AMENDMENTS TO THE OHIO RULES OF PRACTICE AND PROCEDURE

The following amendments to the Ohio Rules of Civil Procedure (4, 4.1, 4.7, 16, 26, 53, 73, and Proposed Civil Form), the Ohio Rules of Criminal Procedure (19 and 46), the Ohio Rules of Evidence (601, proposed 810, and 902), Ohio Rules of Appellate Procedure (3, 19, and 21), and the Ohio Rules of Juvenile Procedure (3, 4, and 42). The Court is also seeking public comment on changes to the Model Uniform Traffic Ticket, found in the Ohio Traffic Rules. The history of these amendments is as follows:

October 7, 2019 First publication for public comment (ENDING NOV. 6, 2019)

Key to Adopted Amendments:

1. Unaltered language appears in regular type. Example: text

2. Language that has been deleted appears in strikethrough. Example: ~~text~~

3. New language that has been added appears in underline. Example: <u>text</u>

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

Comments requested: The Supreme Court of Ohio will accept public comments until September 26, 2018 on the following proposed amendments to the Ohio Rules of Civil Procedure (4, 4.1, 4.7, 16, 26, 53, 73, and Proposed Civil Form), the Ohio Rules of Criminal Procedure (19 and 46), the Ohio Rules of Evidence (601, proposed 810, and 902), Ohio Rules of Appellate Procedure (3, 19, and 21), and the Ohio Rules of Juvenile Procedure (3, 4, and 42). The Court is also seeking public comment on changes to the Model Uniform Traffic Ticket, found in the Ohio Traffic Rules.

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, Interim Judicial and Legislative Affairs 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 6, 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 November 6, 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.

Once the proposed amendments are filed with the General Assembly they are published by the Supreme Court for a second round of public comment. The Court's authorization of a second round of publication for public comment is neither an endorsement of, nor a declaration of intent to approve the proposed amendments. As with the first round of publication, it is an approval inviting the judiciary, the practicing bar, and the public at large to provide thoughtful and meaningful feedback on the legal and practical effects of the proposed amendments. Once the second round of public comments is ended, the comments are reviewed by the Commission which may withdraw, amend, or resubmit all or any provision of the proposed amendments to the Supreme Court for final consideration.

Pursuant to Article IV, Section 5(B) of the Ohio Constitution, the Supreme Court has until April 30 of each year to accept all or any provision of the proposed amendments, and file with the General Assembly the amendments which the Court approves. The General Assembly has until June 30 to issue a concurrent resolution of disapproval for all or any portion of a proposed amendment the Supreme Court has proposed. If a concurrent resolution of disapproval is not issued by that date, the proposed amendments become effective July 1.

Below is a summary of the proposed amendments. In addition to the substantive amendments, nonsubstantive grammar and gender-neutral language changes are made throughout any rule that is proposed for amendment.

Summary

1. OHIO RULES OF CIVIL PROCEDURE

- *Waiver of Service*
(**Civ.R. 4, 4.1, and 4.7**)

The Commission recommends this series of amendments in order to implement a waiver of service provision, as is used in the Federal Rules. Under this scheme, defendants who voluntarily waive service will be given an extended time to file an answer. Waiver of service does *not* waive any objection to jurisdiction or venue. Parties that refuse to waive service without good cause may be held responsible for paying the costs of obtaining service.

As noted above, a similar system is utilized in the federal system and a majority of states utilize some type of incentivized waiver system. The proposal for the Ohio rules does limit this process to civil actions filed in Common Pleas Court.

- *Discovery*
(**Civ.R. 16 and 26**)

The Commission recommends this series of amendments in order to bring the Ohio rules for discovery closer in line with the corresponding federal rules. These proposals would require, among other things, a scheduling order for discovery and other pre-trial matters. A discovery *conference* with the court, however, would still be permissive. Civ.R. 16 contains a list of possible items that could be addressed by the scheduling order.

The proposal to amend Civ.R. 26 follows many of the same themes, and adopts the federal rule concept of "proportionality." This concept would allow a trial court to consider the breadth and scope of the civil case in making determinations as to the type and quantity of discovery that would be appropriate.

The proposed amendment also includes a requirement that the parties hold a discovery conference between the parties, file a discovery plan with the court, and disclose certain information without requiring any request for discovery. The proposal specifically requires the disclosure of documents obtained by way of public records request.

- *Magistrates Jury Trials*
(**Civ.R. 53**)

The Commission recommends amendments to Civ.R. 53 so as to clarify how a jury trial conducted by a magistrate is to proceed. Specifically, the amendment directs a trial judge to file a

final judgment in accordance with the legal findings of the magistrate and the factual findings of the jury, in accordance with Civ.R. 58. The amendment also specifies that all of the magistrate's legal rulings cannot be objected to and taken before the judge. Furthermore, the rule specifies that any post-trial motions will be decided by the magistrate.

This amendment would only come into play when parties unanimously consent to a magistrate conducting a jury trial, as provided under current Civ.R. 53(C)(1)(c).

- *Fixed Cross-Reference*
(**Civ.R. 73**)

The Commission recommends a small corrective amendment to Civ.R. 73, as the rule previously made reference to Civ.R.3(B). In 2019, Civ.R. 3 was amended and the referenced subsection is now Civ.R. 3(C). This amendment reflects that change.

- *Civil Indigency Form*
(**Proposed Form**)

The Commission proposes a form to be added to the Civil Rules. This form is in response to the General Assembly amending R.C. 2323.311 in March 2019. At that time, the statute was amended so as to allow indigent civil litigants the ability to petition a court for the waiver of filing fee deposits. The legislation requested that the Supreme Court create a form so as to allow civil litigants the ability to petition the court for this relief. The new statute also laid out various financial benchmarks which are found in the proposed form.

2. OHIO RULES OF CRIMINAL PROCEDURE

- *Bail and Bond*
(**Crim.R. 46**)

The Commission proposes this series of amendments in relation to the setting of bail in criminal cases. The most prominent features of these amendments include a requirement that a court utilize the least restrictive bond conditions and least amount of monetary bail to secure the defendant's appearance, and an expanded non-exclusive list of bond conditions.

Additionally, the amendment makes clear that a bond schedule is to be used for the sole purpose of securing a release before an initial appearance, and is not to be considered by a trial court during a bond hearing.

Finally, these amendments also make small amendments that require a judge review bail at arraignment should the defendant still be in custody at that time.

- *Duties of Criminal Magistrates*
(**Crim.R. 19**)

The Commission proposes these amendments to allow magistrates to take pleas in criminal cases up to fourth and fifth degree felonies. The rule currently allows magistrates to take pleas, but only in misdemeanor cases.

The Commission, at the request of the Ohio Judicial Conference, also recommends language that would allow magistrates to conduct proceedings in Supreme Court certified specialized dockets, but only when authorized by and in accordance with the existing Specialized Docket Standards.

This specific proposed language was recommended by the Supreme Court's Commission on Specialized Dockets. The intent of the language is to allow a magistrate to assist in managing specialized dockets, but only to the extent approved by the Commission on Specialized Dockets and, ultimately, the Supreme Court.

3. OHIO RULES OF EVIDENCE

- *Competency*
(**Evid.R. 601**)

The Commission recommends amendments to Evid.R. 601 so as to change the standard for competency for children under ten years of age. Under the current rule, a child under such an age is presumed to lack competency to testify. This amendment would specify that all persons are competent to testify unless the Court determines they are not.

This amendment would bring Ohio in line with the majority of other states in regards to competence to testify.

- *Residual Hearsay Exception*
(**Evid.R. 810**)

The Commission recommends the creation of Evid.R. 810 so as to create a residual hearsay exception, as is found in the Federal rules. This exception, which is modeled after the federal rule that will go into effect in December 2019, would allow a court to consider hearsay evidence if it is supported by sufficient guarantees of trustworthiness. The rule would also require notice be given to the opposing party as to use of the evidence in question.

- *Self-Authentication of Business Records and Electronic Records*
(**Evid.R. 902**)

The Commission recommends amendments to Evid.R. 902 to align with the Federal rules in regards to authentication of business records. Under the current rule, business records must be authenticated by custodians of the records. This often times requires live testimony from such

custodians, including employees of cell-phone companies to authenticate call records. Under these amendments, records could be authenticated by sworn statement or certification.

4. OHIO RULES OF APPELLATE PROCEDURE

- *Filing of 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.

- *Applying Word Limits on Appellate Briefs*
(App.R. 19)

The Commission recommends amendments to App.R. 19 so as to move away from requiring page limits on briefs, and move into placing word limits on briefs. The proposed amendments are intended to eliminate concerns of utilizing odd fonts or spacing in order to fit an appellate brief into an allotted page length. Utilizing word limitations would allow for uniform length of a brief, in that regard.

- *Oral Argument Time Limitations*
(App.R. 21)

The Commission recommends amendments to App.R. 21 so as to restrict standard oral argument time from thirty minutes to fifteen minutes. The amendments also specify that parties on the same side of an issue are to split the fifteen minutes amongst themselves as they agree, and each party does not get a separate fifteen minutes.

This proposal was made by the Ohio Association for Court Administrators and mirrors what is already common practice among Ohio's appellate courts.

5. OHIO JUVENILE RULES

- *Appointment of Counsel*
(**Juv.R. 3**)

The Commission recommends this series of amendments in regards to the appointment of counsel for juveniles. The proposal was received from the Juvenile Justice Subcommittee of the Supreme Court's Advisory Committee on Children and Families. The amendments would specify that a juvenile shall be appointed counsel at the earliest stage of proceedings, giving the child a "meaningful opportunity" to consult with counsel before any hearings. The juvenile would not be permitted to waive counsel without meeting with appointed or retained counsel. Also, the rule would not allow any waiver of counsel if the child is detained pending adjudication. Finally, the

rule would specify that a juvenile is presumed indigent and the finances of their parents shall not be considered when deciding to appoint counsel.

- *Appointment of Guardian ad Litem*
(**Juv.R. 4**)

The Commission recommends this series of amendments in regards to the appointment of guardians ad litem. This proposal was submitted by the Juvenile Law and Procedure Committee of the Ohio Judicial Conference. The amendment would clarify that should the child's wishes come into conflict with a guardian ad litem's duty to adhere to the child's best interest, then a new attorney would be appointed for the child. The current rule allows for the appointment of a new guardian ad litem.

- *Consent to Marry*
(**Juv.R. 42**)

The Commission recommends this series of amendments to Juv.R. 42 in order to comply with the recently amended statute. In April 2019, various amendments to R.C. 3101.01 in relation to a minor seeking consent to enter into marriage. The amendments to this rule are in response to that legislation.

6. MODEL UNIFORM TRAFFIC TICKET

- *Redesign*

The Commission recommends a redesign of the Model Uniform Traffic Ticket ("MUTT") as found in the Ohio Traffic Rules. Some of these recommendations come from a recent task force related to the issuance of warrants in Ohio. This task force was convened by Governor DeWine. A small number of other additions were also made, such as language that would allow a driver to "opt in" to receiving text notifications of upcoming court dates and a checkbox that indicates the existence of audio-visual evidence of the traffic stop were also included.

OHIO RULES OF CIVIL PROCEDURE

RULE 4. Process: Summons

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

(D) Waiver of service of summons. Service of summons may be waived in writing by any person entitled thereto under Rule 4.2 who is at least eighteen years of age and not under disability. For any civil action filed in a Court of Common Pleas, the plaintiff may request that the defendant waive service of a summons pursuant to the provisions of Civ.R. 4.7.

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

Proposed Staff Note (July 2020)

Civ.R. 4(D) is amended to include a reference to the specific provisions for waiver of service of summons provided for in Civ.R. 4.7.

RULE 4.1. Process: Methods of Service

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

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

Proposed Staff Note (July 2020)

Civ.R. 4.1 is amended to include a reference to the specific provisions for waiver of service of summons provided for in Civ.R. 4.7.

RULE 4.7. Process: Waiving Service

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

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

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

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

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

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

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

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

(B) Limited to Courts of Common Pleas. The waiver of service provisions in this rule are limited to civil actions filed in the Courts of Common Pleas.

(C) Failure to Waive. If a defendant over which the court has personal jurisdiction fails, without good cause, to sign and return a waiver requested by a plaintiff, then the court must impose on the defendant:

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

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

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

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

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

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

(Caption)

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

WHY ARE YOU GETTING THIS?

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

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

WHAT HAPPENS NEXT?

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

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

Please read the enclosed statement about the duty to avoid unnecessary expenses.

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

Date: _____

(Signature of the attorney or unrepresented party)

_____

(Printed name)

_____

(Address)

_____

(E-mail address)

_____

(Telephone number)

_____

[Form] RULE 4.7 WAIVER OF THE SERVICE OF SUMMONS.

(Caption)

To *(name the plaintiff's attorney or the unrepresented plaintiff)*:

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

(Signature of the attorney or unrepresented party)

_____

(Printed name)

_____

(Address)

_____

(E-mail address)

_____

(Telephone number)

_____

(Attach the following)

DUTY TO AVOID UNNECESSARY EXPENSES OF SERVING A SUMMONS

Rule 4.7 of the Ohio Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is subject to the court's personal jurisdiction and who fails to return a signed waiver of service requested by a plaintiff will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

Proposed Staff Notes (July 2020)

Rule 4.7 is based on the federal rule permitting waiver of service. Paragraph (A) states what the present rule implies: the defendant has a duty to avoid costs associated with the service of a summons not needed to inform the defendant regarding the commencement of an action. The text of the rule also sets forth the requirements for a Notice and Request for Waiver sufficient to put the cost-shifting provision in place. These requirements are illustrated in the forms appended to the rule. Pursuant to Rule 4(D), only those persons who are identified in Rule 4.2 and who are eighteen years of age or older and not under a disability may waive service.

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

A defendant failing to comply with a request for waiver shall be given an opportunity to show good cause for the failure, which is the case under paragraph (B), but sufficient cause should be rare. It is not a good cause for failure to waive service that the claim is unjust or that the court lacks jurisdiction. Sufficient cause not to shift the cost of service would exist, however, if the defendant did not receive the request or was insufficiently literate in English to understand it. It should be noted that the provisions for shifting the cost of service apply only if the defendant is subject to the court's personal jurisdiction.

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

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

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

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

Paragraph (E) of Rule 4.7 is explicit that a timely waiver of service of a summons does not prejudice the right of a defendant to object by means of a motion authorized by Rule 12(B) to the absence of jurisdiction, or to assert improper venue under Rule 12(B)(3). The only issues eliminated are those involving the sufficiency of the summons or the sufficiency of the method by which it is served.

RULE 16. Pretrial Procedure

(A) **Purposes of a Pretrial Conference**. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

(1) expediting disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and (5) facilitating settlement.

Attorneys, their clients, and unrepresented parties shall endeavor in good faith to agree on all the schedules contemplated by this rule and courts shall consider such agreements in the establishment of any such schedule.

(B) **Scheduling**.

(1) *Scheduling Order*. Except for matters listed in Civ. R. 1(C), the court shall issue a scheduling order:

(a) after receiving the parties' report under Civ. R. 26(F);

(b) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference; or

(c) sua sponte by the court.

(2) *Time to Issue.* The court shall issue the scheduling order as soon as practicable, but unless the court finds good cause for delay, the court shall issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has responded to the complaint.

(3) *Contents*. The scheduling order may:

(a) limit the time to join other parties, amend the pleadings, complete discovery, and file motions;

(b) modify the timing of disclosures under Civ. R. 26(A);

(c) modify the extent of discovery;

(d) provide for disclosure, discovery, or preservation of electronically stored information;

(e) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(f) set dates for pretrial conferences and for trial; and (g) include other appropriate matters.

(2) *Modifying a Schedule.* A schedule may be modified only for good cause and with the court's consent.

(C) **Attendance and Matters for Consideration at a Pretrial Conference**.

(1) *Attendance.* A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) *Matters for Consideration.* At any pretrial conference, the court shall consider and take appropriate action on the following matters:

(a) The possibility of settlement of the action;

(b) The simplification of the issues;

(c) Itemizations of expenses and special damages;

(d) The necessity of amendments to the pleadings;

(e) The exchange of medical reports and hospital records (The production by any party of medical reports, medical records, hospital records does not constitute a waiver of the privilege granted under section 2317.02 of the Revised Code.);

(f) The number of expert witnesses;

(g) The preservation of electronically stored information and other information held by the parties or third parties;

(h) The timing, methods of search and production, and the limitations, if any, to be applied to the discovery of documents and electronically stored information;

(i) Disclosure and the exchange of documents obtained through public records requests;

(j) Any agreements or decisions on the sharing or shifting of costs pursuant to Rule 26(C)(2);

(k) The adoption of any agreements by the parties for asserting claims of privilege or for protecting designated materials after production;

(l) The imposition of sanctions as authorized by Civ. R. 37;

(m) The possibility of obtaining:

(i) Admissions of fact;

(ii) Agreements on admissibility of documents and other evidence to avoid unnecessary testimony or other proof during trial.

(n) Disposing of pending motions;

(o) Determination of the applicable deadline for disposition of the case pursuant to Sup. R. 39 and 42, and a timetable for:

(i) initial disclosures of known and reasonably available non-privileged, non-work product documents and things that support or contradict the specifically pleaded claims and defenses,

(ii) joining parties,

(iii) amending the pleadings,

(iv) mediation or other alternative dispute resolution requested by parties,

(v) exchanging lists of lay witnesses, expert witnesses and reports, and exhibits for trial,

(vi) completing discovery,

(vii) filing of motions, responses, replies and decisions,

(viii) further case management conferences, and

(ix) a trial date, preferably one agreed-upon by the parties.

(p) Facilitating in other ways, the just, speedy, and inexpensive disposition of the action.

(D) **Pretrial Orders**. After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(E) **Final Pretrial Conference and Orders**. The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

~~In any action, the court may schedule one or more conferences before trial to accomplish the following objectives:~~

~~(1) The possibility of settlement of the action;~~

~~(2) The simplification of the issues;~~

~~(3) Itemizations of expenses and special damages;~~

~~(4) The necessity of amendments to the pleadings;~~

~~(5) The exchange of reports of expert witnesses expected to be called by each party;~~

~~(6) The exchange of medical reports and hospital records;~~

~~(7) The number of expert witnesses;~~

~~(8) The timing, methods of search and production, and the limitations, if any, to be applied to the discovery of documents and electronically stored information;~~

~~(9)~~ The adoption of any agreements by the parties for asserting claims of privilege or for protecting designated materials after production;

~~(10) The imposition of sanctions as authorized by Civ. R. 37;~~

~~(11) The possibility of obtaining:~~

(a) ~~Admissions of fact;~~

(b) ~~Agreements on admissibility of documents and other evidence to avoid unnecessary testimony or other proof during trial.~~

~~(12) Other matters which may aid in the disposition of the action.~~

~~The production by any party of medical reports or hospital records does not constitute a waiver of the privilege granted under section 2317.02 of the Revised Code.~~

~~The court may, and on the request of either party shall, make a written order that recites the action taken at the conference. The court shall enter the order and submit copies to the parties. Unless modified, the order shall control the subsequent course of action.~~

~~Upon reasonable notice to the parties, the court may require that parties, or their representatives or insurers, attend a conference or participate in other pretrial proceedings.~~

Proposed Staff Note (2020 Amendment)

Civ. R. 16 has been amended to bring the Ohio rule closer to the federal rule, while still allowing for Ohio courts to decide whether to hold a scheduling conference. Civ. R. 16(A) lists several purposes for why a scheduling conference may be held. In addition, the last paragraph of Civ. R. 16(A) provides that parties will attempt to agree on the schedules contemplated by Civ. R. 16, and courts will endeavor to respect the agreements of the parties. This paragraph is consistent with the concept of shared responsibility among parties and courts in Civ. R. 1.

Similar to the prior version of Civ. R. 16, Civ. R. 16(A) still provides that holding a scheduling conference is permissive, not mandatory. However, Civ. R. 16(B) requires that in all cases, except those set forth in Civ. R. 1(C), a scheduling order must be issued by the court. The purpose of this requirement is to promote greater consistency, predictability, and transparency for attorneys, parties, and unrepresented parties in courts across Ohio.

Civ. R. 16(B)(1) clarifies that a scheduling order must be issued after the court receives the parties' Civ. R. 26(F) report or after the court holds a scheduling conference. If no report is submitted or the court does not hold a scheduling conference, the court must issue the scheduling order sua sponte.

Civ. R. 16(B)(2) specifies the timing requirements by which a scheduling order must be issued, based on the date that any defendant has been served with the complaint or that any defendant has responded to the complaint. This subsection does not require a court to wait for all defendants to be served with the complaint or respond to the complaint before entering a scheduling order.

Civ. R. 16(B)(3) lists potential content that a court may include in a scheduling order.

Civ. R. 16(C) describes a variety of items that a court may address at a scheduling conference, including a timetable to address deadlines for discovery and various disclosures, dispositive motions, and trial. Many of the items now listed in Civ. R. 16(C) were included in the prior version of Civ. R. 16.

Civ. R. 16(E) and (F) are identical to these same subsections in the federal rule.

RULE 26. General Provisions Governing Discovery

(A) Policy; discovery methods. It is the policy of these rules (1) to preserve the right of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of such cases and (2) to prevent an attorney from taking undue advantage of an adversary's industry or efforts.

Parties may obtain discovery by one or more of the following methods: deposition upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise, the frequency of use of these methods is not limited.

(B) Scope of discovery. Unless otherwise ordered by the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. ~~Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~ Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' access to resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure subject to comment or admissible in evidence at trial.

(3) Initial Disclosure by a Party.

(a) Without awaiting a discovery request, a party must provide to the other parties, except as exempted by Civ. R. 26(B)(3)(b) or as otherwise stipulated, or ordered by the court:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information - along with the subjects of that information - that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy - or a description by category and location - of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Civ. R. 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Civ. R. 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(b) The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(iii) an action to enforce or quash an administrative summons or subpoena;

(iv) a proceeding ancillary to a proceeding in another court; and

(v) an action to enforce an arbitration award.

(c) A party must make the initial disclosures no later than the parties' first pre-trial or case management conference, unless a different time is set by stipulation or court order, or unless a party objects. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(d) A party that is first served or otherwise joined after the first pre-trial or case management conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(e) A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully

investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

~~(3)~~(4) Trial preparation: materials. Subject to the provisions of subdivision (B)(6) of this rule, a party may obtain discovery of documents, electronically stored information and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing of good cause therefor. A statement concerning the action or its subject matter previously given by the party seeking the statement may be obtained without showing good cause. A statement of a party is (a) a written statement signed or otherwise adopted or approved by the party, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement which was made by the party and contemporaneously recorded.

(5) Specific Limitations on Electronically Stored Information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(B)(6). The court may specify conditions for the discovery.

~~(4)~~(6) Limitations on Frequency and Extent.

(a) When Permitted. By order, the court may limit the number of depositions, requests under Rule 36, and interrogatories or the length of depositions.

(b) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is outside the scope permitted by Rule 26(B)(1).

~~(4) Electronically stored information. A party need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the party from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the following factors when determining if good cause exists:~~

~~(a) whether the discovery sought is unreasonably cumulative or duplicative;~~

~~(b) whether the information sought can be obtained from some other source that is less burdensome, or less expensive;~~

~~(c) whether the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; and~~

~~(d) whether the burden or expense of the proposed discovery outweighs the likely benefit, taking into account the relative importance in the case of the issues on which electronic discovery is sought, the amount in controversy, the parties' resources, and the importance of the proposed discovery in resolving the issues.~~

(c) In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

~~(5)~~(7) ~~Trial preparation: experts.~~ **Disclosure of Expert Testimony.**

~~(a) Subject to the provisions of division (B)(5)(b) of this rule and Civ.R. 35(B), a party may discover facts known or opinions held by an expert retained or specially employed by another party in anticipation of litigation or preparation for trial only upon a showing that the party seeking discovery is unable without undue hardship to obtain facts and opinions on the same subject by other means or upon a showing of other exceptional circumstances indicating that denial of discovery would cause manifest injustice.~~

~~(b) As an alternative or in addition to obtaining discovery under division (B)(5)(a) of this rule, a party by means of interrogatories may require any other party (i) to identify each person whom the other party expects to call as an expert witness at trial, and (ii) to state the subject matter on which the expert is expected to testify. Thereafter, any party may discover from the expert or the other party facts known or opinions held by the expert which are relevant to the stated subject matter. Discovery of the expert's opinions and the grounds therefor is restricted to those previously given to the other party or those to be given on direct examination at trial.~~

(a) A party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Ohio Rule of Evidence 702, 703, or 705.

(b) The reports of expert witnesses expected to be called by each party shall be exchanged with all other parties. The parties shall submit expert reports and curriculum vitaes in accordance with the time schedule established by the Court. The party with the burden of proof as to a particular issue shall be required to first submit expert reports as to that issue. Thereafter, the responding party shall submit opposing expert reports within the schedule established by the Court.

(c) Other than under subsection (d), a party may not call an expert witness to testify unless

a written report has been procured from the witness and provided to opposing counsel. The report of an expert must disclose a complete statement of all opinions and the basis and reasons for them as to each matter on which the expert will testify. It must also state the compensation for the expert's study or testimony. Unless good cause is shown, all reports and, if applicable, supplemental reports must be supplied no later than thirty (30) days prior to trial. An expert will not be permitted to testify or provide opinions on matters not disclosed in his or her report.

(d) Treating Physicians. A treating physician may testify as an expert and offer opinions as to matters addressed in the treating physician's records. Treating physicians' records relevant to the case shall be provided to opposing counsel in lieu of an expert report in accordance with the time schedule established by the Court.

(e) A party may take a discovery deposition of their opponent's expert witness only after the mutual exchange of reports has occurred unless the expert is a treating physician permitted to testify as an expert under subsection (d). Upon good cause shown, additional time after submission of both sides' expert reports will be provided for these discovery depositions if requested by a party. If a party chooses not to hire an expert in opposition to an issue, that party will be permitted to take the discovery deposition of the proponent's expert.

~~(c)~~(f) Drafts of any report provided by any expert, regardless of the form in which the draft is recorded, are protected by division (B)(4) of this rule.

~~(d)~~(g) Communications between a party's attorney and any witness identified as an expert witness under division ~~(B)(5)(b)~~ (B)(7) of this rule regardless of the form of the communications, are protected by division ~~(B)(3)~~ (B)(4) of this rule except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(h) Expert Employed Only for Trial Preparation. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

~~(e)~~(iii) The ~~court may require that the~~ party seeking discovery under division (B)(7) of this rule shall pay the expert a reasonable fee for time spent in

deposition ~~responding to discovery, and, with respect to discovery permitted under division (B)(5)(a) of this rule, the court may require a party to pay another party a fair portion of the fees and expenses incurred by the latter party in obtaining facts and opinions from the expert~~.

~~(6)~~(8) Claims of Privilege or Protection of Trial-Preparation Materials.

(a) Information Withheld. When information subject to discovery is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(b) Information Produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(C) Protective orders. Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court, on terms and conditions as are just, may order that any party or person provide or permit discovery. The provisions of Civ. R. 37(A)(4) apply to the award of expenses incurred in relation to the motion.

Before any person moves for a protective order under this rule, that person shall make a reasonable effort to resolve the matter through discussion with the attorney or unrepresented party seeking discovery. A motion for a protective order shall be accompanied by a statement reciting the effort made to resolve the matter in accordance with this paragraph.

(D) Sequence and timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(E) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (a) the identity and location of person having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness as trial and the subject matter on which he is expected to testify.

(2) A party who knows or later learns that his response is incorrect is under a duty seasonably to correct the response.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through requests for supplementation of prior responses.

(F) Conference of the Parties; Planning for Discovery.

(1) *Conference Timing.* Except those matters excepted under Civ. R. 1(C), or when the court orders otherwise, the attorneys and unrepresented parties shall confer as soon as practicable— and in any event no later than 21 days before a scheduling conference is to be held.

(2) *Conference Content; Parties' Responsibilities.* In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Civ. R. 26(A)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for filing with the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) *Discovery Plan.* A discovery plan shall state the parties' views and proposals on:

(a) what changes should be made in the timing, form, or requirement for disclosures under Civ. R. 26(A), including a statement of when initial disclosures were made or will be made;

(b) agreed-upon deadlines for discovery and other items that may be included in a case schedule to be issued under Rule 16, any proposed modifications to a schedule already issued under Civ. R. 16, and compliance with Sup. R 39 and 42.

(c) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on

particular issues;

(d) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(e) disclosure and the exchange of documents obtained through public records requests;

(f) any issues about claims of privilege or of protection as trial-preparation materials;

(g) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed;

(h) any other orders that the court should issue under Civ. R. 26(C) or under Civ. R. 16(B) and (C); and

(i) any modifications required or to be requested under any scheduling order issued under Civ. R. 16.

Proposed Staff Notes (2020 Amendment)

Civ. R. 26 has been amended to bring the Ohio rule closer to the federal rule in many respects.

Rule 26(B)(1)

Civ. R. 26(B)(1) incorporates nearly identical language as the federal rule in Fed. R. Civ. P. 26(b)(1), as amended in 2015. Civ. R. 26(B)(1) now includes language bearing on proportionality, which contemplates greater judicial involvement in the discovery process and thus acknowledges the reality that it cannot always operate on a self-regulating basis. The scope of available information, including the increase and pervasiveness of electronically stored information, has greatly increased both the potential cost of wide- ranging discovery and the potential for discovery to be used as an instrument for delay or oppression. The present amendment reflects the need for continuing and close judicial involvement in the cases that do not yield readily to the ideal of effective party management. It is expected that discovery will be effectively managed by the parties in many cases. But there will be important occasions for judicial management, both when the parties are legitimately unable to resolve important differences and when the parties fall short of effective, cooperative management on their own.

This change does not place on the party seeking discovery the burden of addressing all proportionality considerations. Nor is the change intended to permit the opposing party to refuse discovery simply by making a boilerplate objection that it is not proportional. The parties and the court have a collective responsibility to consider the proportionality of all discovery and consider it in resolving discovery disputes.

The parties may begin discovery without a full appreciation of the factors that bear on proportionality. A party requesting discovery, for example, may have little information about the burden or expense of responding. A party requested to provide discovery may have little information about the importance of the discovery in resolving the issues as understood by the requesting party. Many of these uncertainties should be addressed and reduced in the parties' Civ. R. 26(F) conference and

in scheduling and pretrial conferences with the court. But if the parties continue to disagree, the discovery dispute could be brought before the court. A party claiming undue burden or expense ordinarily has far better information — perhaps the only information — with respect to that part of the determination. A party claiming that a request is important to resolve the issues should be able to explain the ways in which the underlying information bears on the issues as that party understands them. The court's responsibility, using all the information provided by the parties, is to consider these and all the other factors in reaching a case-specific determination of the appropriate scope of discovery.

With regard to the parties' relative access to relevant information, some cases involve what often is called "information asymmetry." One party — often an individual plaintiff — may have very little discoverable information. The other party may have vast amounts of information, including information that can be readily retrieved and information that is more difficult to retrieve. In practice these circumstances often mean that the burden of responding to discovery lies heavier on the party who has more information, and properly so.

The former provision for discovery of relevant but inadmissible information that appears "reasonably calculated to lead to the discovery of admissible evidence" is also deleted. It is replaced by the direct statement that "Information within this scope of discovery need not be admissible in evidence to be discoverable." Discovery of nonprivileged information not admissible in evidence remains available so long as it is otherwise within the scope of discovery.

Rule 26(B)(3)

This provision has been added to include a requirement that parties, in most cases, exchange initial disclosures without awaiting discovery requests. The language of Civ. R. 26(B)(3) closely follows the federal rule. The purpose of the initial disclosure obligation is to accelerate the exchange of information about the case, consistent with Civ. R. 1 and 26(B)(1).

Rule 26(B)(5)

This subsection is revised to preserve the limitation on production of electronically stored information ("ESI") if it is from a source not reasonably accessible due to undue burden or cost. The court may still order production upon a showing of good cause. The amended rule eliminates the prior factors to be considered when determining if good cause exists and relies instead on the general concepts of proportionality contained in Rule 26.

Rule 26(B)(6)

Civ. R. 26(B)(6) has been added to clarify that courts have authority to modify the frequency and extent of discovery, including consideration that bear on proportionality to Civ. R. 26(B)(1). This language in Civ. R. 26(B)(6) is similar to the language in Fed. R. Civ. P. 26(b)(2)(A) and (C).

Rule 26(B)(7)

The Ohio Civil Rules had not previously required experts to provide a written report. The Local Rules of some counties required a written report while many others did not. Interrogatories directed to the subject matter on which an expert may testify have in practice shown to be an insufficient means to ascertain an opposing expert's opinions and the grounds upon which they are based. The absence of a written report frequently puts counsel in the position of having to bear the substantial time and expense of a deposition in order to learn the opinions of an opposing party's expert. Requiring a written report from experts setting forth all opinions and the basis and reasons for such opinions may, in many cases, obviate the need for a deposition, and will lessen the time and significant expense associated

with expert discovery. So will permitting the deposition of experts only after the mutual exchange of expert reports. Further expense can be lessened by permitting treating physicians to testify as an expert as to matters addressed in medical records, without the necessity of writing a separate medical report, if such records are timely provided to opposing counsel. Subsection (B)(7)(h) is the same as Fed. R. Civ. P. 26(b)(4)(D) and protects facts and opinions held by an expert who is not expected to be called as a witness at trial.

Rule 26(F)

The changes in the proposed rules are best highlighted and understood in contrast to the Federal Rules. The differences between proposed Ohio's Civ.R. 26(F) and Fed. Civ.R. 26(F) are as follows:

1. Civ.R. 26(F)(1) – The Ohio Rule reads, "Except those matters excepted under Civ.R. 1(C)[…][.]" The Federal Rule reads, "Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B)[…][.]"

2. Civ.R. 26(F)(1) – The Ohio Rule states that "attorneys and unrepresented parties shall confer as soon as practicable[…][.]" The Federal Rule states that "the parties must confer as soon as practicable[…][.]"

3. Civ. R. 26(F)(1) – The Ohio Rule reads, at the end, "21 days before a scheduling conference is to be held." The intent with this language of the proposed Ohio Rule is to simplify the setting of the scheduling conference and to give the court greater flexibility in setting that conference. The Federal Rule reads, at the end, "21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)."

4. Civ.R. 26(F)(2) – The Ohio Rule reads, at the end of the second to last sentence, "and for filing with the court[…][.]" The Federal Rule reads, at the end of the second of the second to last sentence, "and for submitting with the court[…][.]"

5. Civ.R. 26(F)(3) – The Ohio Rule uses the word "shall" and the Federal Rule uses the word"must."

6. Civ.R. 26(F)(3)(e) – The Ohio Rule addresses public records disclosure as part of the discovery plan whereas the Federal Rule does not.

7. Civ.R. 26(F)(3)(f) – The Ohio Rule ends with "of protection as trial-preparation materials[…][.]" The Federal Rule (Fed. Civ.R. 26(F)(3)(D)) ends with "as trial-preparation materials, including – if the parties agree on a procedure to assert these claims after production – whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502[…][.]"

8. Civ.R. 26(F)(3)(b) and (i) – these subsections are not included in Fed. Civ.R. 26(F)(3).

9. Civ.R. 26(F)(4) – This subsection was removed from the proposed Ohio Rules, but it is included in the Federal Rules.

10. This amendment introduces to Ohio's civil rules the concept of an early, mandatory

conference among the attorneys and any unrepresented party, and requires the filing of a written report outlining the results of that conference. This amendment also requires that the discovery plan, to which counsel and the parties agree, be in compliance with the time limitations of Sup.R. 39 and 42.

RULE 53. Magistrates.

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

(C) Authority.

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

(a) Determine any motion in any case;

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

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

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

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

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

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

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

(b) Ruling upon the admissibility of evidence;

(c) Putting witnesses under oath and examining them;

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

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

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

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

Proposed Staff Notes (July 2020)

Division (C)(2)

A major improvement to federal practice in the last half century was the authorization given magistrate judges to conduct civil jury trials. F.R.C.P. 73. Following the lead of the federal courts, Ohio magistrates also now conduct civil jury trials with written consent of all parties as authorized by Civ.R. 53(C)(1)(c). Yet, as demonstrated in *Gilson v. American Institute of Alternative Medicine*, 10th Dist. Case No. 15AP-548, 2016-Ohio-1324, ¶¶ 28-29, 103, Ohio procedure remains cumbersome after jury trials conducted by magistrates, and may require the trial court to unnecessarily review factual findings of the jury and certain interlocutory rulings of a magistrate. This is unnecessarily time consuming and costly.

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

RULE 73. Probate Division of the Court of Common Pleas

(A) **Applicability**. These Rules of Civil Procedure shall apply to proceedings in the probate division of the court of common pleas as indicated in this rule. Additionally, all of the Rules of Civil Procedure, though not specifically mentioned in this rule, shall apply except to the extent that by their nature they would be clearly inapplicable.

(B) **Venue**. Civ. R. ~~3(B)~~ 3(C) shall not apply to proceedings in the probate division of the court of common pleas, which shall be venued as provided by law. Proceedings under Chapters 2101. through 2131. of the Revised Code, which may be venued in the general division or the probate division of the court of common pleas, shall be venued in the probate division of the appropriate court of common pleas.

Proceedings that are improperly venued shall be transferred to a proper venue provided by law and division (B) of this rule, and the court may assess costs, including reasonable attorney fees, to the time of transfer against the party who commenced the action in an improper venue.

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

OHIO RULES OF CRIMINAL PROCEDURE

RULE 19. Magistrates

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

(C) Authority

(1) *Scope.* To assist courts of record and pursuant to reference under Crim. R. 19(D)(1), magistrates are authorized, subject to the terms of the relevant reference, to do any of the following:

(a) Conduct initial appearances and preliminary hearings pursuant to Crim. R. 5.

(b) Conduct arraignments pursuant to Crim.R. 10.

(c) Receive pleas, in accordance with Crim.R. 11, only as follows:

(i) In felony and misdemeanor cases, accept and enter not guilty pleas.

(ii) In felony cases that contain only fourth and/or fifth degree felonies and in all misdemeanor cases, accept and enter guilty and no contest pleas, determine guilt or innocence, receive statements in explanation and in mitigation of sentence, and recommend a penalty to be imposed. If imprisonment is a possible penalty for the offense charged, the matter may be referred only with the unanimous consent of the parties, in writing or on the record in open court.

(d) Conduct pretrial conferences pursuant to Crim. R. 17.1.

(e) Conduct proceedings to establish bail pursuant to Crim. R. 46.

(f) Hear and decide the following motions:

(i) Any pretrial or post-judgment motion in any misdemeanor case for which imprisonment is not a possible penalty.

(ii) Upon the unanimous consent of the parties in writing or on the record in open court, any pretrial or post-judgment motion in any misdemeanor case for which imprisonment is a possibility.

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

(h) Conduct the trial of any misdemeanor case that will not be tried to a jury. If the offense charged is an offense for which imprisonment is a possible penalty, the matter may be referred only with unanimous consent of the parties in writing or on the record in open court.

(i) Conduct proceedings in Supreme Court certified dockets only when authorized and only in accordance with the authority granted by the Specialized Docket Standards.

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

(2) *Regulation of proceedings.* In performing the responsibilities described in Crim. R. 19(C)(1), magistrates are authorized, subject to the terms of the relevant reference, to regulate all proceedings as if by the court and to do everything necessary for the efficient performance of those responsibilities, including but not limited to, the following:

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

(b) Ruling upon the admissibility of evidence in misdemeanor cases in accordance with division (C)(1)(f) of this rule;

(c) Putting witnesses under oath and examining them;

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

(e) Imposing, subject to Crim. R. 19(D)(8), appropriate sanctions for civil or criminal contempt committed in the presence of the magistrate.

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

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

(A) Pretrial detention. A defendant may be detained pretrial, pursuant to a motion by the prosecutor or the court's own motion, in accordance with the standards and procedures set forth in the Revised Code.

(B) Pretrial release. Unless the court orders the defendant detained under division (A) of this rule, the court shall release the defendant on the least restrictive conditions that, in the discretion of the court, will reasonably assure the defendant's appearance in court, the protection or safety of any person or the community, and that the defendant will not obstruct the criminal justice process. If the court orders financial conditions of release, those financial conditions shall be related solely to the defendant's risk of non-appearance. Any financial conditions shall be in an amount and type which are least costly to the defendant while also sufficient to reasonably assure the defendant's future appearance in court.

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

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

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

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

~~(B)~~(C)(2) Non-financial ~~Conditions~~ conditions of release ~~bail~~. The court may impose any of the following conditions of ~~bail~~ release:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) ~~Amendments~~ Continuation of Bail. ~~A court, at any time, may order additional or different types, amounts, or conditions of bail.~~ Unless modified by the judicial officer, or if application is made by a surety for discharge from a bond pursuant to R.C. 2937.40, conditions of release shall continue until the return of a verdict or the entry of a guilty plea, and may continue thereafter pending sentence or disposition of the case on review. When a judicial officer, either on motion of a party or on the court's own motion, determines that the considerations set forth in subsections (B) and (C) require a modification of the conditions of release, the judicial officer may order additional or different types, amounts or conditions of bail, or may eliminate or lessen conditions of bail determined to be no longer necessary.

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

(G) Bond schedule.

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

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

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

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

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

(H) Review of Release Conditions. A person who has been arrested, either pursuant to a warrant or without a warrant, and who has not been released on bail, shall be brought before a judicial officer for an initial bail hearing no later than the second court day following the arrest. That bail hearing may be combined with the initial appearance provided for in Crim. R. 5(A).

If, at the initial bail hearing before a judicial officer, the defendant was not represented by counsel, and if the defendant has not yet been released on bail, a second bail hearing shall be held on the second court day following the initial bail hearing. An indigent defendant shall be afforded representation by appointed counsel at State's expense at this second bail hearing.

(I) Failure to appear; breach of conditions. Any person who fails to appear before any court as required is subject to the punishment provided by the law, and any bond ~~bail~~ given

for the person's release may be forfeited. If there is a breach of condition of release ~~bail~~, the court may amend the bail.

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

Proposed Staff Note (July 2020)

Crim.R. 46

Crim. R. 46 has been amended to improve efficiency in setting bail in an amount that effectively ensures (1) the defendant's continued presence at future proceedings, (2) that future proceedings will not be impeded by any effort to obstruct justice, and (3) the safety of any person as well as the community in general. Crim. R. 46 continues to entrust to the judicial officer's sound discretion the setting of particular conditions of release that will be imposed on a particular defendant in a particular case. At the same time, the amendments seek to ensure that excessive money bails are not used as a means of simply denying a defendant bail without benefit of a detention hearing prescribed by statute. See R.C. 2937.222

The title of Crim. R. 46 has been changed to recognize that pretrial detention is available under the Revised Code in those cases where no conditions of release are reasonably available. Subsection (A) has been added to that same effect.

Subsection (B) recognizes that conditions of release include both financial and non-financial conditions, either or both of which may be employed by the judicial officer in the exercise of the judicial officer's discretion. Financial conditions should be the least costly to reasonably ensure the defendant's presence at future proceedings; limiting financial conditions to ensuring against risk of flight is consistent with subsection (I), which provides that bond can only be forfeited when a defendant fails to appear at a future proceeding. The subsection's list of non-financial conditions is not exclusive, but identifies a number of non-financial conditions already employed by courts in Ohio and elsewhere.

Subsection (G) recognizes that a bond schedule is to be used for the sole purpose of securing a release before an initial appearance, and is not to be considered by a judicial officer during a bond hearing.

Subsection (H) has been amended to ensure that a person arrested who has not already been released pursuant to posting a bond specified in a bond schedule or prescribed in an arrest warrant, will appear before a judicial officer no later than the second court day after arrest. If the defendant's appearance at that time is without counsel, and if the defendant has not yet been released, then a second hearing, with the opportunity for the defendant to be represented by counsel, must take place within two court days after the initial court appearance.

OHIO RULES OF APPELLATE PROCEDURE

RULE 3. Appeals as of Right – How Taken

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

(C) Cross-Appeal

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

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

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

RULE 19. Form of Briefs and Other Papers

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

Without prior leave of court, no initial brief of appellant or cross-appellant and no answer brief of appellee or cross-appellee shall ~~exceed thirty-five pages in length~~ contain more than 15,300 words, and no reply brief shall ~~exceed fifteen pages in length~~ contain more than 6,500 words, exclusive of the cover page, ~~the~~ table of contents, table of cases, statutes and other authorities cited, statement regarding oral argument, certificates of counsel, signature blocks, certificate of service, and appendices, if any. A court of appeals, by local rule, may adopt ~~shorter or longer page~~ different word-count limitations. In all proceedings involving post-conviction review of a capital case, as defined in Crim.R. 42, there shall be no ~~page limitations or~~ word-count limitations. The signature of the attorney, or an unrepresented party, constitutes a certification that the document filed complies with the applicable word-count limitation. The person signing the document may rely on the word count of the word-processing system used to prepare the document.

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

(B) Form of other papers. Applications for reconsideration shall be produced in a manner prescribed by subdivision (A). Motions and other papers may be produced in a like manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced except quoted matter which shall be single spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the case number and a brief descriptive title indicating the purpose of the paper.

RULE 21. Oral Argument

(A) Scheduling and requesting oral argument. The court shall schedule oral argument in all cases, whether or not requested by a party, unless the court has adopted a local rule requiring a party to request oral argument. In the event of such a local rule, the court shall schedule oral argument at the request of any of the parties. Such a request shall be in the form of the words "ORAL ARGUMENT REQUESTED" displayed prominently on the cover page of the appellant's opening brief or the appellee's brief; no separate motion or other filing is necessary to secure oral argument. Notwithstanding any of the foregoing, the court is not required to schedule oral argument, even if requested, if any of the parties is both incarcerated and proceeding pro se.

(B) Notice of oral argument and of appellate panel.

(1) The court shall advise all parties of the time and place at which oral argument will be heard.

(2) No later than fourteen days prior to the date on which oral argument will be heard, the court of appeals shall make available to the parties the names of the judges assigned to the three-judge panel that will hear the case. If the case is submitted on briefs without oral argument, the court of appeals shall make available to the parties the names of the judges assigned to the three-judge panel that will hear the case no later than fourteen days prior to the date on which the case is submitted to the panel. If the membership of the panel changes after the names of the judges are made available to the parties pursuant to this rule, the court of appeals shall immediately make the new membership of the panel available to the parties.

(C) Time allowed for argument. Unless otherwise ordered, each side will be allowed ~~thirty~~ fifteen minutes for argument. Either sua sponte or upon motion, the court may vary the time for oral argument permitted by this rule. Motions to vary the time for oral argument shall be filed at least seven days before the date scheduled for oral argument. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(D) Order and content of argument. The appellant is entitled to open and conclude the argument, except in the case of a cross appeal. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

(E) Cross and separate appeals. A cross-appeal or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. ~~If separate~~ Separate appellants or appellees ~~support the same argument, they~~ shall share the ~~thirty~~ fifteen minutes allowed to their side for argument unless pursuant to timely request the court grants additional time. Separate parties supporting the same side of an appeal may agree to divide their time however they choose.

(F) Nonappearance of parties. If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the

court may hear argument on behalf of the appellee, if ~~his~~ appellee's counsel is present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

(G) Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(H) Motions. Oral argument will not be heard upon motions unless ordered by the court.

(I) Citation of Additional Authorities. If counsel on oral argument intends to present authorities not cited in the brief, counsel shall, at least five days prior to oral argument, present in writing such authorities to the court and to opposing counsel, unless there is good cause for a later presentment.

OHIO RULES OF JUVENILE PROCEDURE

RULE 3. Waiver of Rights

(A) All children in delinquency and status offense cases shall be appointed counsel at the earliest stage of the proceedings, so that the child has a meaningful opportunity to consult with counsel prior to any hearings.

(B) The court shall not allow any waiver of counsel unless the child has met privately with appointed or retained counsel to discuss the child's right to counsel and the disadvantages of self-representation.

(C) A child's right to be represented by counsel may not be waived in the following circumstances:

(1) When a child is detained pending adjudication;

(2) At a hearing conducted pursuant to Juv.R. 30;

~~(2)~~(3) When a serious youthful offender dispositional sentence has been requested; or

~~(3)~~(4) When there is a conflict or disagreement between the child and the parent, guardian, or custodian; or if the parent, guardian, or custodian requests that the child be removed from the home.

~~(B) If a child is facing the potential loss of liberty, the child shall be informed on the record of the child's right to counsel and the disadvantages of self-representation.~~

~~(C) If a child is charged with a felony offense, the court shall not allow any waiver of counsel unless the child has met privately with an attorney to discuss the child's right to counsel and the disadvantages of self-representation.~~

(D) In all other cases, ~~Any~~ any waiver of the right to counsel shall be made, only by the child, in open court, recorded, in the presence of the child's lawyer, and in writing. The court shall advise the child of the right to counsel and the dangers of self-representation. In determining whether a child has knowingly, intelligently, and voluntarily waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child's age; intelligence; education; background and experience generally and in the court system specifically; the child's emotional stability; and the complexity of the proceedings. The Court shall ensure that a child consults with a parent, ~~custodian,~~ guardian, or guardian ad litem, before any waiver of counsel. ~~However, no parent, guardian, custodian, or other person may waive the child's right to counsel.~~

(E) A child is presumed indigent and thus entitled to the appointment of counsel at state expense without regard to the income of the child's parent, guardian or custodian.

(F) Other rights of a child may be waived with permission of the court.

RULE 4. Assistance of Counsel; Guardian Ad Litem

(A) Assistance of counsel. Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. When the complaint alleges that a child is an abused child, the court must appoint an attorney to represent the interests of the child. This rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.

(B) Guardian *ad litem*; when appointed. The court shall appoint a guardian *ad litem* to protect the interests of a child or incompetent adult in a juvenile court proceeding when:

(1) The child has no parents, guardian, or legal custodian;

(2) The interests of the child and the interests of the parent may conflict;

(3) The parent is under eighteen years of age or appears to be mentally incompetent;

(4) The court believes that the parent of the child is not capable of representing the best interest of the child.

(5) Any proceeding involves allegations of abuse ~~or~~ neglect, or dependency, voluntary surrender of permanent custody, or termination of parental rights as soon as possible after the commencement of such proceeding.

(6) There is an agreement for the voluntary surrender of temporary custody that is made in accordance with section 5103.15 of the Revised Code, and thereafter there is a request for extension of the voluntary agreement.

(7) The proceeding is a removal action.

(8) Appointment is otherwise necessary to meet the requirements of a fair hearing.

(9) If a court appoints a person who is not an attorney admitted to the practice of law in this state to be a guardian ad litem, the court may appoint an attorney admitted to the practice of law in this state to serve as attorney for the child or ward.

(C) ~~Guardian ad litem as counsel.~~

~~(1) When the guardian ad litem is an attorney admitted to practice in this state, the guardian may also serve as counsel to the ward providing no conflict between the roles exist.~~

~~(2) If a person is serving as guardian ad litem and as attorney for a ward and either that person or the court finds a conflict between the responsibilities of the role of attorney and that of guardian ad litem, the court shall appoint another person as guardian ad litem for the ward.~~

~~(3) If a court appoints a person who is not an attorney admitted to practice in this state to be a guardian ad litem, the court may appoint an attorney admitted to practice in this state to serve as attorney for the guardian ad litem.~~

If an attorney is serving as Guardian ad litem for a child or ward, and the court finds a conflict exists between the role of the Guardian ad litem and the interest or wishes of the child of the ward, the court shall appoint counsel for the child or ward.

(D) Appearance of attorneys. An attorney shall enter appearance by filing a written notice with the court or by appearing personally at a court hearing and informing the court of said representation.

(E) Notice to guardian ad litem. The guardian ad litem shall be given notice of all proceedings in the same manner as notice is given to other parties to the action.

(F) Withdrawal of counsel or guardian ad litem. An attorney or guardian ad litem may withdraw only with the consent of the court upon good cause shown.

(G) Costs. The court may fix compensation for the services of appointed counsel and guardians ad litem, tax the same as part of the costs and assess them against the child, the child's parents, custodian, or other person in loco parentis of such child.

RULE 42. Consent to Marry

(A) Application ~~where parental consent not required~~ for Juvenile Court consent. ~~When a minor desires to contract matrimony and has no parent, guardian, or custodian whose consent to the marriage is required by law, the minor shall file an application under oath in the county where the female resides requesting that the judge of the juvenile court give consent and approbation in the probate court for such marriage.~~

(1) When two persons, both age seventeen, seek to be joined in marriage, both persons shall file an application under oath requesting that the juvenile court give consent and approbation in the probate court for such marriage.

(2) When a person age seventeen desires to be joined in marriage to an adult who is no more than four years older, the minor shall file an application under oath in the county where the minor resides requesting that the juvenile court consent and approbation in the probate court for such marriage.

(B) ~~Contents of application~~ Application where both persons are age seventeen. The application required by division (A)(1) of this rule shall contain all of the following:

(1) The name, ~~and~~ address, and date of birth of the person ~~for whom consent is sought~~ seeking consent;

(2) ~~The age of the person for whom consent is sought~~ An affirmation that the person seeking consent is age seventeen;

(3) ~~The reason why consent of a parent is not required~~ The name and date of birth of the other person to be joined in marriage;

(4) ~~The name and address, if known, of the parent, where the minor alleges that parental consent is unnecessary because the parent has neglected or abandoned the child for at least one year immediately preceding the application~~ An affirmation that the other person to be joined in marriage is also seventeen.

(5) An affirmation that the application is being filed in the juvenile court of the county where the he/she resides, and that a similar application has not been filed in a juvenile court of another county within the state;

(6) An affirmation that the applicant is either:

(a) A member of the armed services;

(b) A employed and self-subsisting;

(c) A independent from the care and control of his or her parent, guardian, or custodian.

(7) An affirmation that the applicant who is to marry is free from force or coercion;

(8) The name and address of a parent, legal guardian, or legal custodian of the person seeking consent with whom the juvenile court shall consult, and;

(9) The Court should find by clear and convincing evidence that the intended marriage and the emancipation is in the best interest of the applicant.

(C) Contents of ~~Application~~ application where only one person is age seventeen ~~female pregnant or delivered of child born out of wedlock.~~ ~~Where a female is pregnant or delivered of a child born out of wedlock and the parents of such child seek to marry even though one or both of them is under the minimum age prescribed by law for persons who may contract marriage, such persons shall file an application under oath in the county where the female resides requesting that the judge of the juvenile court give consent in the probate court to such marriage.~~

The application required by division (A)(2) of this rule shall contain all of the following:

(1) The name, address, and date of birth of the person seeking consent;

(2) An affirmation that the person seeking consent is age seventeen;

(3) The name and date of birth of the other person to be joined in marriage;

(4) An affirmation that the other person to be joined in marriage is no more than four years older than the person seeking consent;

(5) An affirmation that the application is being filed in the juvenile court of the county where he or she resides, and that a similar application has not been filed in a juvenile court of another county within the state;

(6) An affirmation that the applicant is either:

(a) A member of the armed services;

(b) Employed and self-subsisting;

(c) Independent from the care and control of his or her parent, guardian, or custodian.

(7) An affirmation that the applicant who is to marry is free from force or coercion;

(8) The name and address of a parent, legal guardian, or legal custodian of the person seeking consent with whom the juvenile court shall consult, and;

(9) The Court should find by clear and convincing evidence that the intended marriage and the emancipation is in the best interest of the applicant.

(D) ~~Contents of application~~. ~~The application required by subdivision (C) shall contain:~~

~~(1) The name and address of the person or persons for whom consent is sought;~~

~~(2) The age of such person;~~

~~(3) An indication of whether the female is pregnant or has already been delivered;~~

~~(4) An indication of whether or not any applicant under eighteen years of age is already a ward of the court; and~~

~~(5) Any other facts which may assist the court in determining whether to consent to such marriage.~~

~~If pregnancy is asserted, a certificate from a physician verifying pregnancy shall be attached to the application. If an illegitimate child has been delivered, the birth certificate of such child shall be attached.~~

~~The consent to the granting of the application by each parent whose consent to the marriage is required by law shall be indorsed on the application.~~

The Court shall appoint an attorney as guardian ad litem for each party to the intended marriage who is seventeen years of age.

(E) ~~Investigation~~ Consultation. ~~Upon receipt of an application under subdivision (C), the court shall set a date and time for hearing thereon at its earliest convenience and shall direct that an inquiry be made as to the circumstances surrounding the applicants.~~ The court shall consult with the parent, legal guardian or legal custodian of each person age seventeen seeking consent, as well as the guardian ad litem appointed for each person age seventeen seeking consent. The purpose of this consultation is to determine if the intended marriage is in the best interests of each person age seventeen and whether each person age seventeen has the capacity of a person of the age of eighteen years or more as described in R.C. 3109.01.

(F) Notice. ~~If neglect or abandonment is alleged in an application under subdivision (A) and the address of the parent is known, the~~ The court shall cause notice of the date and time of ~~hearing~~ consultation to be ~~served upon such~~ given to the applicant, guardian ad litem, and parent, legal guardian, or legal custodian of each person age seventeen seeking consent. All proceedings shall be recorded.

(G) Judgment. ~~If the court finds that the allegations stated in the application are true, and that the granting of the application is in the best interest of the applicants, the court shall grant the consent and shall make the applicant referred to in subdivision (C) a ward of the court.~~

The court shall grant the consent to marry if the court finds:

(1) The information stated in the application is true;

(2) The party to the intended marriage, who is seventeen, decision to marry is free from force or coercion;

(3) Granting of the application is in the best interest of each person age seventeen seeking to be joined in marriage, and;

(4) Each person age seventeen has the capacity of a person of the age eighteen years or older, as described in R.C. 3109.01.

(H) Certified copy. A certified copy of the judgment entry shall be transmitted to the probate court in the county where the application was filed or will be filed.

(I) Denial of application. Upon denial of the application, the Clerk is instructed to provide the applicant with the Notice of Appeal form and advise him or her of the right to an appeal.

OHIO RULES OF EVIDENCE

RULE 601. General Rule of Competency

~~Every person is competent to be a witness except:~~

(A) ~~Those of unsound mind, and children under ten years of age, who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly.~~ **General rule.** Every person is competent to be a witness except as otherwise provided in these rules.

(B) **Disqualification of witness in general.** A person is disqualified to testify as a witness when the court determines that the person is:

(1) Incapable of expressing himself or herself concerning the matter as to be understood, either directly or through interpretation by one who can understand him or her; or,

(2) Incapable of understanding the duty of a witness to tell the truth.

~~(B)~~(C) A spouse testifying against the other spouse charged with a crime except when either of the following applies:

(1) a crime against the testifying spouse or a child of either spouse is charged;

(2) the testifying spouse elects to testify.

~~(C)~~(D) An officer, while on duty for the exclusive or main purpose of enforcing traffic laws, arresting or assisting in the arrest of a person charged with a traffic violation punishable as a misdemeanor where the officer at the time of the arrest was not using a properly marked motor vehicle as defined by statute or was not wearing a legally distinctive uniform as defined by statute.

~~(D)~~(E) A person giving expert testimony on the issue of liability in any medical claim, as defined in R.C. 2305.113, asserted in any civil action against a physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist, unless:

(1) The person testifying is licensed to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery by the state medical board or by the licensing authority of any state;

(2) The person devotes at least one-half of his or her professional time to the active clinical practice in his or her field of licensure, or to its instruction in an accredited school and

(3) The person practices in the same or a substantially similar specialty as the defendant. The court shall not permit an expert in one medical specialty to testify against a health care provider in another medical specialty unless the expert shows both that the standards of care

and practice in the two specialties are similar and that the expert has substantial familiarity between the specialties.

If the person is certified in a specialty, the person must be certified by a board recognized by the American board of medical specialties or the American board of osteopathic specialties in a specialty having acknowledged expertise and training directly related to the particular health care matter at issue.

Nothing in this division shall be construed to limit the power of the trial court to adjudge the testimony of any expert witness incompetent on any other ground, or to limit the power of the trial court to allow the testimony of any other witness, on a matter unrelated to the liability issues in the medical claim, when that testimony is relevant to the medical claim involved.

This division shall not prohibit other medical professionals who otherwise are competent to testify under these rules from giving expert testimony on the appropriate standard of care in their own profession in any claim asserted in any civil action against a physician, podiatrist, medical professional, or hospital arising out of the diagnosis, care, or treatment of any person.

~~(E)~~(F) As otherwise provided in these rules.

RULE 810. Residual Exception

(A) **In General.** Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804:

(1) The statement is supported by sufficient guarantees of trustworthiness – after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and

(2) It is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

(B) **Notice.** The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement – including its substance and the declarant's name – so that the party has a fair opportunity to meet it. The notice must be provided in writing before the trial or hearing – or in any form during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.

RULE 902. Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign public documents. A document purporting to be executed or attested in the official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (a) of the executing or attesting person, or (b) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any law of a jurisdiction, state or federal, or rule prescribed by the Supreme Court of Ohio.

(5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and periodicals. Printed materials purporting to be newspapers or periodicals, including notices and advertisements contained therein.

(7) Trade inscriptions and the like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions created by law. Any signature, document, or other matter declared by any law of a jurisdiction, state or federal, to be presumptively or prima facie genuine or authentic.

(11) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of Evid.R. 803(6), as shown by a certification of the custodian or another qualified person that complies with an Ohio statute or a rule prescribed by the Supreme Court of Ohio. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record —and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

(12) Certified Foreign Records of a Regularly Conducted Activity. In a civil case, the original or a copy of a foreign record that meets the requirements of Evid.R. 902(11), modified as follows: the certification, rather than complying with an Ohio statute or Supreme Court of Ohio rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Evid.R. 902(11).

(13) Certified Records Generated by an Electronic Process or System. A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Evid.R. 902(11) or (12). The proponent must also meet the notice requirements of Evid.R. 902(11).

(14) Certified Data Copied from an Electronic Device, Storage Medium, or File. Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Evid.R. 902(11) or (12). The proponent also must meet the notice requirements of Evid.R. 902(11).

IN THE COURT OF _____

_____COUNTY, OHIO

	)	CASE NO.
	)	
Plaintiff,	)	JUDGE
	)	
vs.	)	
	)	**FINANCIAL DISCLOSURE / FEE**
	)	**WAIVER AFFIDAVIT**
Defendant.	)	**AND ORDER**

Pursuant to R.C. 2323.311, the below-named Applicant requests that the Court determine that the Applicant is an indigent litigant and be granted a waiver of the prepayment of costs or fees in the above captioned matter. The Applicant submits the following information in support of said request.

Personal Information	
Applicant's First Name	Applicant's Last Name
Applicant's Date of Birth	Last 4 Digits of Applicant's SSN
Applicant's Address	

Other Persons Living in Your Household			
First Name	Last Name	Is this person a child under 18?	Relationship (Spouse or Child)
		☐ Yes ☐ No	
		☐ Yes ☐ No	
		☐ Yes ☐ No	

Public Benefits

I receive the following public benefits and my gross income, including the cash benefits marked below, does not exceed **187.5%** of the federal poverty guidelines.

Pace an "X" next to any benefits you receive.

Ohio Works First[1]: ___ SSI[2]: ___ Medicaid[3]: ___ Veterans Pension Benefit[4]: ___ SNAP / Food Stamps[5]: ___

Monthly Income

I am **NOT** able to access my spouse's income ☐

	Applicant	Spouse (If Living in Household)	Total Monthly Income
Gross Monthly Employment Income, including Self-Employment Income (Before Taxes)	**$**	**$**	**$**
Unemployment, Worker's Compensation, Spousal Support (If Receiving)	**$**	**$**	**$**

Pursuant to R.C. 2323.311(B)(3), upon the filing of a civil action or proceeding and the affidavit of indigency under division (B)(1) of this section, the clerk of the court shall accept the action, proceeding, or motion for filing.

TOTAL MONTHLY INCOME	$

Liquid Assets	
Type of Asset	**Estimated Value**
Cash on Hand	**$**
Available Cash in Checking, Savings, Money Market Accounts	**$**
Stocks, Bonds, CDs	**$**
Other Liquid Assets	**$**
Total Liquid Assets	**$**

Monthly Expenses					
Column A			**Column B**		
Type of Expense	**Amount**		**Type of Expense**	**Amount**	
Rent / Mortgage / Property Tax / Insurance	**$**		Insurance (Medical, Dental, Auto, etc.)	**$**	
Food / Groceries	**$**		Child or Spousal Support that You Pay	**$**	
Utilities (Heat, Gas, Electric, Water / Sewer, Trash)	**$**		Medical / Dental Expenses or Associated Costs of Caring for a Sick or Disabled Family Member	**$**	
Transportation / Gas	**$**		Credit Card, Other Loans	**$**	
Phone	**$**		Taxes Withheld or Owed	**$**	
Child Care	**$**		Other (Specify)	**$**	
Total Column A Expenses	**$**		**Total Column B Expenses**	**$**	
TOTAL MONTHLY EXPENSES (Column A + Column B)					

I, _____, hereby, certify that the information I have provided on
(Print Name)
this financial disclosure form is true to the best of my knowledge and that I unable to prepay the costs or fees in this case.

_____
Signature

NOTARY PUBLIC:
Sworn to before me and signed in my presence this _____ day of _____, 20_____.

_____
Notary Public

If available, an individual duly authorized to administer this oath at the Clerk of Court's Office will do so at no cost to the Applicant.

ORDER

☐ Upon the request of the Applicant and the Court's review, the Court finds that the Applicant **IS** an indigent litigant and **GRANTS** a waiver of the prepayment of costs or fees in this matter.

☐ Upon the request of the Applicant and the Court's review, the Court finds that the Applicant is **NOT** an indigent litigant and **DENIES** a waiver of the prepayment of costs or fees in this matter.

Pursuant to R.C. 2323.311(B)(3), upon the filing of a civil action or proceeding and the affidavit of indigency under division (B)(1) of this section, the clerk of the court shall accept the action, motion, or proceeding for filing.

IT IS SO ORDERED

_____ _____

Judge / Magistrate Date

APPENDIX

2019 FEDERAL POVERTY LIMIT (FPL)

Persons in family/household	100% Poverty	100% Poverty Monthly Gross Income	187.5% Poverty	187.5% Poverty Monthly Gross Income
1	$12,490	$1,040.83	$23,419	**$1,951.58**
2	$16,910	$1,409.17	$31,706	**$2,642.17**
3	$21,330	$1,777.50	$39,994	**$3,332.83**
4	$25,750	$2,145.83	$48,281	**$4,023.42**
5	$30,170	$2,514.17	$56,569	**$4,714.08**
6	$34,590	$2,882.50	$64,856	**$5,404.67**
7	$39,010	$3,250.83	$73,144	**$6,095.33**
8	$43,430	$3,619.17	$81,431	**$6,785.92**

R.C. 2323.311(B)

(4) A judge or magistrate of the court shall review the affidavit of indigency as filed pursuant to division (B)(2) of this section and shall approve or deny the applicant's application to qualify as an indigent litigant. The judge or magistrate shall approve the application if the applicant's gross income does not exceed one hundred eighty-seven and five-tenths per cent of the federal poverty guidelines as determined by the United States department of health and human services for the state of Ohio and the applicant's monthly expenses are equal to or in excess of the applicant's liquid assets as specified in division (C)(2) of section 120-1-03 of the Administrative Code, as amended, or a substantially similar provision. If the application is approved, the clerk shall waive the advance deposit or security and the court shall proceed with the civil action or proceeding. If the application is denied, the clerk shall retain the filing of the action or proceeding, and the court shall issue an order granting the applicant whose application is denied thirty days to make the required advance deposit or security, prior to any dismissal or other action on the filing of the civil action or proceeding.

(6) Nothing in this section shall prevent a court from approving or affirming an application to qualify as an indigent litigant for an applicant whose gross income exceeds one hundred eighty-seven and five-tenths per cent of the federal poverty guidelines as determined by the United States department of health and human services for the state of Ohio, or whose liquid assets equal or exceed the applicant's monthly expenses as specified in division (C)(2) of section 120-1-03 of the Administrative Code, as amended, or a substantially similar provision.

---

[1]Ohio Works First Income Limit: 50% FPL (R.C. 5107.10(D)(1)(a))
[2]SSI Income Limit: cannot have countable income that exceeds the Federal Benefit Rate (FBR). 2019 FBR: $771 monthly for single disabled individual; $1157 monthly for disabled couple (20 CFR 416.1100)
[3]Medicaid Income Limit:
Modified Adjusted Gross Income (MAGI):138% FPL (OAC 5160:1-4-01; 42 USC 1396a(a)(10)(A)(i)(VIII))
Aged, Blind or Disabled: $791 for single person; $1177 for disabled couple
[4]Veterans Pension Benefit Income Limit: $13,535 annually / $1,127 monthly for a single person; $17,724 annually / $1,477 monthly for a veteran with one dependent
[5]Supplemental Nutrition Assistance Program (SNAP) Income Limit: 130% FPL for assistance groups with nondisabled/nonelderly member; 165% FPL for elderly and disabled assistance groups (OAC 5101:4-4-11; Food Assistance Change Transmittal No. 61)

TO DEFENDANT: SUMMONS You are summoned and ordered to appear on _____ at _____ in _____ at _____

If you fail to appear at this time and place, you may be arrested or your license may be cancelled.

_____ _____ COUNTY, OHIO

STATE OF OHIO _____ TICKET NUMBER:

REFERENCE # _____ _____

PHONE NUMBER _____ CASE # _____

NAME _____ COUNTY OF RESIDENCE:

STREET _____ _____

CITY, STATE _____ ZIP _____

TEXT/PHONE NOTIFICATION APPROVED ☐ Yes ☐ No

OPERATOR LICENSE / STATE ID# ☐ None*	BIRTH DATE	ISSUE DATE	STATE

CLASS	EXPIRES	ENDORSEMENT(s)/RESTRICTIONS(s)	SSN# *(last 4 digits)*
		☐ CDL ☐ MC ☐ Other _____	

SEX	HEIGHT	WEIGHT	EYES	HAIR	RACE	FINANCIAL RESPONSIBILITY PROOF?
						☐ Yes ☐ No ☐ N/A

* If no DL/State ID; **REQUIRED** documentation attached: ☐ Yes

TO DEFENDANT: COMPLAINT ON _____ AT _____, YOU

Operated /Passenger /Parked /Walked ☐ Passenger ☐ Motorcycle ☐ Bicycle ☐ Other _____

☐ Commercial DOT# _____ ☐ >=26,001 lbs ☐ <16 Pass Bus ☐ >=16 Pass Bus ☐ Haz. Mat.

VEHICLE: YEAR _____ MAKE _____ MODEL _____

COLOR _____ LICENSE # _____ STATE _____

UPON A PUBLIC HIGHWAY, NAMELY _____ DIRECTION _____

AT/NEAR _____

IN THE _____ OF _____ IN _____

COUNTY (NO.), _____ STATE OF OHIO AND COMMITTED THE FOLLOWING OFFENSE(S).

☐ **SPEED:** _____ MPH in _____ MPH zone ☐ ORC ☐ ORD ☐ T.P.
☐ Over limits ☐ Unsafe for conditions ☐ ACDA
☐ Radar ☐ Air ☐ VASCAR ☐ Pace ☐ Laser ☐ Stationary ☐ Moving

☐ **OVI:** ☐ Under the influence of alcohol/drug of abuse. ☐ ORC ☐ ORD ☐ T.P.
☐ In physical control of vehicle.
☐ Prohibited blood alcohol concentration. _____ BAC
☐ Blood ☐ Breath ☐ Urine ☐ Refused
Prior OVIs: # of prior OVIs _____ Years of prior OVIs _____

☐ **DRIVER LICENSE:** ☐ None ☐ Not on person ☐ Revoked ☐ Suspended ☐ ORC ☐ ORD ☐ T.P.
EXPIRED: ☐ < 6 months ☐ > 6 months ☐ Failure to Reinstate
Suspension Type:

☐ **SAFETY BELT:** Failure to wear ☐ ORC ☐ ORD ☐ T.P.
☐ Driver ☐ Passenger ☐ Child Restraint ☐ Booster Seat

☐ **OTHER OFFENSE:** ☐ ORC ☐ ORD ☐ T.P.

☐ DRIVER LICENSE HELD ☐ VEHICLE SEIZED ☐ JUVENILE OFFENDER
☐ DISTRACTED DRIVING PENTALTY ENHANCEMENT APPLIES (REMARKS REQUIRED

PAVEMENT: ☐ Dry ☐ Wet ☐ Snow ☐ Ice # of Lanes _____ ☐ Construction Zone
VISIBILITY: ☐ Clear ☐ Cloudy ☐ Dusk ☐ Night ☐ Dawn ☐ Workers Present
WEATHER: ☐ Rain ☐ Snow ☐ Fog ☐ No Adverse ☐ A/V
TRAFFIC: ☐ Heavy ☐ Moderate ☐ Light ☐ None
AREA: ☐ Business ☐ Rural ☐ Residential ☐ Industry ☐ School ☐ Freeway
CRASH: ☐ Yes ☐ No ☐ Almost Caused ☐ Non-Injury ☐ Injury ☐ Fatal

Crash Report Number:

REMARKS:

ACCOMPANYING CRIMINAL CHARGE ☐ Yes ☐ No TOTAL # OFFENSES _____

This summons served personally to the defendant on _____. This issuing/charging law enforcement officer states under the penalties of perjury and falsification that he/she has read the above complaint and that it is true. **PERSONAL APPEARANCE REQUIRED** ☐ Yes ☐ No

_____
Charging Law Enforcement Officer

_____
Issuing Law Enforcement Officer ☐ **SAME AS ABOVE**

Court Code	Unit	Post	District

OHP0060 10-0060-00 (REVISION 3/10) DEFENDANT'S COPY OSHP HP7 (B8605)

TO DEFENDANT: Read this material carefully.

☐ **Personal Appearance Required**

If the officer marked this block on the face of the ticket, you must appear in court. Your appearance in court is required because the offenses cannot be processed by a traffic violations bureau.

Failure to Appear and/or **Pay:**

- The posting of bail or depositing your license as bond is to secure your appearance in court or the processing of the offenses through a traffic violations bureau. It is not a payment of fines, or costs.
- If you do not appear at the time and place stated in the citation or if you do not timely process this citation through a traffic violations bureau, your license may be cancelled.
- Also, a warrant may be issued for your arrest and you may be subject to additional criminal penalties.

The following offenses require court appearance and may not be processed by a traffic violations bureau:

- Any Indictable offense;
- Operating a vehicle under the influence of alcohol or any drug of abuse;
- Leave scene of accident;
- Driving while under suspension or revocation of driver's or commercial driver's license when jail is a possible penalty; [Tr.R. 13(B)(4)]
- Driving without being licensed to drive when jail is a possible penalty; [Tr.R. 13(B)(5)]
- A third moving traffic offense within 12 months;
- Passing a standing school bus;
- Willfully eluding or fleeing a police officer;
- Drag racing.

☐ **Waiverable through traffic violations bureau.**

If you are charged with offenses other than those listed above, you may, at any time prior to arraignment, **plead guilty** to the offenses charged and dispose of the case without court appearance by:

(1) appearing personally at the traffic violations bureau, signing the waiver printed below and paying the fines and costs or

(2) signing the waiver printed below and mailing it with the approved payment form, for the total of the fines and costs to the traffic violations bureau at the following address:

Traffic Violations Bureau Address:

INSURANCE WARNING

Under Ohio Law you are required to show proof of financial responsibility or insurance. If you did not do so at the time of receiving this ticket, **you must submit proof** of insurance when you appear in court on these offenses.

If you do not submit the required proof:
- your driver's license will be suspended and,
- you may be subject to additional fees and insurance sanctions.

If you have any questions regarding the proof filing, you may call the traffic violations bureau at the telephone indicated.

For information regarding your **Duty To Appear** or the **Fines and Costs** amount(s), call:

_____ _____
Telephone Number(s) Court Web Address

Contested Case; Court Appearance Required.

If you desire to **contest the offenses** or if court **appearance is required**, you must appear at the time and place stated in the summons.

Notice to Defendant under age eighteen.

You **must appear** before the Juvenile Court at the time and place determined by the Court. The Juvenile Court will notify you when and where to appear.
This ticket will be filed with the Juvenile Court and may be used as a juvenile complaint.

_____
Court Address

For information regarding your **Duty to Appear** at Court call:

_____ _____
Telephone Number(s) Court Web Address

Guilty Pleas, No Contest Pleas, Waiver of Trial, Payment of Fines and Costs

I, the undersigned defendant, do hereby enter my written pleas of guilty to the offenses charged in this ticket. I realize that by signing these guilty pleas, I admit my guilt of the offenses charged and waive my right to contest the offenses in a trial before the court or jury. Further, I realize that a record of this plea will be sent to the Ohio Bureau of Motor Vehicles. I have not been convicted of, pleaded guilty to, or forfeited bond for two or more prior moving traffic offenses within the last 12 months. I plead guilty to the offense (s) charged.

FINES $ _____ _____
Defendant's Signature

COSTS $ _____ _____
Address

TOTAL $ _____ _____

Ticket Number : _____