facts and is relying entirely on Client's limited disclosure of the facts given the duration of the limited services provided

☐ Assistance with computer support programs.
List the programs to be used_____

☐ Legal research and analysis.
List the issues to be researched and analyzed:
_____

☐ Evaluate settlement options.

☐ Prepare discovery documents such as: interrogatories, and requests for document production.
List the discovery documents to be prepared:_____

☐ Help you prepare for depositions.

☐ Planning for negotiations.

☐ Planning for court appearances.

☐ Standby telephone assistance during negotiations or settlement conferences.

☐ Referring Client to expert witnesses, other counsel or other service providers.

☐ Counseling Client about an appeal.

☐ Procedural assistance with an appeal and assisting with substantive legal argument in an appeal.

☐ Provide preventive planning and/or schedule legal check-ups.

☐ Representing you in Court but only for the following specific matters:
_____

☐ Other: _____
_____

3. Client shall pay the attorney for those limited services as follows (check agreed options):

☐ Hourly Fee. Client agrees to pay Lawyer for the agreed limited services at an hourly rate. The current hourly fee charged by Lawyer or Lawyer's law firm for services under this agreement is as follows:

i. Lawyer: $_____
ii. Associate: $_____
iii. Paralegal: $_____
iv. Law Clerk: $_____

Unless a different fee arrangement is established in clause "b" of this paragraph, the hourly fee shall be payable at the time of the service. Time will be charged in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour.

☐ Flat Fee. Client will pay Lawyer a flat fee for the limited services listed of $_____

☐ Retainer/Payment from Deposit. Client will pay to Lawyer a retainer/deposit of $_____, to be received by Lawyer on or before_____, and to be applied against attorney fees and costs incurred by Client. This amount will be deposited by Lawyer in attorney trust account. Client authorizes Lawyer to withdraw funds from the trust account to pay attorney fees and costs as they are incurred by client. The deposit is refundable. If, at the termination of services under this agreement, the total amount incurred by client for attorney fees and costs is less than the amount of the deposit, the difference will be refunded to client. If the deposit is not enough to pay for the services provided by the attorney, Client shall pay any additional costs within thirty days of billing.

☐ Costs. Client shall pay Lawyer all out-of-pocket costs incurred in connection with this agreement, including long distance telephone and fax costs, photocopy expense, postage, filing fees, investigation fees, deposition fees, and the like unless paid directly by client. Lawyer will not advance costs to third parties on Client's behalf and Lawyer will not pay filing fees, court costs, or other costs to any court unless specifically requested by Client and agreed upon in advance by Attorney. Advances will be repaid to Lawyer in addition to any attorney's fee charged as set forth above. Lawyer may request that the amount to be advanced or paid on behalf of client be paid to Lawyer before any payment is made to a third party.

4. Lawyer representation begins with the signing of this Agreement and it terminated at the completion of the services requested and identified above or, whichever happens first.

5. Additional Services/Representation: Lawyer and Client may later determine that the Lawyer should provide additional limited services or assume full representation. Lawyer has no further obligation to Client after completing the above described limited legal services unless and until both Lawyer and Client enter into another written representation agreement. Lawyer may decline to provide additional services.

   a. If Lawyer agrees to provide additional services, those additional service should be specifically listed in an amendment to this agreement, signed and dated by both the Lawyer and Client.

   b. If Lawyer and Client agree that Lawyer will serve as Client's attorney of record on all matters related to handling Client's case, Client and Lawyer should indicate that agreement in an amendment to this agreement, signed and dated by both the Lawyer and Client.

   c. NEITHER LAWYER NOR CLIENT SHOULD RELY ON VERBAL DISCUSSIONS OR VERBAL AGREEMENTS WHEN CHANGING THE TERMS OF THE LAWYER'S RESPONSIBILITY FOR REPRESENTATION.

6. If any dispute between Client and Lawyer arises under this agreement concerning the payment of fees, Client and Lawyer will submit the dispute for fee dispute resolution.

7. Client has read this Limited Scope Representation Agreement and understands what it says. Client agrees that the legal services specified above are the only legal help Lawyer will provide. Client understands and agrees that:

   - the Lawyer who is helping me with these services is not my lawyer for any other purpose and does not have to give me any more legal help;
   - Lawyer is not promising any particular outcome;
   - because of the limited services to be provided. Lawyer has limited his or her investigation of the facts as set out in specifically in this agreement;
   - if Lawyer goes to court with me, Lawyer does not have to help me afterwards, unless we both agree in writing.

Client understands that it is important that Lawyer, the opposing party and the court handling my case be able to reach me at this address. I therefore agree that I will inform Lawyer or any Court and opposing party, if applicable, of any change in my permanent address or telephone number.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

Client	Lawyer
_____	_____
Printed Name:_____	Firm: _____
Address:_____	Address: _____
_____	_____
Phone:_____	Phone:_____