

IN THE SUPREME COURT OF OHIO  
CASE NO. 2006-1568

STATE OF OHIO :  
Appellant :  
-vs- : On Appeal from the  
NORMAN A. CRAIG : Cuyahoga County Court  
Appellant : of Appeals, Eighth  
Appellate District Court  
of Appeals  
CA: 88313

---

**BRIEF OF AMICUS CURIAE CUYAHOGA COUNTY PUBLIC  
DEFENDER IN SUPPORT OF APPELLEE NORMAN CRAIG**

---

ROBERT L. TOBIK, ESQ.  
Cuyahoga County Public Defender  
BY: JOHN T. MARTIN, ESQ. ( 0020606)  
Assistant Public Defender  
310 Lakeside Avenue, Suite 200  
Cleveland, OH 44113  
(216) 443-7583  
COUNSEL FOR AMICUS CURIAE  
CUYAHOGA COUNTY PUBLIC DEFENDER.

WILLIAM MASON, ESQ.  
Cuyahoga County Prosecutor  
BY: LISA REITZ WILLIAMSON (0041468)  
JON W. OEBKER (0064255) (Counsel of Record)  
Assistant Prosecuting Attorneys  
The Justice Center – 9<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, OH 44113  
(216) 443-7800  
COUNSEL FOR APPELLANT  
STATE OF OHIO

RUFUS SIMS, ESQ. (39369)  
75 Public Square, Suite 1111  
Cleveland, Ohio 44113  
(216) 502-0800  
COUNSEL FOR APPELLEE  
NORMAN A. CRAIG

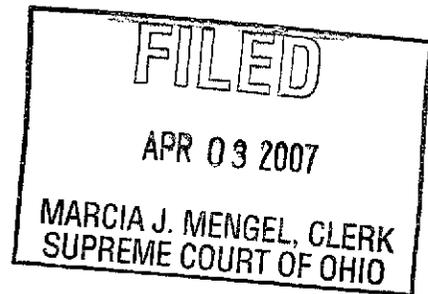


TABLE OF CONTENTS

	<u>PAGES</u>
TABLE OF AUTHORITIES .....	POST
INTERESTS OF AMICUS CURIAE .....	1
STATEMENT OF THE CASE AND FACTS .....	1
ARGUMENT: .....	2
<b>IN RESPONSE TO STATE OF OHIO’S PROPOSITION OF LAW (AS FORMULATED BY                      APPELLANT STATE OF OHIO):</b> <b>THE STATE MAY APPEAL AS A MATTER OF RIGHT ANY DECISION BY A                      TRIAL COURT THAT DISMISSES A CRIMINAL INDICTMENT REGARDLESS OF                      WHETHER THE DISMISSAL IS WITH OR WITHOUT PREJUDICE</b>	
CONCLUSION .....	10
SERVICE.....	10

APPENDIX

R.C. 1.59-----	A-1
R.C. 2901.04 and 1974 Committee Comment to H. 511 (excerpt) -----	A-2
R.C. 2945.72 -----	A-3
Evid. R. 101 -----	A-4

TABLE OF AUTHORITIES

CASES

<i>In re S.J.</i> , 106 Ohio St.3d 11, 2005-Ohio-3215 -----	5
<i>State v. Meeker</i> (1971), 26 Ohio St.2d 9 -----	9
<i>Zedner v. United States</i> (2006), 126 S.Ct. 1976 -----	9

STATUTES AND RULES

R.C. 1.59-----	2
R.C. 2505.02 -----	1, 2, 3, 4
R.C. 2901.04 -----	4, 5, 6, 8
R.C. 2945.67 -----	passim
R.C. 2945.71 -----	8
R.C. 2945.72 -----	8
Evid. R. 101 -----	7

LEGISLATIVE MATERIALS

Committee Comment to H. 511 -----	5
-----------------------------------	---

## **INTERESTS OF AMICUS CURIAE**

Your amicus, the Cuyahoga County Public Defender, represents approximately thirty-five percent of the indigent felony defendants in Cuyahoga County. In addition, through its Appellate Division, the Public Defender's Office represents approximately 100 indigent defendants each year, principally before this Court and the Eighth District Court of Appeals.

As one of, if not the, largest public defender offices in the State, this Office believes that the instant case will have ramifications upon its clients. Accordingly, this case is important to this Office, and to the rights of criminal defendants throughout the State.

## **STATEMENT OF THE CASE AND FACTS**

The instant case involves a purported appeal by right of the State of Ohio from the sua sponte dismissal of the indictment by the trial judge. See, Docket, June 12, 2006. The appeal was dismissed by the Eighth District Court of Appeals as not having been taken from a final appealable order because, in accordance with Eighth District precedent, the trial court's dismissal had been entered without prejudice to the State's ability to re-indict. See, Journal Entry of Dismissal, July 3, 2006.

To the extent that the parties have addressed the circumstances and proceedings that the parties believe led to the dismissal of the indictment by the trial judge, they have presented to this Court facts and circumstances that are not necessary for the development of the arguments posited herein. Your amicus takes no position regarding these factual circumstances.

## ARGUMENT

*In Response to Appellant State of Ohio's Sole Proposition of Law, which states:*

**The State May Appeal as a Matter of Right Any Decision by a Trial Court that Dismisses a Criminal Indictment Regardless of Whether the Dismissal is With or Without Prejudice**

The State contends that authority for its appeal of right of a dismissal without prejudice is derived from two statutes: R.C. 2505.02 and R.C. 2945.67, respectively. Accordingly, your amicus addresses each of these statutes seriatim.

### **R.C. 2505.02 Does Not Authorize the State's Appeal.**

The State's reliance upon R.C. 2505.02 is misplaced. The State relies upon R.C. 2505.02(B) as authorizing its appeal. R.C. 2505.02(B) states:

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

- (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;
- (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;
- (3) An order that vacates or sets aside a judgment or grants a new trial;
- (4) An order that grants or denies a provisional remedy and to which both of the following apply:
  - (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.
  - (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.
- (5) An order that determines that an action may or may not be maintained as a class action;
- (6) An order determining the constitutionality of any changes to the

Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly .

The State contends that it possesses a “substantial right” to prosecute the originally-indicted case and that it therefore has a right to appeal the dismissal of the indictment.

The flaw in the State’s argument is that the term “substantial right,” is a term that carries with it a particular definition:

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles *a person* to enforce or protect.

R.C. 2505.02(A) (emphasis added). R.C. 2505.02’s reference to “substantial right” is explicitly limited to rights guaranteed to “person[s].” Id.

In addition, the term, “person” is a defined term:

As used in any statute, unless another definition is provided in that statute or a related statute:

\*\*\*

“Person” includes an individual, corporation, business trust, partnership or association.

R.C. 1.59(C).

Thus, because “person” does not include governmental agencies (such as the State of Ohio acting through a county prosecutor) and because a “substantial right” must be a right that inures to a “person,” the provisions of R.C 2505.02(B)(1) do not apply to the State’s appeal of a dismissed criminal case.

Nor can the State draw from any other portion of R.C. 2505.02(B). R.C. 2505.02(B)(2) involves both a “substantial right” in the context of particular proceedings not applicable here.

R.C. 2505.02(B)(3) involves an order that vacates or sets aside a previous judgment or grants a new trial and is clearly inapplicable.

R.C. 2505.02(B)(4) involves “provisional remed[ies],” which are defined in R.C. 2505.02(A)(3). The dismissal of the entire case, with or without prejudice, is not a “provisional remedy” under R.C. 2505.02(A)(3) because it is not a proceeding ancillary to the underlying action – rather, it is directly related to the underlying action. As such, R.C. 2505.02(B)(4) is inapplicable. R.C. 2505.02(B)(5) and (B)(6), dealing with class actions and the constitutionality of certain statutory provisions, are clearly inapplicable.

Accordingly, this Court should turn to the second plank of the State’s argument, whether it has an appeal of right under R.C. 2945.67.

**R.C. 2945.67 Does Not Provide an Appeal of Right of Dismissals Without Prejudice**

While the State’s right to appeal under R.C. 2505.02 is short-circuited by the explicit definition of the terms of that statute, the State’s right to appeal under R.C. 2945.67 is a closer question. On its face, as the State argues, R.C. 2945.67 grants the State the right to appeal “a motion to dismiss all or any part of an indictment.” R.C. 2945.67, cited in State’s Merit Brief of Appellant, at 5. The State maintains that the language of this provision makes no distinction between dismissals with or without prejudice and that the term “dismissal” covers either scenario.

The question then before this Court is whether, in the absence of an explicit definition of “dismissal” in the Revised Code, the term “dismissal” in R.C. 2945.67 should be interpreted expansively so as to include both dismissals with and dismissals without prejudice. The interpretation of the words used in R.C. 2945.67 is dictated by statute. R.C. 2901.04(B) specifically provides that “sections of the Revised Code providing for criminal procedure shall

be construed so as to effect the fair, impartial, speedy, and sure administration of justice.” Thus, the General Assembly, by its plain language in R.C. 2901.04, has directed this Court to focus on four paramount considerations in determining what “dismissal” means:

Interpret the term so as to effect the fair administration of justice;

Interpret the term so as to effect the impartial administration of justice;

Interpret the term so as to effect the speedy administration of justice;

Interpret the term so as to effect the sure administration of justice.

Accord, 1974 Committee Comment to H. 511 (R.C. 2901.04 provides that “procedural matters are not to be construed in terms of strictness or liberality, but rather to effect the fair, impartial, speedy and sure administration of justice.”).

This Court has recognized that R.C. 2945.67 is not subject to strict, or literal, construction. In *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, on which the State relies, this Court construed the words of R.C. 2945.67 to hold that a sua sponte dismissal with prejudice by a trial court fell under the purview of R.C. 2945.67, even though there had been no “motion to dismiss” as explicitly set forth in the statute.<sup>1</sup> This Court reasoned that the “dismissal is the equivalent of a ‘decision grant[ing] a motion to dismiss’ under R.C. 2945.67(A).” *In re S.J.*, at par. 13 (bracketed material appears as such in original). In the same way that this Court went beyond the literal terms of R.C. 2945.67 to determine that the State had an appeal of right of the trial court’s sua sponte dismissal with prejudice, this Court must similarly examine R.C. 2945.67’s use of the term “dismissal” and determine whether the State has an appeal of right of a trial court’s dismissal without prejudice.

---

<sup>1</sup> Had this Court decided this issue to the contrary in *In re S.J.*, the instant appeal would have to be dismissed because the trial court in this case did not dismiss upon motion of the defendant, but sua sponte.

When analyzed under the lens of R.C. 2901.04(B)'s mandates, R.C. 2945.67 should be interpreted so as to guarantee the State an appeal of right of only those dismissals that are with prejudice. Your amicus urges this Court to adopt as its syllabus law the following proposition:

**Where the State can continue to prosecute the defendant via a new indictment for the same alleged offense conduct, the dismissal of an indictment is not appealable by the prosecuting attorney as a matter of right under R.C. 2945.67.**

This proposition of law is consistent with the four principles of R.C. 2901.04 set forth above. Limiting State appeals of right to dismissals with prejudice is both fair and impartial, thus satisfying the first two criteria under R.C. 2901.04(B) rule of interpretation. Limiting appeals of right by the State to dismissals with prejudice is impartial because it places the State on even footing with the defendant. There are times when a defendant may wish to appeal a trial court's dismissal without prejudice of an indictment – because the defendant believes that the State should either be required to go to trial or dismiss *with* prejudice. Yet the defendant is precluded from taking such an appeal because of the lack of finality. The State should be in no better a position than is the individual defendant.

Not only is limiting State appeals of right to dismissals with prejudice impartial, it is also fair. The State maintains that the instant case is one of four examples of “arbitrary dismissals” promulgated by the Cuyahoga County Common Pleas Court in the past several years. See, State's Brief, at 9. The State contends that, without the ability to appeal dismissals without prejudice, it could be subjected to an endless circuit of successive dismissals by a vindictive or arbitrary judge. See, State's Brief at 8-9. But, apart from R.C. 2945.67, the State has the ability, via established procedures for petitioning the Chief Justice to remove a trial judge from a case, to ensure that a truly irresponsible judge will not be able to wreak havoc over a particular case indefinitely. In much the same way that the State argues that “[t]here are options for dealing with

an attorney who does not comply with a court's orders other than dismissing a minor rape victim's case,"<sup>2</sup> so too there are options for dealing with a judge who does not comply with the rules of judicial propriety other than subjecting a criminal defendant to an extended process of appellate litigation.<sup>3</sup>

Under the proposition of law urged by your amicus, the State still enjoys appellate remedies in cases where it contends, as it has in this case, that a trial judge has dismissed a case arbitrarily. R.C. 2945.67 is not limited to delineating when the State can take an appeal of right. The statute goes on to provide that the State may also take appeals with the leave of the appellate court. R.C. 2945.67.<sup>4</sup> Thus, your amicus' proposition of law will not keep the State from ever entering the appellate courthouse door in cases such as this – however, the State would be required to knock first and ask permission to enter.

Moreover, in those cases where the court of appeals denies the State leave to appeal, the State is not precluded from prosecuting the case. It must, however, first return to the grand jury in order to obtain an indictment. The State's concerns about having to again marshal all of its evidence to obtain a true bill of indictment should be allayed by the relaxed evidentiary requirements of the grand jury. Specifically, the rules of evidence regarding hearsay testimony do not apply in the grand jury. Evid. R. 101(C)(3). Moreover, in the unusual case where the grand jury would want more or better evidence before it would return a true bill against a

---

<sup>2</sup> State's Brief, at 9.

<sup>3</sup> Your amicus desires only to address the legal issue relating to the State's ability to take an appeal of right of a dismissal of an indictment. Accordingly, we offer no opinion about the propriety of the actions of the trial judges in any of the cases, including the instant case, about which the State complains.

<sup>4</sup> The only exception in this regard, which is not applicable here, is that the State may not appeal a final verdict. *Id.*

defendant that was previously indicted for the same offense or offenses, the grand jury's reluctance to indict may well indicate that further investigation or introspection is needed before subjecting the defendant to criminal charges.

Having addressed whether limiting State's appeals to dismissals with prejudice is fair and impartial, your amicus now turns to R.C. 2901.04's remaining two criteria, which, for the Office of the Cuyahoga County Public Defender, is the gravamen of this case: keeping a case on hold during the pendency of an appeal is an extraordinary remedy that should be used sparingly, lest criminal defendants be subjected to an unnecessary delay which erodes the sure administration of justice. An appeal of a dismissal without prejudice subjects a defendant to months, if not years, of expense and uncertainty as the State pursues an appeal to the district court of appeals and, perhaps, to this Court.<sup>5</sup> While indigent defendants such as Mr. Craig will not be responsible for the costs of this essentially-interlocutory appellate litigation, persons who are not indigent will have to pay for counsel to represent them in an appellate process initiated by the State in order for the State to avoid returning to the grand jury.

Nor is money the only issue. While the appeal is pending, the defendant cannot get on with his or her life. The specter of an ongoing appeal hangs over the defendant and affects employment prospects, community perception and familial relationships. The defendant cannot say, "the charges against me are dismissed and I don't have to go to court." Rather, the case is pending – it is on appeal in a higher court.

---

<sup>5</sup> For example, Mr. Craig's case was dismissed without prejudice on June 12, 2006. The only reason why this case is before this Court in such an expedited fashion is that the Eighth District Court of Appeals sua sponte dismissed the appeal on July 3, 2006 for lack of an appealable order. Had the case been briefed on its merits, it is not at all certain that a decision would have already been reached in the Eighth District, and it is virtually certain that a losing party's appeal of a decision on the merits in the Eight District would have yet to be decided by this Court.

In the meantime, as the appeal proceeds, the underlying case lingers. The opportunity for the defendant to collect and preserve evidence is oftentimes eroding. Unlike the State, who can memorialize testimony of witnesses in the grand jury, the defendant has no similar means of perpetuating testimony. The inequity in investigative resources makes it harder for criminal defendants than it is for the State to piece together the facts of a case as time passes.

These practical concerns underlie the General Assembly's speedy trial statutes, R.C. 2945.71 et seq., as well as this Court's historical jurisprudence regarding both speedy trial and pre-indictment delay. E.g., *State v. Meeker* (1971), 26 Ohio St. 2d 9. Yet, by dragging a criminal defendant through the appeal in situations where the case could be re-indicted in relatively short order, the State subjects the defendant to the same type of delay but without any meaningful redress afforded to the defendant. The speedy trial provisions are tolled. R.C. 2945.72. The constitutional right to speedy trial is of no help to the defendant because the case is still proceeding on appeal. Most importantly, because the appeal is pending as to the dismissal of the indictment, there is no pre-indictment delay. If, on the other hand, if the State could not appeal, then the constitutional protections against pre-indictment delay would apply to any subsequent indictment.

Moreover, as the United States Supreme Court recently reiterated, the right to speedy trials goes beyond the rights of the defendant and beyond the rights of the prosecuting attorney. See, *Zedner v. United States* (2006), 126 S.Ct. 1976. Victims, witnesses, and the public at large have an interest in the speedy resolution of criminal cases. *Id.*

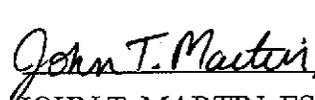
In short, if the State is correct that R.C. 2945.67 guarantees it an appeal of right in situations such as that presented here, the State can unduly prolong a case, to the prejudice of the defendant and the public, because it chooses to fight a dismissal without prejudice in the courts of appeals, rather than simply re-indict. Conversely, if under your amicus' proposition of law, the State will still

be able to attempt to take an appeal of a dismissal without prejudice but it will have to seek leave of the appellate court to do so. In deciding whether to grant leave to appeal, the appellate court will be able to hear from the defendant, via a response to the motion for leave to appeal, and then decide whether the hardship that an appeal places upon the defendant and the public is outweighed by the benefit to the State on a case-by-case basis. R.C. 2945.67, by requiring judicial intervention before full engagement of the appellate process, will thus ensure both impartiality and fairness in a manner that is both swift and sure.

### CONCLUSION

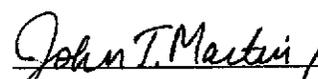
For these reasons, your amicus urges this Court to affirm the decision of the trial court dismissing the within appeal.

Respectfully submitted,

 *SES per  
addendum  
(0023825)*  
JOHN T. MARTIN, ESQ., #0020606  
Assistant Public Defender  
Counsel for Amicus Curiae  
CUYAHOGA COUNTY PUBLIC  
DEFENDER

### SERVICE

A copy of the foregoing Brief of Amicus Curiae Cuyahoga County Public Defender in Support of Appellee Norman Craig was served via U.S. mail upon Assistant County Prosecutor Jon W. Oebker, The Justice Center - 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 and Rufus Sims, Esq., 75 Public Square, Suite 1111, Cleveland, Ohio 44113, this 3<sup>rd</sup> day of April, 2007.

 *Bill Stone per  
authenticity*  
JOHN T. MARTIN, ESQ. #0020606

**§ 1.59. Definitions.**

As used in any statute, unless another definition is provided in that statute or a related statute:

- (A) "Child" includes child by adoption.
- (B) "Oath" includes affirmation and "swear" includes affirm.
- (C) "Person" includes an individual, corporation, business trust, estate, trust, partnership, and association.
- (D) "Population" means that shown by the most recent regular federal census.
- (E) "Property" means real and personal property.
- (F) "Rule" includes regulation.
- (G) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legislative authority of the United States of America. "This state" or "the state" means the state of Ohio.
- (H) "United States" includes all the states.
- (I) "Will" includes codicil.
- (J) "Written" or "in writing" includes any representation of words, letters, symbols, or figures; this provision does not affect any law relating to signatures.
- (K) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.

**HISTORY: 134 v H 607. Eff 1-3-72; 150 v H 204, § 1, eff. 11-5-04.**

**Effect of Amendments**

150 v H 204, effective November 5, 2004, added (K) and made minor stylistic changes.

**§ 2901.04. Rules of construction; references to previous conviction; interpretation of statutory references that define or specify a criminal offense.**

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(C) Any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

**HISTORY:** 134 v H 511 (Eff 1-1-74); 148 v S 107. Eff 3-23-2000; 150 v S 146, § 1, eff. 9-23-04.

**Not analogous to former RC § 2901.04 (GC § 12402-1; 109 v 545; 111 v 77; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.**

**Effect of Amendments**

150 v S 146, effective September 23, 2004, added (D) and corrected internal references.

**19xx Committee Report or Comment.**

**1974 Committee Comment to H 511**

This section codifies the rule that penal statutes must be strictly construed against the state and liberally construed in favor of the accused. See, *Harrison v. Ohio*, 112 Ohio St. 429, 147 N.E. 650 (1925) aff'd 270 U.S. 632; *State ex rel. Moore Oil Co. v. Dauben*, 99 Ohio St. 406, 124 N.E. 232 (1919). In addition, the section provides a rule for the construction of procedural measures, based on the premise that the prime object of procedural statutes and rules is to promote justice both to the accused and to the state. Thus, procedural measures are not to be construed in terms of strictness or liberality, but rather to effect the fair, impartial, speedy, and sure administration of justice.

**§ 2945.72. Extension of time for hearing or trial.**

The time within which an accused must be brought to trial, or, in the case of felony, to preliminary hearing and trial, may be extended only by the following:

(A) Any period during which the accused is unavailable for hearing or trial, by reason of other criminal proceedings against him, within or outside the state, by reason of his confinement in another state, or by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his availability;

(B) Any period during which the accused is mentally incompetent to stand trial or during which his mental competence to stand trial is being determined, or any period during which the accused is physically incapable of standing trial;

(C) Any period of delay necessitated by the accused's lack of counsel, provided that such delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon his request as required by law;

(D) Any period of delay occasioned by the neglect or improper act of the accused;

(E) Any period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused;

(F) Any period of delay necessitated by a removal or change of venue pursuant to law;

(G) Any period during which trial is stayed pursuant to an express statutory requirement, or pursuant to an order of another court competent to issue such order;

(H) The period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion;

(I) Any period during which an appeal filed pursuant to section 2945.67 of the Revised Code is pending.

**HISTORY:** 134 v H 511 (Eff 1-1-74); 136 v H 164 (Eff 1-13-76); 136 v S 368 (Eff 9-27-76); 137 v H 1168. Eff 11-1-78.

Analogous to former RC § 2945.72 (GC § 13447-2; 113 v 123(193); Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

**EvR 101. Scope of Rules: Applicability; Privileges; Exceptions.**

**(A) Applicability.** These rules govern proceedings in the courts of this state, subject to the exceptions stated in division (C) of this rule.

**(B) Privileges.** The rule with respect to privileges applies at all stages of all actions, cases, and proceedings conducted under these rules.

**(C) Exceptions.** These rules (other than with respect to privileges) do not apply in the following situations:

(1) Admissibility determinations. Determinations prerequisite to rulings on the admissibility of evidence when the issue is to be determined by the court under Evid.R. 104.

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous criminal proceedings. Proceedings for extradition or rendition of fugitives; sentencing; granting or revoking probation; proceedings with respect to community control sanctions; issuance of warrants for arrest; criminal summonses and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Contempt. Contempt proceedings in which the court may act summarily.

(5) Arbitration. Proceedings for those mandatory arbitrations of civil cases authorized by the rules of superintendence and governed by local rules of court.

(6) Other rules. Proceedings in which other rules prescribed by the Supreme Court govern matters relating to evidence.

(7) Special non-adversary statutory proceedings. Special statutory proceedings of a non-adversary nature in which these rules would by nature be clearly inapplicable.

(8) Small claims division. Proceedings in the small claims division of a county or municipal court.

**HISTORY: Amended, eff 7-1-90; 7-1-96; 7-1-99**