

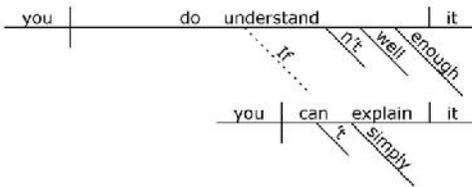
The last 3 years of changes to the Rules of Civil Procedure

Presented by John H. Phillips

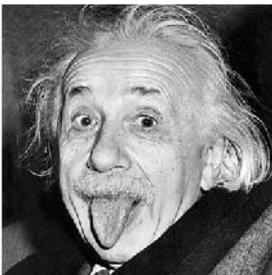
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The Rules of Civil Procedure can be like reading a sentence diagram. The message is there, but what does it say?

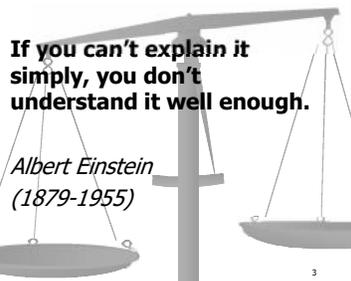


The Rules of Civil Procedure



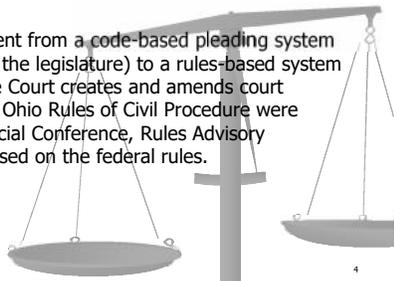
If you can't explain it simply, you don't understand it well enough.

Albert Einstein
(1879-1955)



Ohio's History of tracking the Federal Rules of Civil Procedure

- On July 1, 1970, Ohio went from a code-based pleading system (i.e. statutes enacted by the legislature) to a rules-based system where the Ohio Supreme Court creates and amends court rules. The original 1970 Ohio Rules of Civil Procedure were created by the Ohio Judicial Conference, Rules Advisory Committee, and were based on the federal rules.

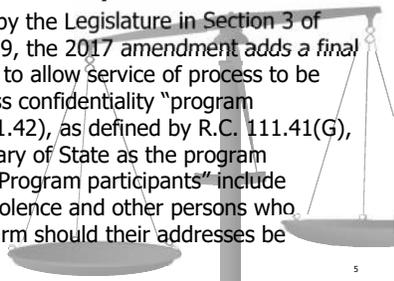


4

2017 Changes

■ Rule 4.2 - Process: Who May be Served

- At the request made by the Legislature in Section 3 of 2016 Sub.H.B. No. 359, the 2017 amendment adds a final paragraph to the rule to allow service of process to be made upon an address confidentiality "program participant," (R.C. 111.42), as defined by R.C. 111.41(G), by serving the Secretary of State as the program participant's agent. "Program participants" include victims of domestic violence and other persons who would be at risk of harm should their addresses be disclosed.

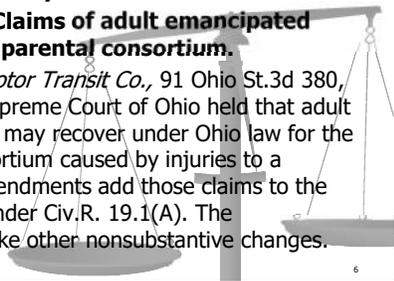


5

2017 Changes

■ Rule 19.1 - Compulsory Joinder

- **Civ.R. 19.1(A)(5). Claims of adult emancipated children for loss of parental consortium.**
- In *Rolf v. Tri State Motor Transit Co.*, 91 Ohio St.3d 380, 2001-Ohio-44, the Supreme Court of Ohio held that adult emancipated children may recover under Ohio law for the loss of parental consortium caused by injuries to a parent. The 2017 amendments add those claims to the claims enumerated under Civ.R. 19.1(A). The amendments also make other nonsubstantive changes.



6

2017 Changes

■ **Rule 30(c) - Examination and cross-examination; objections.**

- The 2017 amendments adopt the 2007 stylistic changes to Fed.R.Civ.P. 30(c), including a nonsubstantive substitution of "deponent" for "witness." Deponents include both parties and non-parties. See Civ.R. 30(A).
- The amendments provide that the Rules of Evidence shall apply at a deposition, except Evid.R. 103 and Evid.R. 615. The Federal Rules first included this provision in 1993. With respect to the exception of Evid.R. 615, the Notes of the Federal Advisory Committee included the following comments which are approved and re-stated in this Staff Note:

7

2017 Changes

■ **Rule 30(c) - Examination and cross-examination; objections. (Continued)**

- "[T]he revision addresses a recurring problem as to whether other potential deponents can attend a deposition. Courts have disagreed, some holding that witnesses should be excluded through invocation of Rule 615 of the evidence rules, and others holding that witnesses may attend unless excluded by an order under [Rule 26(c)]. The revision provides that other witnesses are not automatically excluded from a deposition simply by the request of a party. Exclusion, however, can be ordered under [Rule 26(c)] when appropriate; and, if exclusion is ordered, consideration should be given as to whether the excluded witnesses likewise should be precluded from reading, or being otherwise informed about, the testimony given in the earlier depositions. The revision addresses only the matter of attendance by potential deponents, and does not attempt to resolve issues concerning attendance by others, such as members of the public or press.

8

2017 Changes

■ **Rule 30(c) - Examination and cross-examination; objections. (Continued)**

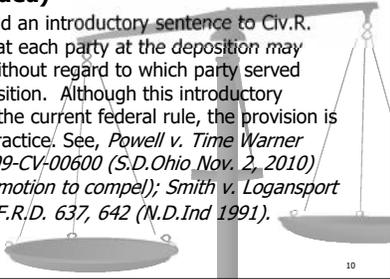
- In adopting the 2007 federal stylistic changes, the amendments include provisions of the federal rule addressing the manner of making objections and the circumstances under which an instruction not to answer a question may be given. These additional provisions are consistent with the guidelines entitled: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

9

2017 Changes

■ **Rule 30(c) - Examination and cross-examination; objections. (Continued)**

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

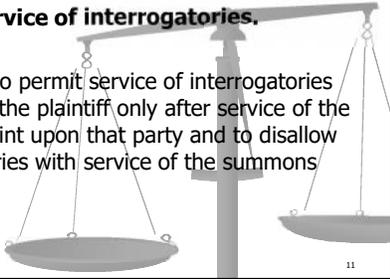


10

2017 Changes

■ **Civ.R. 33(A)(2). Service of interrogatories.**

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

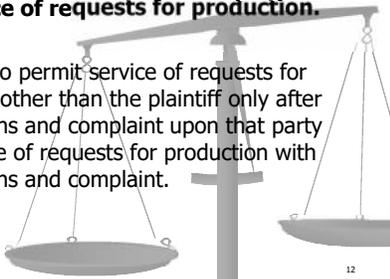


11

2017 Changes

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

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

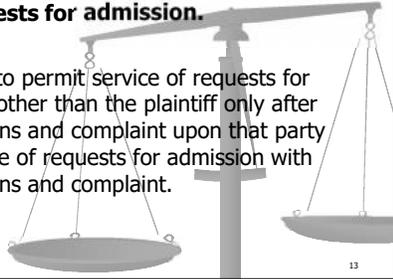


12

2017 Changes

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

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



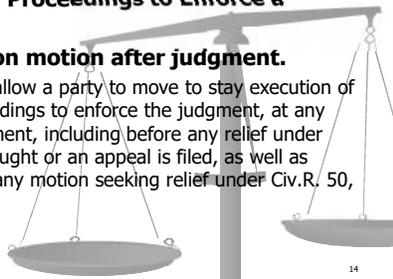
13

2017 Changes

■ Civ.R. 62 - Stay of Proceedings to Enforce a Judgment

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

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

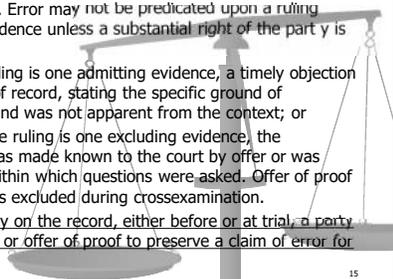


14

2017 Changes to Evidence Rule 103

■ RULE 103 Rulings on evidence

- (A) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected; and
- (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
- (2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. Offer of proof is not necessary if evidence is excluded during cross-examination.
- Once the court rules definitely on the record, either before or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.



15

2016 Changes

■ Rule 4.1 – Process: Methods of Service

- Civ.R. 4.1(A)(1)(b) was adopted in 2012 to provide the clerk with an option to make service of process by a commercial carrier service as an alternative to service by United States certified or express mail. The amendment permits the serving party to provide written instruction to the clerk that service be made by United States certified or express mail pursuant to Civ.R. 4.1(A)(1)(a). This amendment removes the ability of the clerk to use a commercial carrier for service, when the serving party desires to use the United States mail service.

16

2016 Changes

■ Rule 4.2 – Process: Who may be served

- Amendments to Civ.R. 4.2 make changes to incorporate gender neutral language where appropriate to comport with the decision of U.S. Supreme Court in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). *The proposed changes are limited to making the rules gender neutral.*

17

2016 Changes

■ Rule 4.4 – Process: Service by Publication

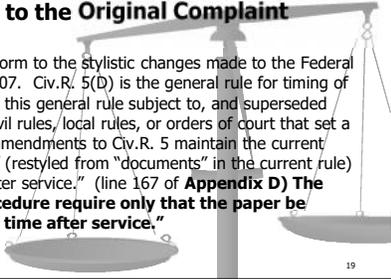
- Amendments to Civ.R. 4.4 allow that publication by posting service of process is an appropriate method of service in Civ.R. 65.1 civil protection order proceedings, under certain conditions described in that division of the rule. As stated in division (A)(2) of the rule a petitioner who is proceeding in forma pauperis and who requests publication by posting service of process must file an affidavit with the court containing the same averments required by division (A)(1) of the rule, i.e., that service of summons cannot be made because the residence of the defendant is unknown to the affiant, all of the efforts made on behalf of the party to ascertain the residence of the defendant, and that the residence of the defendant cannot be ascertained with reasonable diligence.

18

2016 Changes

■ Rule 5 - Service and Filing of Pleadings and Other Papers Subsequent to the Original Complaint

- Amendments to Civ.R. 5 conform to the stylistic changes made to the Federal Rules of Civil Procedure in 2007. Civ.R. 5(D) is the general rule for timing of filing; the amendments make this general rule subject to, and superseded by, any provisions in other civil rules, local rules, or orders of court that set a different time of filing. The amendments to Civ.R. 5 maintain the current requirement that any "paper" (restyled from "documents" in the current rule) "be filed within three days after service." (line 167 of **Appendix D**) **The Federal Rules of Civil Procedure require only that the paper be "filed within a reasonable time after service."**

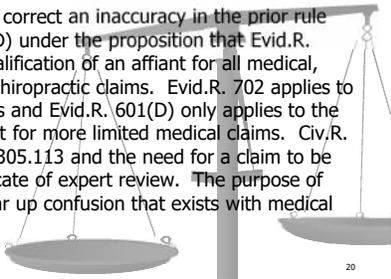


19

2016 Changes

■ Rule 10 - Form of Pleadings

- Amendments to Civ.R.10 correct an inaccuracy in the prior rule which cited Evid.R. 601(D) under the proposition that Evid.R. 601(D) applies to the qualification of an affiant for all medical, dental, optometric, and chiropractic claims. Evid.R. 702 applies to these medical professions and Evid.R. 601(D) only applies to the qualifications of an affiant for more limited medical claims. Civ.R. 10 interfaces with R.C. 2305.113 and the need for a claim to be accompanied by a certificate of expert review. The purpose of the amendment is to clear up confusion that exists with medical liability claims.

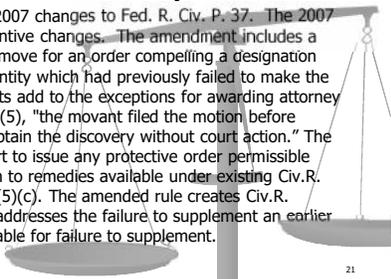


20

2016 Changes

■ Rule 37 – Failure to Make Discovery: Sanctions

- The amendments adopt the 2007 changes to Fed. R. Civ. P. 37. The 2007 changes include some substantive changes. The amendment includes a provision allowing a party to move for an order compelling a designation from a corporation or other entity which had previously failed to make the designation. The amendments add to the exceptions for awarding attorney fees in amended Civ.R. 37(A)(5), "the movant filed the motion before attempting in good faith to obtain the discovery without court action." The amended rule allows the court to issue any protective order permissible under Civ.R. 26(C) in addition to remedies available under existing Civ.R. 37(A)(5)(b) and Civ.R. 37(A)(5)(c). The amended rule creates Civ.R. 37(C)(1); the new language addresses the failure to supplement an earlier response and sanctions available for failure to supplement.



21

2016 Changes

■ Rule 54 - Judgments; Costs

- A new division (E) is added to supersede any application of the decision in *State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 116 Ohio St.3d 88, 2007-Ohio-5542 to an award of attorney fees. The amendment specifies that when any provision of the rules authorizes an award of attorney fees, the court may award the reasonable value of the time spent by the attorney, whether or not the party actually paid or is obligated to pay the attorney for such time.

22

2016 Changes

■ Rule 65.1 - Civil Protection Orders

- The amendments provide direction regarding the methods of service in civil protection order proceedings. The initial attempt at service by the clerk is to be by personal service. If personal service is ineffective, the amendments recognize other methods of service of process available elsewhere in the Rules of Civil Procedure. The amendments, consistent with R.C. 3113.31, R.C. 2151.34, and R.C. 2903.214, allow for any of the methods of service found in Civ.R. 4 through Civ.R. 4.6, when the matter concerns a motion to renew, modify, or terminate a full hearing civil protection order or an approved consent agreement. The amendments clarify ambiguities regarding objections and appeal of a court's adoption, modification, or rejection of a magistrate's denial or granting of a protection order after a full hearing.

23

2015 Changes

■ Rule 1 – Scope of Rules: Applicability; Construction; Exceptions

- Civ.R. 1 The amendments to Civ.R. 1 specifically include Revised Code Chapter 3107 adoption proceedings within the exceptions to the application of the rules. The General Assembly enacted S.B. 250 (effective March 23, 2015) which shortens the time within which to challenge an adoption decree to sixty days. Existing Civ.R. 60(B) governs the timing of a motion for relief from final judgment. Under certain circumstances, that rule, if applicable, would allow a challenge for an adoption decree up to one year after the final judgment. Although court decisions indicate that adoption proceedings are special statutory proceedings, the proposed amendment would eliminate any controversy over whether the statutory change is subject to challenge as in conflict with the Rules of Civil Procedure.

24

2015 Changes

■ Rule 5 – Service and Filing of Pleadings and Other Papers Subsequent to the Original Complaint

- The amendment permits a party to use a court's transmission facilities to serve other parties by electronic means so long as a local rule authorizes that practice. As explained in conjunction with the amendment to App.R. 13, the proposed amendment eliminates a duplication of effort under the current rule that allows a party to electronically serve another party but does not allow the serving party to utilize the court's facilities which serve all parties participating in the electronic filing system. The need for the amendment, which is modeled on a similar provision in the Federal Rules, was overlooked at the time of the 2012 amendments to Civ.R. 5 that permitted the parties to perform service by electronic means.

25

2015 Changes

■ Civ.R. 6, Civ.R. 7, Civ.R. 25, Civ.R. 50, Civ.R. 56, Civ.R. 59

- The amendments address an uncertainty existing under the current rules as to when a response to a motion is due when there is no local rule or court order specifying a time for responding to motions, by specifying, in the absence of a local rule, a timeline after service of the motion within which to serve arguments in response and reply arguments. In addition, the amendments to Civ.R. 6, 7, and 25 eliminate the requirement to serve a "notice of hearing" when serving a motion, recognizing that the requirement is inconsistent with current practice where courts determine motions without oral hearing.

26

2015 Changes

■ Civ.R. 23, Civ.R. 52

- The amendments to Civ.R. 23 conform its provisions to changes made to the Federal Rule. Civ.R. 23 has not been amended since its adoption in 1973; however, the federal rule has seen significant changes to guide courts and parties in the conduct of class actions. The changes include defining the class and appointing class counsel in the certification order; additional detail for the initial notice to Civ.R. 23(B)(3) class members and for the notice of a proposed settlement, voluntary dismissal, or compromise, and new provisions addressing the appointment of class counsel and the awarding of attorney fees and nontaxable costs. The amendments to Civ.R. 52 conform the provisions of the rule to recognize the amendments to Civ.R. 23 and also change the phrase "conclusions of fact" to "findings of fact" which is the customary phrase used in other parts of the rule and in modern practice.

27

2015 Changes

■ Rule 30 – Depositions upon Oral Examination

- The amendments, modeled on provisions in the Federal Rules, permit a party other than the one noticing the deposition, at its own expense and with notice to the deponent and other parties, to arrange for an additional method of recording the testimony. In addition, the amendment to division (B)(6) acknowledges advances in technology and allows the parties to stipulate that a deposition may be taken by other remote means, rather than limiting the means to the telephone. (Skype, etc.)

28

2015 Changes

■ Rule 42 – Consolidation; Separate Trials

- The amendments make no substantive changes to the provisions of the rule. The amendments merely adopt the stylistic changes made to Rule 42 of the Federal Rules of Civil Procedure and also implement the Court's decision in *Havel v. Villa St. Joseph*, 131 Ohio St.3d 235, 2012-Ohio-552 that the trial court does not have discretion to grant or deny bifurcation as to punitive damages.

29

2015 Changes

■ Rule 43 – Taking Testimony

- A new rule, modeled on Fed.R.Civ.P. 43, is adopted that will allow live open court testimony from a location outside the courtroom. The new rule is offered in light of 2011 amendments to R.C. 3109.04 and 3109.051 requiring the court to permit a parent who is called to active military service to participate in custody or visitation proceedings and present evidence by electronic means. Similar amendments are adopted for the Ohio Rules of Juvenile Procedure (Juv. R. 41).

30

2017 CHANGES

OHIO RULES OF CIVIL PROCEDURE

RULE 4.2 Process: Who May be Served

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

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

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

Staff Note (July 1, 2017 Amendment)

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

RULE 19.1 Compulsory Joinder

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

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

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

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

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

(5) Personal injury to a parent and a claim of an adult emancipated child of the parent for loss of parental consortium if caused by the same wrongful act.

If the person has not been so joined, the court, subject to division (B) of this rule, shall order that the person be made a party upon timely assertion of the defense of failure to join a party as provided in Civ.R. 12(B)(7). If the defense is not timely asserted, waiver is applicable as provided in Civ.R. 12(G) and (H). If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. In the event that such joinder causes the relief sought to exceed the jurisdiction of the court, the court shall certify the proceedings in the action to the court of common pleas.

(B) Exception to compulsory joinder. If a party to the action or a person described in division (A) shows good cause why that person should not be joined, the court shall proceed without requiring joinder.

(C) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in divisions (A)(1), (2), (3), or (4) of this rule who are not joined, and the reasons why they are not joined.

(D) Exception of class actions. This rule is subject to the provisions of ~~Rule~~ Civ.R. 23.

Staff Note (July 1, 2017 Amendment)

Civ.R. 19.1(A)(5). Claims of adult emancipated children for loss of parental consortium.

In *Rolf v. Tri State Motor Transit Co.*, 91 Ohio St.3d 380, 2001-Ohio-44, the Supreme Court of 59 Ohio held that adult emancipated children may recover under Ohio law for the loss of parental 60 consortium caused by injuries to a parent. The 2017 amendments add those claims to the claims 61 enumerated under Civ.R. 19.1(A). The amendments also make other nonsubstantive changes.

RULE 30. Depositions upon oral examination

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

(C) Examination and cross-examination; record of examination; oath; objections; written questions.

(1) Examination and cross-examination. Each party at the deposition may examine the deponent without regard to which party served notice or called the deposition. In all other respects the examination and cross-examination of witnesses a deponent may proceed as permitted they would at the trial under the Ohio Rules of Evidence, except Evid.R. 103 and Evid.R. 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and personally, or by someone acting under the officer's direction and in the officer's presence, shall record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means designated in accordance with division (B)(3) of this rule. If requested by one of the parties, the testimony shall be transcribed. After putting the deponent under oath or affirmation, the officer shall record the testimony by the method designated under Civ.R. 30(B)(3). The testimony shall be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

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

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

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

Staff Notes (July 1, 2017 Amendments)

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

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

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

"[T]he revision addresses a recurring problem as to whether other potential deponents can attend a deposition. Courts have disagreed, some holding that witnesses should be excluded through invocation of Rule 615 of the evidence rules, and others holding that witnesses may attend unless excluded by an order under [Rule 26(c)]. The revision provides that other witnesses are not automatically excluded from a deposition simply by the request of a party. Exclusion, however, can be ordered under [Rule 26(c)] when appropriate; and, if exclusion is ordered, consideration should be given as to whether the excluded witnesses likewise should be precluded from reading, or being otherwise informed about, the testimony given in the earlier depositions. The revision addresses only the matter of attendance by potential deponents, and does not attempt to resolve issues concerning attendance by others, such as members of the public or press.

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

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

RULE 33. Interrogatories to Parties

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

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

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

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

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

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

Staff Note (July 1, 2017 Amendment)

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

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

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

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

(B) Procedure. Without leave of court, the request may be served upon the plaintiff after commencement of the action and upon any other party ~~with or~~ after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced, but may not require the production of the same information in more than one form.

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

Staff Note (July 1, 2017 Amendment)

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

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

RULE 36. Requests for Admission

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

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

Staff Note (July 1, 2017 Amendment)

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

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

RULE 62. Stay of Proceedings to Enforce a Judgment

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

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

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

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

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

Staff Note (July 1, 2017 Amendments)

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

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

RULE 86. Effective Date

(QQ) Effective date of amendments. The amendments to Civil Rules 4.2, 19.1, 30, 33, 34, 36 and 62 filed by the Supreme Court with the General Assembly on January 6, 2017 and refiled on April 26, 2017 shall take effect on July 1, 2017. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

2017 CHANGES
OHIO RULES OF EVIDENCE

RULE 103 Rulings on evidence

(A) **Effect of erroneous ruling.** Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected; and

(1) **Objection.** In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) **Offer of proof.** In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. Offer of proof is not necessary if evidence is excluded during cross-examination.

Once the court rules definitely on the record, either before or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(B) **Record of offer and ruling.** At the time of making the ruling, the court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

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

(D) **Plain error.** Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

RULE 1102. Effective Date

(S) Effective date of amendments. The amendments to the Rules of Evidence 103 filed by the Supreme Court with the General Assembly on January 6, 2017 and refiled on April 26, 2017 shall take effect on July 1, 2017. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

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(D) **Plain error.** Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

RULE 1102. Effective Date

(S) Effective date of amendments. The amendments to the Rules of Evidence 103 filed by the Supreme Court with the General Assembly on January 6, 2017 and refiled on April 26, 2017 shall take effect on July 1, 2017. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.