

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.,
DR. JUDITH VARNAU,

SUPREME CT. CASE NO. 2014-1605

Relator,

-vs-

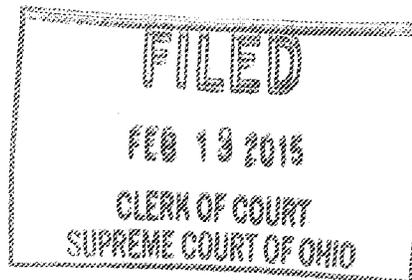
In an Original Action for Writs
of Prohibition and Mandamus

TWELFTH DISTRICT COURT OF
APPEALS

and

ROBERT A. HENDRICKSON,
JUDGE

Respondents.



MERIT BRIEF OF
RELATOR, DR. JUDITH VARNAU

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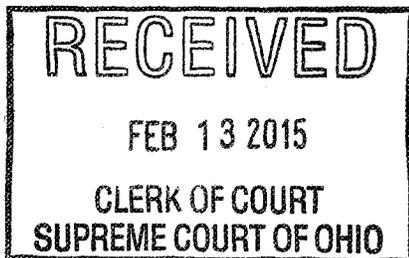


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STATEMENT OF FACTS

The facts here are not disputed, only the construction of the applicable law to those facts. This court has in previous cases mostly already resolved the legal issues, and in Relator's favor, that are material to the Respondents' jurisdiction to proceed in the subject appeal, due to defects in the initiating Complaint; and due to defects in the attempt to appeal the underlying Judgment (in Relator's favor) in a statutory removal action. Supporting documents were attached and incorporated into Relator's Affidavit filed with the Submission of Evidence in this case.

On April 16, 2014, Steve Adamson and others (Appellants in the Twelfth District), through their counsel, filed a Complaint to remove the Brown County Coroner Dr. Judith Varnau (Relator) from office, pursuant to R.C. 3.07 et seq. (Relator's Ex. 1). The Complaint was not signed by anyone other than their attorney, and instead was accompanied by a petition purported to have been signed by a certain number of Brown County voters.

The matter was tried without a jury on May 14 and 15, 2014. On June 23, 2014, the trial court rendered a verdict and judgment finding in the Relator's favor and dismissing the case (Relator's Ex. 2). The basis for the ruling was stated, in the court's "Conclusion" as:

[T]he court finds that the failures [alleged against Relator] *do not sufficiently make out clear and convincing evidence of gross neglect as defined* – of a gravity and frequency amounting to an endangerment or threat to the public welfare.

* * *

[T]hese actions [the court describing the facts basing the complaints] *do not establish by clear and convincing evidence, grounds to remove Defendant Varnau* from her position.

* * *

The question is whether Defendant is guilty of misconduct in office, and *the court finds that Plaintiffs have failed to prove by clear and convincing evidence that Coroner Varnau has committed violations sufficient to warrant removal* pursuant to R.C. 3.07. The court *is not convinced* that the mistakes Defendant had made in the performance of

her official duties *rise to the level* of gross neglect of duty, misfeasance, malfeasance or nonfeasance required by law for her removal.

The court returns a verdict in favor of Defendant, and orders the Complaint dismissed. Findings and Decision, June 23, 2014 (Rel. Ex. 2), p. 11-12 (emphasis added). Those plaintiffs did not request findings of fact or conclusions of law.

On July 23, 2014, those plaintiffs filed a Notice of Appeal, without having first obtained leave to do so, and at the same time filed a Motion for Leave to file an Appeal (see Rel. Ex. 3). No hearing was ever set or noticed or held on the Motion for Leave. (Id.). Relator filed a motion to strike the Notice and dismiss the appeal and to deny leave to appeal. No response was filed by those appellants (see Rel. Ex. 3).

On September 8, 2014, the Respondent Twelfth District Court of Appeals, by the Honorable Judge Robert A. Hendrickson (as Administrative Judge), and without *any* hearing (see Rel. Ex. 3, and Affidavit of Relator, Rel. Ex. 6), denied Relator's Motion to Dismiss the Appeal and granted leave to appeal. (Rel. Ex. 4). On September 10, 2014, an accelerated scheduling order issued (Rel. Ex. 5). See also, Affidavit of Relator Dr. Judith Varnau, Brown County Coroner (Rel. Ex. 6).

Relator filed this Complaint seeking a Writ of Prohibition and Mandamus to arrest the exercise of jurisdiction over the Removal Action appeal by the Twelfth District Court of Appeals. On January 28, 2015, this court denied the Respondents' Motion to Dismiss and granted the Alternative Writ of Prohibition and Mandamus, and set a briefing schedule.

ARGUMENT

Proposition of Law No. I: R.C. 3.07, et seq, for initiating and appealing from a statutory action for removal of a county coroner, are substantive and not just procedural and are therefore jurisdictional.

The General Assembly created a special statutory proceeding for removal of an elected

coroner from office, in R.C. 3.07, et seq. These removal proceedings are quasi-penal in nature and therefore *are to be strictly construed*. *2,867 Signers of Petition for Removal of Mack v. Mack*, 66 Ohio App. 2d 79, 82, 419 N.E.2d 1108 (9th Dist. 1979) (citing *McMillen v. Diehl*, 128 Ohio St. 212, 214-215, 190 N.E. 567 (1934)). The Civil Rules do not apply to these proceedings. Civ. R. 1(C)(7); *2,687 Signers*, supra at 84.

Just as the General Assembly created a special statutory proceeding for a common pleas court to remove an elected official, it created a special right *to appeal from* that proceeding -- to invoke appellate jurisdiction. R.C. 3.09 provides (in relevant part): “Such notice of appeal may be filed *only after leave has been granted* by the court of appeals for good cause shown” (Emphasis added). A hearing on the request for leave is also expressly required. *Id.* No such leave was granted before the Notice was filed, and therefore the July 23, 2014, “notice” was void and a nullity and should have been stricken. Because no *valid* notice of appeal was ever filed, much less in time as required by R.C. 3.09, the Respondent has no jurisdiction.

The Respondents here granted leave to appeal although there was no leave requested before the appeal was filed, and no hearing on the request for leave to appeal, both expressly required by the Statutes. In granting leave to appeal after the fact, and without a hearing, the Respondents appear to have found that the General Assembly’s provisions for an appeal in a removal action are not binding on the courts. See Entry, September 8, 2014 (Rel. Ex. 4). But R.C. 3.09 is jurisdictional, and this court and the 12th District appear to have both said so.

These provisions (including R.C. 3.09) are statutorily created substantive limits of the right of appeal from a statutorily created right (a removal action). The Ohio Constitution, at Article IV, Section 5(B) (the “Modern Courts Amendment”) conferred authority on the Ohio Supreme Court to promulgate rules relating to matters of *procedure* in courts of Ohio, but the

right to establish the *substantive law* in Ohio remained with the General Assembly. Procedural rules therefore only supersede conflicting statutes that affect procedural matters, but the Rules cannot "abridge, enlarge, or modify any substantive right." See Milligan & Pohlman, "The 1968 Modern Courts Amendment to the Ohio Constitution," 29 Ohio St.LJ. 811 (1968), quoted in *Havel v. Villa St. Joseph*, 131 Ohio St.3d 235, 236, 2012-Ohio-552, 963 N.E.2d 1270, ¶ 2. See also, *Proctor v. Kardassilaris*, 115 Ohio St.3d 71, 2007-Ohio-4838, 873 N.E.2d 872, ¶ 17 (Ohio Constitution, Article IV, Section 5(B) "expressly states that rules created in this manner 'shall not abridge, enlarge, or modify any substantive right.'"). If a rule conflicts with a statute, the rule will control for procedure but "the statute will control for matters of substantive law." *Id.*

"Substantive" in this context means "that body of law which creates, defines and regulates the rights of the parties. . . . The word substantive refers to common law, statutory and constitutionally recognized rights." *Krause v. State*, 31 Ohio St.2d 132, 145, 285 N.E.2d 736 (1972), over'd on other grounds, *Schenkolewski v. Cleveland Metroparks Sys.*, 67 Ohio St.2d 31, 426 N.E.2d 784 (1981), syl. 1. Procedural law though "prescribes methods of enforcement of rights or obtaining redress." *Roe v. Planned Parenthood Southwest Ohio Region*, 122 Ohio St.3d 399, 2009-Ohio-2973, 912 N.E.2d 61, ¶ 34 (citations omitted). A right is a "power, privilege, or immunity secured to a person by law," as well as "[a] legally enforceable claim that another will do or will not do a given act." *Black's Law Dictionary* (9th Ed.2009).

Whether R.C. 3.09 specifically is a substantive law depends upon whether it and the statutes for removal actions create "a right." It cannot be construed any other way. There would be no "right" for anyone to seek removal by civil action of an elected official without those sections. There would be nothing for anyone to appeal from if not for those sections creating the right to do so. Therefore those sections are only, and are *the* "body of law which creates, defines

and regulates the rights of the parties” (as to removal actions) and are the only source for those “statutory” and “recognized rights,” *Krause v. State*, supra, and are therefore substantive.

State v. Hughes, 41 Ohio St.2d 208, 210, 324 N.E.2d 731 (1975), construed R.C. 2945.68 (granting appellate courts *discretion* to allow the state to appeal a criminal matter) to prevail over App. R. 4(B) (which permitted the state to appeal *as of right* in criminal cases), and held that App. R. 4(B) is invalid as it “enlarges the statutory right of appeal provided by R. C. 2945.67 through 2945.70,” and that the Rule must yield to the Statute because (like R.C. 3.09) R.C. 2945.68 granted the state “a substantive right of appeal which did not exist at common law prior to the adoption of Section 6 of Article IV of the Ohio Constitution (now Section 3 of Article IV), and the implementing legislation contained in R.C. 2945.67 through 2945.70.” In *Havel v. Villa St. Joseph*, 131 Ohio St.3d 235, at ¶ 20-21, this court noted that those statutes granted “jurisdiction to appellate courts to hear appeals by the prosecution in criminal cases” as well as created “a substantive right in the prosecution to bring such appeals in the instances permitted by R.C. 2945.70 and the decisions interpreting that section.” (Citing *State v. Hughes*, supra at 210-211).¹

Similarly R.C. 3.09 granted “jurisdiction to appellate courts to hear appeals by” the parties in statutory removal actions, as well as created “a substantive right in the [parties to removal actions] to bring such appeals in the instances permitted by R.C. [3.09].” *Havel v. Villa St. Joseph*, 131 Ohio St.3d 235, at ¶ 20-21 (editing added). *State ex rel. Sapp v. Franklin County Court of Appeals*, 118 Ohio St.3d 368, 372-373, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 30-31, cited

¹The Twelfth District cited to *State v. Hughes* and Article IV, Section 5(B) of the Ohio Constitution, in *In re Removal of Osuna*, 116 Ohio App.3d 339, 341, 688 N.E.2d 42 (12th Dist. 1996), which denied an appeal in a removal action because the appellant did not comply with R.C. 3.09. “Here, however, *the statutory requirements for leave to appeal go directly to the right to appeal, and the right to appeal is a substantive right which cannot be abridged, enlarged or modified by a rule of procedure.*” *Id.* (Emphasis added).

to the Twelfth District in *Osuna*, specifically addressing the removal statutes, and said that the “statute requiring leave to appeal decision on removal of public officer was a substantive law that controlled over App.R. 3 and 4, which govern the appellate procedure.” (Emphasis added). This court also held that the similar “vexatious litigator” statute, that also required leave to appeal before the 30-day limit

is jurisdictional: once relators alerted the court of appeals that Berman had failed to obtain leave of court to file his appeal, the court was required by the statute to dismiss the appeal. *Since by that time the 30-day period to appeal had expired, the court could not consider Berman's belated motion for leave.*

Id. (Emphasis added).

This court has consistently enforced the General Assembly’s passage of such laws, governing substantive rights created by statute, and the courts’ obligation to follow them. In *Havel* this court held that R.C. 2315.21(B) (bifurcation of compensatory and punitive damages in tort actions) prevailed over Civ. R. 42(B) on the same subject. *Erwin v. Bryan*, 125 Ohio St.3d 519, 525, 2010-Ohio-2202, 929 N.E.2d 1019, ¶ 30, held that Civ. R. 15(D) (amending complaints) could not be construed to extend the statutory time provided for filing complaints. *State v. Slatter*, 66 Ohio St.2d 452, 458, 423 N.E.2d 100 (1981), upheld R.C. 2935.26 (the right of “freedom from arrest” on a minor misdemeanor) over the rights of courts to cause arrests under the Criminal Rules. *Proctor v. Kardassilaris*, 115 Ohio St.3d 71, 2007-Ohio-4838, 873 N.E.2d 872, required compliance with R.C. 5501.22 (as to how to pursue actions against the director of transportation, “substantive law”) over Civ. R. 13 (as to counterclaims). *In re McBride*, 110 Ohio St. 3d 19, 2006-Ohio-3454, 850 N.E.2d 43, upheld Revised Code limitations on petitioning for child custody over conflicting provisions in Juv. R. 10. *Boyer v. Boyer*, 46 Ohio St. 2d 83, 346 N.E.2d 286 (1976), upheld a child’s Statutory right to be committed first to a relative, if in the child’s best interests, over Civ. R. 75’s parental unsuitability requirement.

Respondents' took the position that as long as leave to appeal is requested before the 30-day limit, even though no hearing was ever set or noticed or conducted as required by the Statute, and even though the notice of appeal was filed without leave to do so as required by the Statute, the appeal can proceed anyway. But as *State ex rel. Sapp v. Franklin County Court of Appeals* stated, specifically addressing these removal statutes:

Therefore, even if we did find that the statute and the rules conflict, R.C. 2323.52 would control. See also *In re Removal of Osuna* (1996), 116 Ohio App.3d 339, 688 N.E.2d 42 (statute requiring leave to appeal decision on removal of public officer was a substantive law that controlled over App.R. 3 and 4, which govern the appellate procedure)."

118 Ohio St.3d at 372-373, 2008-Ohio-2637 at ¶ 30 (Emphasis added in part and in original in part). This court there noted the lack of an exception or ability of the courts to add one. *Id.*

The Statutes creating and applying the rights to remove an elected official, or appeal from it, are therefore jurisdictional.

Proposition of Law No. II: A court of appeals is without jurisdiction over a notice of appeal from a statutory action to remove an elected county official from office, where the notice of appeal is filed prior to leave being granted to do so.

The special statutory proceedings for removal of an elected coroner from office, and for appeal from such an action, R.C. 3.07, et seq., created a special right to pursue an appeal from that proceeding, and to invoke appellate jurisdiction. R.C. 3.09 provides (in relevant part): "Such notice of appeal may be filed *only after leave has been granted* by the court of appeals for good cause shown" (Emphasis added). Removal proceedings *are to be strictly construed*. 2,867 Signers of Petition for Removal of Mack v. Mack, 66 Ohio App. 2d at 82 (citing *McMillen v. Diehl*, 128 Ohio St. at 214-215). No such leave was granted before the Notice was filed, and therefore the July 23, 2014, "notice" was void and a nullity and should have been stricken. Because no *valid* notice of appeal was ever filed, much less in time as required by R.C. 3.09, the Respondent has no jurisdiction.

Similarly, this Relator had a statutory right of finality (as did everyone else in Brown County) to a verdict in the relator's favor in the removal action, if R.C. 3.09 was not followed to review it, and those provisions were not followed here. The jurisdictional principles, see this Brief, *supra* at 3-7, apply specifically to R.C. 3.09. The right to appeal a removal action created by R.C. 3.09 expressly requires leave to appeal be obtained before a notice of appeal can be filed, and only after a hearing, and that must all be done within 30 days. As the Twelfth District stated in *In re Removal of Osuna*, 116 Ohio App.3d at 341, specifically addressing R.C. 3.09, "the statutory requirements for leave to appeal go directly to the right to appeal, and the right to appeal is a substantive right which cannot be abridged, enlarged or modified by a rule of procedure."

Allowing the appeal requires the court to *read into* the Statute that a notice of appeal *can be filed* before leave is granted – opposite of what the Statute says – or *obtain leave after the fact*. Doing so abridges, enlarges, and modifies the statutory procedure for appeal from a removal action. Allowing such an appeal to proceed when a notice of appeal is filed before leave is granted has to assume the General Assembly meant that was permitted, although it didn't say so. If the Legislature meant to allow an appeal to be filed before leave is granted, or leave to be obtained after the fact, it could have said so, and not saying so is on purpose. *State ex rel. Butler Twp. Bd of Trs. v. Mont. Cty. Bd. of Comm'rs*, 124 Ohio St.3d 390, 394, 2009-Ohio-169, 922 N.E.2d 945, ¶ 21 (The expression of one or more persons or things implies the exclusion of those not expressed). An unambiguous statute must be applied consistent with the plain meaning of the statutory language and a court cannot ignore or *add* words. *Portage Cty. Bd. of Commrs. v. City of Akron*, 109 Ohio St. 3d 106, 116, 2006-Ohio-954, 846 N.E.2d 478, ¶ 52.

Therefore the grant of jurisdiction over a statutory action for removal of an elected

official is confined to appeals for which leave is granted to file, beforehand. There was no such leave in the appeal case and therefore the Respondents had and have no jurisdiction over the appeal of the removal action.

Proposition of Law No. III: A court of appeals is without jurisdiction over an appeal from a statutory action to remove an elected county official from office unless within 30 days from the decision in the removal action a hearing is noticed and held granting a motion for leave to appeal.

R.C. 3.09 also provides (in relevant part):

The transcript of the record and the notice of appeal shall be filed in the court of appeals in not more than thirty days after the decision is rendered and the journal entry made by the court of common pleas. Such notice of appeal may be filed only after leave has been granted by the court of appeals for good cause shown at a hearing of which the attorneys for both the officer and the prosecution have been notified.

(Emphasis added). This Statute provides for a four-step prerequisite to invoke the jurisdiction of the court of appeals:

1. A motion for leave to appeal must be filed first, and a “notice” cannot be filed until the motion for leave is granted.
2. A hearing has to be held on the motion, with notice to the parties’ counsel.
3. Only after the hearing, leave has to be granted.
4. Appellants cannot file a notice of appeal until after leave has been granted at a hearing for that purpose.

The non-prevailing party in a removal action is under the obligation to file the motion for leave and obtain a hearing date, and obtain leave, *before* it can file a notice of appeal. These requirements are exactly what were met to invoke the court’s jurisdiction in the Twelfth District itself in a prior case: to have a motion for leave heard and granted prior to the expiration of the 30-day time limit. *In re Removal of Kuehnle*, 161 Ohio App.3d 399, 407-408, 420, 2005-Ohio-2373, 830 N.E.2d 1173 (12th Dist.), ¶ 3, 6 (reflecting the judgment removing the official on

September 27, 2004, and leave to appeal granted on October 21, 2004, as does that court's docket, available online, showing the motion for leave to appeal filed within days of the decision being appealed and the hearing set to meet the statutory deadline). These requirements were not met in this instant case. These requirements were also not met, and resulted in dismissal of the appeal, in *In re Removal of Osuna*, 116 Ohio App.3d 339, 341, 688 N.E.2d 42 (12th Dist. 1996).

The proper notice of appeal, only after leave is granted, only at/after a noticed hearing, has to be filed within 30 days of the decision and entry. Appellants below failed to observe these requirements. Because the statutory requirements were not met, no proper notice of appeal can be filed within the statutory time period. Therefore the Respondent did not and now cannot acquire jurisdiction in this case and the writs should issue to prevent Respondent from hearing the appeal, and revoking its actions already taken in doing so. This court so much as said so:

[O]nce relators alerted the court of appeals that Berman had failed to obtain leave of court to file his appeal, the court was required by the statute to dismiss the appeal. *Since by that time the 30-day period to appeal had expired, the court could not consider Berman's belated motion for leave.* R.C. 2323.52(D)(3), (F)(2), and (I); App.R. 3(A) and (4)(A).

State ex rel. Sapp, 118 Ohio St.3d at 373 (emphasis added). In both the vexatious litigator statute at issue in *Sapp*, and in R.C. 3.09 here (and in *Osuna*), the appeal requires leave before filing, and prohibits filing without leave. In both *Sapp*, analogizing the vexatious litigator provision and finding support from the construction of R.C. 3.09 in *Osuna*, found the combination of the filing of an appeal before obtaining leave and the running of the 30 days before doing so to be fatal to the jurisdiction over the appeal.

By allowing the case to proceed, or be appealed, without observance of this statutory requirement, the Respondent has essentially voided the statute. Proceeding in this case requires the court to again *read into* the Statute that a notice of appeal *can be filed* before leave is granted,

and *obtain leave after the fact*, and *without a hearing*; or take out “only,” “after,” “at,” “hearing,” and “notice,” thereby abridging, enlarging, or modifying the statutory procedure for appeal of a removal action, and assumes the General Assembly meant that although it didn’t say so. See *State ex rel Sapp*, 118 Ohio St.3d at 372 (“The court of appeals suggests an exception to R.C. 2323.52 when the person declared a vexatious litigator seeks to appeal the judgment initially declaring him or her to be a vexatious litigator. But the plain language of R.C. 2323.52 recognizes no such exception, and courts cannot add one.”).

The grant of jurisdiction over a statutory action for removal of an elected official under R.C. 3.09 is confined to appeals for which a hearing is noticed and held prior to the expiration of the 30-day time limit to file such an appeal. There was no such hearing in the appeal case and therefore the Respondents had and have no jurisdiction over the appeal of the removal action.

Proposition of Law No. IV: A court of appeals is without jurisdiction to address an appeal from a complaint to remove an elected county official where the complaint was not signed by the required number of voters.

R.C. 3.08 provides for the initiation of a proceeding for removal, by a complaint, “signed by” a certain number of electors in the county, not less than 15% of those who cast votes in the last gubernatorial election. The removal action here was brought in the name of a couple of persons (the named plaintiffs), but is signed only by an attorney. (Rel. Ex. 1). Signing a petition authorizing a complaint – and who knows which or what document or draft they were “authorizing” – is simply not a complaint “signed by” them. See, *2,867 Signers of Petition for Removal of Mack v. Mack*, 66 Ohio App.2d at 81-83 (holding that the complaint filed under R.C. 3.08 was legally insufficient under that statute); *Dancy v. Board of Elections*, 9th Dist. Summit No. 10361, 1982 Ohio App. LEXIS 11490, at 1-2 (appeal from dismissal of election complaint for failure to comply with the statute for required signatures, dismissed, although on other

grounds). R.C. 3.08 says nothing about a “petition.” The court would have to read into the statute, “signed by qualified electors . . . or by an attorney for them.”

Because the complaint was not signed in compliance with the Statute, the trial court’s jurisdiction, and therefore the Respondents’ jurisdiction, was not properly invoked. If the Legislature meant to allow the Complaint to be signed by anyone other than the required voters, or by an attorney only, or by petition, it could have said so. Not saying so is on purpose. *State ex rel. Butler Twp. Bd of Trs. v. Mont. Cty. Bd. of Comm’rs*, 124 Ohio St.3d 390, 394, 2009-Ohio-169, 922 N.E.2d 945, ¶ 21. An unambiguous statute must be applied consistent with the plain meaning of the statutory language, and a court cannot ignore or *add* words. *Portage Cty. Bd. of Commrs. v. City of Akron*, 109 Ohio St. 3d 106, 116, 2006-Ohio-954, 846 N.E.2d 478, ¶ 52. Therefore the attempted appeal was jurisdictionally defective from the start and the writs should issue. By allowing the case without observance of this statutory requirement, the courts essentially void this requirement.

Proposition of Law No. V: A writ of prohibition and mandamus will issue to prevent exercise of jurisdiction over an appeal from a statutory action for removal of an elected official that does not comply with the procedures of R.C. 3.09 for leave to be granted before a notice of appeal is filed, or without a noticed hearing, both prior to the expiration of the 30-day appeal time limit.

A writ of prohibition is an order under which a court of superior jurisdiction enjoins a court of inferior jurisdiction from exceeding its authority. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 73-74, 701 N.E.2d 1002 (1998); *State ex rel. Feathers v. Hayes*, 11th Dist. Portage No. 2006-P-0092, 2007-Ohio-3852, ¶9. A writ of prohibition issues where the relator establishes that: (1) a judicial officer or court intends to exercise judicial power over a pending matter; (2) the proposed use of that power is unauthorized under the law; and (3) the denial of the writ will result in harm for which there is no other adequate remedy in the ordinary course of the

law. *State ex rel. Sliwinski v. Unruh*, 118 Ohio St.3d 76, 2008-Ohio-1734, 886 N.E.2d 201, ¶7; *State ex rel. Florence v. Zitter*, 106 Ohio St.3d 87, 2005-Ohio-3804, 831 N.E.2d 1003, ¶14.

The writ may be invoked against any inferior courts or inferior tribunals, ministerial or otherwise, that possess incidentally judicial or quasi-judicial powers, to keep such courts and tribunals within the limits of their own jurisdiction.

If such inferior courts or tribunals, in attempting to exercise judicial or quasi-judicial power, are proceeding in a matter wholly or partly outside of their jurisdiction, such inferior courts or tribunals are amenable to the writ of prohibition as to such ultra vires jurisdiction.

State ex rel. Nolan v. Clendenning, 93 Ohio St. 264, 112 N.E. 1029 (1915), syl. 3, 4.

"[A] court of superior jurisdiction may grant a writ of prohibition to prevent the attempted exercise of ultra vires jurisdiction by a court of inferior jurisdiction. Where the proceedings are void ab initio, ultra vires jurisdiction is invoked and the writ will lie." *Wisner v. Probate Court of Columbiana Cty.*, 145 Ohio St. 419, 422, 61 N.E.2d 889 (1945).

Where there is a total want of jurisdiction in the lower court a writ of prohibition will be granted to arrest an order issued by such court, even if the order was entered prior to the application for the writ of prohibition. *State ex rel. Adams v. Gusweiler*, 30 Ohio St.2d 326, 285 N.E.2d 22 (1972), at syl. 2. If the material facts are undisputed and it appears beyond doubt that a relator is entitled to the requested extraordinary relief a peremptory writ will be granted. *State ex rel. Sapp v. Franklin County Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶14.

Mandamus is also an appropriate remedy. Relator must establish a clear legal right to an order compelling Respondents to dismiss the appeal, a clear legal duty on the part of that court to perform the requested act, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Cincinnati Bell Tel. Co. v. Pub. Util. Comm.*, 105 Ohio St.3d 177, 2005-Ohio-1150, 824 N.E.2d 68. Mandamus is appropriate when the alternate remedy is not complete, beneficial, and speedy. *State ex rel. Ullmann v. Hayes*, 103 Ohio St.3d 405, 2005-Ohio-5469, 816 N.E.2d

245; *State ex rel. Ohio State Racing Comm. v. Walton*, 37 Ohio St.3d 246, 525 N.E.2d 756 (1988); *State ex rel. Starner v. DeHoff*, 18 Ohio St.3d 163, 480 N.E.2d 449 (1985).

This court has jurisdiction over this action and to grant these writs pursuant to Article IV, Section 2(B)(1)(b) and (d), of the Ohio Constitution and R.C. 2731.02.

In *Sapp* both writs were granted when leave was not obtained prior to filing the appeal, even though further review was at least arguable. Because the appellant did not obtain leave to appeal before the time ran out to appeal, even though he filed an appeal in time, and regardless of theoretical further review:

[t]he court of appeals patently and unambiguously lacks jurisdiction over Berman's appeal. Because the pertinent facts are uncontroverted, we grant the requested peremptory writ of prohibition to prevent the court of appeals from further proceeding in Berman's appeal and grant the requested peremptory writ of mandamus to compel the court of appeals to dismiss the appeal.

Sapp, supra at ¶ 32.

The exercise by a court of jurisdiction it does not have, to adjudicate (and force the litigation and presentation of, and the risks of and content of) review of a verdict and judgment after a trial, or to establish precedent that can be used elsewhere, or appealed further, justifies such extraordinary actions. Allowing proceedings on the merits of any issue in the case to stand deprives the Relator of the substantial rights under the applicable statutes, to finality of the Judgment below, and the observance of R.C. 3.09. This substantial right – not to be subjected to review of a trial court verdict outside of the limits placed on that review by law, where it is potentially outside the jurisdiction of the Appeal court -- is why the writs must be issued, for this and for other cases. In *State ex rel. Zupancic v. Limbach*, 58 Ohio St.3d 130, 133, 568 N.E.2d 1206 (1991), this court noted the use of the extraordinary writ to “direct the public bodies or officials to follow a constitutional course in completing their duties.” A constitutional course in this case requires the Appeal be dismissed, ab initio. Issuing the Writs also sets forth all correct

procedure for all future attempts at appealing a removal action, statewide.

Conclusion

As a result the Respondents are exercising jurisdiction it does not have, to the detriment of the Relator. The court should therefore issue the writs to prohibit the court from doing so and to dismiss the appeal.

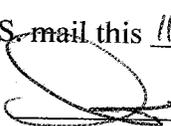
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon Attorneys for Respondents, Assistant Attorneys General, Sarah E. Pierce & Tiffany L. Carwile, 30 East Broad St. 16th Floor, Columbus, OH 43215 by ordinary U.S. mail this 11th day of February, 2015.



Thomas G. Eagle (0034492)

which all interested parties may appear and be represented, shall determine the question of disability. The court shall make its determination within twenty-one days after presentment of such resolution.

If the governor transmits to the Supreme Court a written declaration that the disability no longer exists, the Supreme Court shall, after public hearing at which all interested parties may appear and be represented, determine the question of the continuation of the disability. The court shall make its determination within twenty-one days after transmittal of such declaration.

The Supreme Court has original, exclusive, and final jurisdiction to determine all questions concerning succession to the office of the governor or to its powers and duties.

(1976)

ARTICLE IV: JUDICIAL

JUDICIAL POWER VESTED IN COURT.

§1 The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law.

(1851, am. 1883, 1912, 1968, 1973)

ORGANIZATION AND JURISDICTION OF SUPREME COURT.

§2 (A) The Supreme Court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief

justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the Supreme Court in the place and stead of the absent judge. A majority of the Supreme Court shall be necessary to constitute a quorum or to render a judgment.

(B)(1) The Supreme Court shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary to its complete determination;
- (g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The Supreme Court shall have appellate jurisdiction as follows:

- (a) In appeals from the courts of appeals as a matter of right in the following:
 - (i) Cases originating in the courts of appeals;
 - (ii) Cases in which the death penalty has been affirmed;
 - (iii) Cases involving questions arising under the constitution of the United States or of this state.
- (b) In appeals from the courts of appeals in cases of felony on leave first obtained.

- (c) In direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed.
- (d) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;
- (e) In cases of public or great general interest, the Supreme Court may direct any court of appeals to certify its record to the Supreme Court, and may review and affirm, modify, or reverse the judgment of the court of appeals;
- (f) The Supreme Court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the Supreme Court.

(C) The decisions in all cases in the Supreme Court shall be reported together with the reasons therefor.

(1851, am. 1883, 1912, 1944, 1968, 1994)

ORGANIZATION AND JURISDICTION OF COURT OF APPEALS.

§3 (A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district where in the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing

and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B)(1) The courts of appeals shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo
- (f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgement that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B)(2) of the article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon

which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination.

(C) Laws may be passed providing for the reporting of cases in the courts of appeals.

(1968, am. 1994)

ORGANIZATION AND JURISDICTION OF COMMON PLEAS COURT.

§4 (A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state. Any judge of a court of common pleas or a division thereof may temporarily hold court in any county. In the interests of the fair, impartial, speedy, and sure administration of justice, each county shall have one or more resident judges, or two or more counties may be combined into districts having one or more judges resident in the district and serving the common pleas court of all counties in the district, as may be provided by law. Judges serving a district shall sit in each county in the district as the business of the court requires. In counties or districts having more than one judge of the court of common pleas, the judges shall select one of their number to act as presiding judge, to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge until selection is made by vote. The presiding judge shall have such duties and exercise such powers as

are prescribed by rule of the Supreme Court.

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

(C) Unless otherwise provided by law, there shall be probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to such probate division and to such other divisions. The judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts.

(1968, am. 1973)

POWERS AND DUTIES OF SUPREME COURT; RULES.

§5 (A)(1) In addition to all other powers vested by this article in the Supreme Court, the Supreme Court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the Supreme Court

(2) The Supreme Court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas or a division thereof temporarily to sit or hold court on any other court

of common pleas or division thereof or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas or division thereof and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold court in any court established by law.

(B) The Supreme Court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the General Assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the General Assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the Supreme Court. The Supreme Court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the Supreme Court or any judge of that court designated by him shall pass upon the dis-

qualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing or disqualification matters involving judges of courts established by law.

(1968, am. 1973)

ELECTION OF JUDGES; COMPENSATION.

§6 (A)(1) The chief justice and the justices of the Supreme Court shall be elected by the electors of the state at large, for terms of not less than six years.

(2) The judges of the courts of appeals shall be elected by the electors of their respective appellate districts, for terms of not less than six years.

(3) The judges of the courts of common pleas and the divisions thereof shall be elected by the electors of the counties, districts, or, as may be provided by law, other subdivisions, in which their respective courts are located, for terms of not less than six years, and each judge of a court of common pleas or division thereof shall reside during his term of office in the county, district, or subdivision in which his court is located.

(4) Terms of office of all judges shall begin on the days fixed by law, and laws shall be enacted to prescribe the times and mode of their election.

(B) The judges of the Supreme Court, courts of appeals, courts of common pleas, and divisions thereof, and of all courts of record established by law, shall, at stated times, receive for their services such compensation as may be provided by law, which shall not be diminished during their term of office. The compensation of all judges of the Supreme Court, except that of the chief

justice, shall be the same. The compensation of all judges of the courts of appeals shall be the same. Common pleas judges and judges of divisions thereof, and judges of all courts of record established by law shall receive such compensation as may be provided by law. Judges shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or of the United States. All votes for any judge, for any elective office, except a judicial office, under the authority of this state, given by the General Assembly, or the people shall be void.

(C) No person shall be elected or appointed to any judicial office if on or before the day when he shall assume the office and enter upon the discharge of its duties he shall have attained the age of seventy years. Any voluntarily retired judge, or any judge who is retired under this section, may be assigned with his consent, by the chief justice or acting chief justice of the Supreme Court to active duty as a judge and while so serving shall receive the established compensation for such office, computed upon a per diem basis, in addition to any retirement benefits to which he may be entitled. Laws may be passed providing retirement benefits for judges.

(1968, am. 1973)

REPEALED. PROBATE COURTS.

§7

(1851, am. 1912, 1947, 1951, rep. 1968)

REPEALED. PROBATE COURT;

JURISDICTION.

§8

(1851, rep. 1968)

REPEALED. JUSTICES OF THE PEACE.

§9

(1851, rep. 1912)

REPEALED. OTHER JUDGES; ELECTION.

§10

(1851, rep. 1968)

REPEALED. CLASSIFICATION OF SUPREME COURT JUDGES.

§11

(1851, rep. 1883)

REPEALED. VACANCIES, HOW FILLED.

§12

(1851, am. 1912, rep. 1968)

VACANCY IN OFFICE OF JUDGE, HOW FILLED.

§13 In case the office of any judge shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and has qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy shall have occurred; provided, however, that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term.

(1851, am. 1942)

3.07 Misconduct in office - forfeiture.

Any person holding office in this state, or in any municipal corporation, county, or subdivision thereof, coming within the official classification in Section 38 of Article II, Ohio Constitution, who willfully and flagrantly exercises authority or power not authorized by law, refuses or willfully neglects to enforce the law or to perform any official duty imposed upon him by law, or is guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance is guilty of misconduct in office. Upon complaint and hearing in the manner provided for in sections 3.07 to 3.10 , inclusive, of the Revised Code, such person shall have judgment of forfeiture of said office with all its emoluments entered thereon against him, creating thereby in said office a vacancy to be filled as prescribed by law. The proceedings provided for in such sections are in addition to impeachment and other methods of removal authorized by law, and such sections do not divest the governor or any other authority of the jurisdiction given in removal proceedings.

Effective Date: 10-01-1953

3.08 Removal of public officers.

Proceedings for the removal of public officers on any of the grounds enumerated in section 3.07 of the Revised Code shall be commenced by the filing of a written or printed complaint specifically setting forth the charge and signed by qualified electors of the state or political subdivision whose officer it is sought to remove, not less in number than fifteen per cent of the total vote cast for governor at the most recent election for the office of governor in the state or political subdivision whose officer it is sought to remove, or, if the officer sought to be removed is the sheriff or prosecuting attorney of a county or the mayor of a municipal corporation, the governor may sign and file such written or printed complaint without the signatures of qualified electors. Such complaint shall be filed with the court of common pleas of the county where the officer against whom the complaint is filed resides, except that when the officer against whom the complaint is filed is a judge of the court of common pleas, such complaint shall be filed in the court of appeals of the district where such judge resides, and all complaints against state officers shall be filed with the court of appeals of the district where the officer against whom the complaint is filed resides. The judge or clerk of the court shall cause a copy of such complaint to be served upon the officer, against whom the complaint has been filed, at least ten days before the hearing upon such complaint. Such hearing shall be had within thirty days from the date of the filing of the complaint by said electors, or by the governor. The court may suspend the officer pending the hearing.

The removal proceedings filed in the court of common pleas shall be tried by a judge unless a jury trial is demanded in writing by the officer against whom the complaint has been filed. If a jury is demanded, it shall be composed of twelve persons who satisfy the qualifications of a juror specified in section 2313.17 of the Revised Code. If nine or more persons of that jury find one or more of the charges in the complaint are true, such jury shall return a finding for the removal of the officer, which finding shall be filed with the clerk of the court and be made a matter of public record. If less than nine persons of that jury find that the charges on the complaint are true, the jury shall return a finding that the complaint be dismissed. The proceedings had by a judge upon such removal shall be matters of public record and a full detailed statement of the reasons for such removal shall be filed with the clerk of the court and shall be made a matter of public record.

Amended by 129th General Assembly File No.81, HB 268, §1, eff. 5/22/2012.

Effective Date: 08-22-1995

3.09 Appeal in removal cases on questions of law by court of appeals.

The decision of the court of common pleas in all cases for the removal of officers may be reviewed on appeal on questions of law by the court of appeals. The transcript of the record and the notice of appeal shall be filed in the court of appeals in not more than thirty days after the decision is rendered and the journal entry made by the court of common pleas. Such notice of appeal may be filed only after leave has been granted by the court of appeals for good cause shown at a hearing of which the attorneys for both the officer and the prosecution have been notified. The court of appeals has jurisdiction to hear such case at any place in the judicial district in which such court may be sitting, and such court shall hear such case in not more than thirty court days after the filing of the notice of appeal. The decision of the court of appeals in refusing to allow a notice of appeal to be filed, or in the passing upon the merits of the case in the appellate proceedings, shall be final. If the court of appeals reviews the proceedings provided for in section 3.08 of the Revised Code in any county within its judicial district other than the county where the officer complained against resides, said court of appeals shall transmit its findings with the reasons therefor to the clerk of the court of common pleas of the county where the officer complained against resides, with instructions to said clerk to make the findings of said court a matter of record upon the journal of said court in the county where the officer complained against resides. In all cases involving the removal of an officer against whom a complaint has been filed in the court of appeals, the officer has the right of review or appeal to the supreme court on leave first obtained, and such court shall hear such case in not more than thirty court days after leave has been granted. In other respects such hearing shall follow the regular procedure in appealable cases which originate in the court of appeals.

If any officer is removed and the law provides no means for filling the vacancy, the board of elections in the county where the removed officer resides shall order a special election to fill such vacancy in the unit of government in which such officer was elected.

Effective Date: 10-01-1953

2315.21 Punitive or exemplary damages.

(A) As used in this section:

(1) "Tort action" means a civil action for damages for injury or loss to person or property. "Tort action" includes a product liability claim for damages for injury or loss to person or property that is subject to sections 2307.71 to 2307.80 of the Revised Code, but does not include a civil action for damages for a breach of contract or another agreement between persons.

(2) "Trier of fact" means the jury or, in a nonjury action, the court.

(3) "Home" has the same meaning as in section 3721.10 of the Revised Code.

(4) "Employer" includes, but is not limited to, a parent, subsidiary, affiliate, division, or department of the employer. If the employer is an individual, the individual shall be considered an employer under this section only if the subject of the tort action is related to the individual's capacity as an employer.

(5) "Small employer" means an employer who employs not more than one hundred persons on a full-time permanent basis, or, if the employer is classified as being in the manufacturing sector by the North American industrial classification system, "small employer" means an employer who employs not more than five hundred persons on a full-time permanent basis.

(B)

(1) In a tort action that is tried to a jury and in which a plaintiff makes a claim for compensatory damages and a claim for punitive or exemplary damages, upon the motion of any party, the trial of the tort action shall be bifurcated as follows:

(a) The initial stage of the trial shall relate only to the presentation of evidence, and a determination by the jury, with respect to whether the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant. During this stage, no party to the tort action shall present, and the court shall not permit a party to present, evidence that relates solely to the issue of whether the plaintiff is entitled to recover punitive or exemplary damages for the injury or loss to person or property from the defendant.

(b) If the jury determines in the initial stage of the trial that the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant, evidence may be presented in the second stage of the trial, and a determination by that jury shall be made, with respect to whether the plaintiff additionally is entitled to recover punitive or exemplary damages for the injury or loss to person or property from the defendant.

(2) In a tort action that is tried to a jury and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant.

(3) In a tort action that is tried to a court and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall make its determination with respect to whether the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant and, if that determination is in favor of the plaintiff, shall make findings of fact that specify the total compensatory damages recoverable by the plaintiff from the defendant.

2323.52 Civil action to declare person vexatious litigator.

(A) As used in this section:

(1) "Conduct" has the same meaning as in section 2323.51 of the Revised Code.

(2) "Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following:

(a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.

(b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(c) The conduct is imposed solely for delay.

(3) "Vexatious litigator" means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. "Vexatious litigator" does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions.

(B) A person, the office of the attorney general, or a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator. The person, office of the attorney general, prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation may commence this civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.

(C) A civil action to have a person declared a vexatious litigator shall proceed as any other civil action, and the Ohio Rules of Civil Procedure apply to the action.

(D)

(1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:

(a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

(b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified in division (D)(1)(a) of this section prior to the entry of the order;

(c) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section.

(2) If the court of common pleas finds a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio to be a vexatious litigator and enters an order described in division (D)(1) of this section in connection with that finding, the order shall apply to the person only insofar as the person would seek to institute proceedings described in division (D)(1)(a) of this section on a pro se basis, continue proceedings described in division (D)(1)(b) of this section on a pro se basis, or make an application described in division (D)(1)(c) of this section on a pro se basis. The order shall not apply to the person insofar as the person represents one or more other persons in the person's capacity as a licensed and registered attorney in a civil or criminal action or proceeding or other matter in a court of common pleas, municipal court, or county court or in the court of claims. Division (D)(2) of this section does not affect any remedy that is available to a court or an adversely affected party under section 2323.51 or another section of the Revised Code, under Civil Rule 11 or another provision of the Ohio Rules of Civil Procedure, or under the common law of this state as a result of frivolous conduct or other inappropriate conduct by an attorney who represents one or more clients in connection with a civil or criminal action or proceeding or other matter in a court of common pleas, municipal court, or county court or in the court of claims.

(3) A person who is subject to an order entered pursuant to division (D)(1) of this section may not institute legal proceedings in a court of appeals, continue any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by the vexatious litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.

(E) An order that is entered under division (D)(1) of this section shall remain in force indefinitely unless the order provides for its expiration after a specified period of time.

(F)

(1) A court of common pleas that entered an order under division (D)(1) of this section shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court unless the court of common pleas that entered that order is satisfied that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of common pleas that entered an order under division (D)(1) of this section to grant the person leave to proceed as described in division (F)(1) of this section, the period of time commencing with the filing with that court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

(2) A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application, other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in

which the legal proceedings would be instituted or are pending. The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of appeals to grant the person leave to proceed as described in division (F)(2) of this section, the period of time commencing with the filing with the court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

(G) During the period of time that the order entered under division (D)(1) of this section is in force, no appeal by the person who is the subject of that order shall lie from a decision of the court of common pleas or court of appeals under division (F) of this section that denies that person leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court.

(H) The clerk of the court of common pleas that enters an order under division (D)(1) of this section shall send a certified copy of the order to the supreme court for publication in a manner that the supreme court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of appeals, court of common pleas, municipal court, or county court in refusing to accept pleadings or other papers submitted for filing by persons who have been found to be a vexatious litigator under this section and who have failed to obtain leave to proceed under this section.

(I) Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending shall dismiss the proceedings or application of the vexatious litigator.

Effective Date: 06-28-2002

2731.02 Courts authorized to issue writ - contents.

The writ of mandamus may be allowed by the supreme court, the court of appeals, or the court of common pleas and shall be issued by the clerk of the court in which the application is made. Such writ may issue on the information of the party beneficially interested.

Such writ shall contain a copy of the petition, verification, and order of allowance.

Effective Date: 10-01-1953

2935.26 Minor misdemeanor citation.

(A) Notwithstanding any other provision of the Revised Code, when a law enforcement officer is otherwise authorized to arrest a person for the commission of a minor misdemeanor, the officer shall not arrest the person, but shall issue a citation, unless one of the following applies:

(1) The offender requires medical care or is unable to provide for his own safety.

(2) The offender cannot or will not offer satisfactory evidence of his identity.

(3) The offender refuses to sign the citation.

(4) The offender has previously been issued a citation for the commission of that misdemeanor and has failed to do one of the following:

(a) Appear at the time and place stated in the citation;

(b) Comply with division (C) of this section.

(B) The citation shall contain all of the following:

(1) The name and address of the offender;

(2) A description of the offense and the numerical designation of the applicable statute or ordinance;

(3) The name of the person issuing the citation;

(4) An order for the offender to appear at a stated time and place;

(5) A notice that the offender may comply with division (C) of this section in lieu of appearing at the stated time and place;

(6) A notice that the offender is required to do one of the following and that he may be arrested if he fails to do one of them:

(a) Appear at the time and place stated in the citation;

(b) Comply with division (C) of this section.

(C) In lieu of appearing at the time and place stated in the citation, the offender may, within seven days after the date of issuance of the citation, do either of the following:

(1) Appear in person at the office of the clerk of the court stated in the citation, sign a plea of guilty and a waiver of trial provision that is on the citation, and pay the total amount of the fine and costs;

(2) Sign the guilty plea and waiver of trial provision of the citation, and mail the citation and a check or money order for the total amount of the fine and costs to the office of the clerk of the court stated in the citation.

Remittance by mail of the fine and costs to the office of the clerk of the court stated in the citation constitutes a guilty plea and waiver of trial whether or not the guilty plea and waiver of trial provision of the citation are signed by the defendant.

(D) A law enforcement officer who issues a citation shall complete and sign the citation form, serve a copy of the completed form upon the offender and, without unnecessary delay, file the original citation with the

court having jurisdiction over the offense.

(E) Each court shall establish a fine schedule that shall list the fine for each minor misdemeanor, and state the court costs. The fine schedule shall be prominently posted in the place where minor misdemeanor fines are paid.

(F) If an offender fails to appear and does not comply with division (C) of this section, the court may issue a supplemental citation, or a summons or warrant for the arrest of the offender pursuant to the Criminal Rules. Supplemental citations shall be in the form prescribed by division (B) of this section, but shall be issued and signed by the clerk of the court at which the citation directed the offender to appear and shall be served in the same manner as a summons.

Effective Date: 10-25-1978

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2945.67 Appeal by state by leave of court.

(A) A prosecuting attorney, village solicitor, city director of law, or the attorney general may appeal as a matter of right any decision of a trial court in a criminal case, or any decision of a juvenile court in a delinquency case, which decision grants a motion to dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, or a motion for the return of seized property or grants post conviction relief pursuant to sections 2953.21 to 2953.24 of the Revised Code, and may appeal by leave of the court to which the appeal is taken any other decision, except the final verdict, of the trial court in a criminal case or of the juvenile court in a delinquency case. In addition to any other right to appeal under this section or any other provision of law, a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general may appeal, in accordance with section 2953.08 of the Revised Code, a sentence imposed upon a person who is convicted of or pleads guilty to a felony.

(B) In any proceeding brought pursuant to division (A) of this section, the court, in accordance with Chapter 120. of the Revised Code, shall appoint the county public defender, joint county public defender, or other counsel to represent any person who is indigent, is not represented by counsel, and does not waive the person's right to counsel.

Effective Date: 07-01-1996

2945.68 to 2945.70 [Repealed].

Effective Date: 11-01-1978

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5501.22 Actions against director.

The director of transportation shall not be suable, either as a sole defendant or jointly with other defendants, in any court outside Franklin county except in actions brought by a railroad company under section 4957.30 of the Revised Code, or by a property owner to prevent the taking of property without due process of law, in which case suit may be brought in the county where such property is situated, or in any action otherwise specifically provided for in Chapters 5501., 5503., 5511., 5512. , 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5525., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code.

Effective Date: 09-28-1973

**TITLE II. APPEALS FROM JUDGMENTS AND
ORDERS OF COURT OF RECORD**

RULE 3. Appeal as of Right - How Taken

(A) Filing the notice of appeal. An appeal as of right shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Appeals by leave of court shall be taken in the manner prescribed by Rule 5.

(B) Joint or consolidated appeals. If two or more persons are entitled to appeal from a judgment or order of a trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the court of appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(C) Cross appeal.

(1) Cross appeal required. A person who intends to defend a judgment or order against an appeal taken by an appellant and who also seeks to change the judgment or order or, in the event the judgment or order may be reversed or modified, an interlocutory ruling merged into the judgment or order, shall file a notice of cross appeal within the time allowed by App.R. 4.

(2) Cross appeal and cross-assignment of error not required. A person who intends to defend a judgment or 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.

(D) Content of the notice of appeal. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. The title of the case shall be the same as in the trial court with the designation of the appellant added, as appropriate. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(E) Service of the notice of appeal. The clerk of the trial court shall serve notice of the filing of a notice of appeal and, where required by local rule, a docketing statement, by mailing, or by facsimile transmission, a copy to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at the party's last known address. The clerk shall mail or otherwise forward a copy of the notice of appeal and of the docket entries, together with a copy of all filings by appellant pursuant to App.R. 9(B), to the clerk of the court of appeals named in the notice. The clerk shall note on each copy served the

RULE 4. Appeal as of Right--When Taken

(A) Time for appeal

(1) Appeal from order that is final upon its entry. Subject to the provisions of App.R. 4(A)(3), a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry.

(2) Appeal from order that is not final upon its entry. Subject to the provisions of App.R. 4(A)(3), a party who wishes to appeal from an order that is not final upon its entry but subsequently becomes final—such as an order that merges into a final order entered by the clerk or that becomes final upon dismissal of the action—shall file the notice of appeal required by App.R. 3 within 30 days of the date on which the order becomes final.

(3) Delay of clerk's service in civil case. In a civil case, if the clerk has not completed service of the order within the three-day period prescribed in Civ.R. 58(B), the 30-day periods referenced in App.R. 4(A)(1) and 4(A)(2) begin to run on the date when the clerk actually completes service.

(B) Exceptions

The following are exceptions to the appeal time period in division (A) of this rule:

(1) Multiple or cross appeals. If a notice of appeal is timely filed by a party, another party may file a notice of appeal within the appeal time period otherwise prescribed by this rule or within ten days of the filing of the first notice of appeal.

(2) Civil or juvenile post-judgment motion. In a civil case or juvenile proceeding, if a party files any of the following, if timely and appropriate:

- (a) a motion for judgment under Civ.R. 50(B);
- (b) a motion for a new trial under Civ.R. 59;
- (c) objections to a magistrate's decision under Civ.R. 53(D)(3)(b) or Juv. R. 40(D)(3)(b);
- (d) a request for findings of fact and conclusions of law under Civ.R. 52, Juv.R. 29(F)(3), Civ.R. 53(D)(3)(a)(ii) or Juv.R. 40(D)(3)(a)(ii);
- (e) a motion for attorney fees; or
- (f) a motion for prejudgment interest,

then the time for filing a notice of appeal from the judgment or final order in question begins to run as to all parties when the trial court enters an order resolving the last of these post-judgment filings.

If a party files a notice of appeal from an otherwise final judgment but before the trial court has resolved one or more of the filings listed in this division, then the court of appeals, upon

TITLE I. SCOPE OF RULES--ONE FORM OF ACTION

RULE 1. Scope of Rules: Applicability; Construction; Exceptions

(A) Applicability. These rules prescribe the procedure to be followed in all courts of this state in the exercise of civil jurisdiction at law or in equity, with the exceptions stated in subdivision (C) of this rule.

(B) Construction. These rules shall be construed and applied to effect just results by eliminating delay, unnecessary expense and all other impediments to the expeditious administration of justice.

(C) Exceptions. These rules, to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure (1) upon appeal to review any judgment, order or ruling, (2) in the appropriation of property, (3) in forcible entry and detainer, (4) in small claims matters under Chapter 1925, Revised Code, (5) in uniform reciprocal support actions, (6) in the commitment of the mentally ill, (7) in all other special statutory proceedings; provided, that where any statute provides for procedure by a general or specific reference to all the statutes governing procedure in civil actions such procedure shall be in accordance with these rules.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1975.]

RULE 13. Counterclaim and Cross-Claim

(A) Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(B) Permissive counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(C) Counterclaim exceeding opposing claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(D) Counterclaim against this state. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against this state, a political subdivision or an officer in his representative capacity or agent of either.

(E) Counterclaim maturing or acquired after pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleadings.

(F) Omitted counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

(G) Cross-claim against co-party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(H) Joinder of additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 19, Rule 19.1, and Rule 20. Such persons shall be served pursuant to Rule 4 through Rule 4.6.

(I) Separate trials; separate judgments. If the court orders separate trials as provided in Rule 42(B), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(B) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

(J) Certification of proceedings. In the event that a counterclaim, cross-claim, or third-party claim exceeds the jurisdiction of the court, the court shall certify the proceedings in the case to the court of common pleas.

[Effective: July 1, 1970; amended effective July 1, 1971.]

RULE 15. Amended and Supplemental Pleadings

(A) **Amendments.** A party may amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court shall freely give leave when justice so requires. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within fourteen days after service of the amended pleading, whichever is later.

(B) **Amendments to conform to the evidence.** When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment. Failure to amend as provided herein does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(C) **Relation back of amendments.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The delivery or mailing of process to this state, a municipal corporation or other governmental agency, or the responsible officer of any of the foregoing, subject to service of process under Rule 4 through Rule 4.6, satisfies the requirements of clauses (1) and (2) of the preceding paragraph if the above entities or officers thereof would have been proper defendants upon the original pleading. Such entities or officers thereof or both may be brought into the action as defendants.

(D) Amendments where name of party unknown. When the plaintiff does not know the name of a defendant, that defendant may be designated in a pleading or proceeding by any name and description. When the name is discovered, the pleading or proceeding must be amended accordingly. The plaintiff, in such case, must aver in the complaint the fact that he could not discover the name. The summons must contain the words "name unknown," and a copy thereof must be served personally upon the defendant.

(E) Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

[Effective: July 1, 1970; July 1, 2013.]

Staff Notes (July 1, 2013 Amendments)

Rule 15(A) is amended to allow amendment without leave of court of a complaint, or other pleading requiring a responsive pleading, for a period of 28 days after the service of a responsive pleading or motion. Under the prior rule, amendment without leave of court was limited to pleadings not requiring a response or to which a required response had not been served.

Rule 15(A) is also amended to limit amendment without leave of court of a complaint or other pleading requiring a responsive pleading, to a period of 28 days after service of the pleading when a response has not been served. Under the prior rule, the time for amendment without leave of court under those circumstances was not limited, and could be made at any time prior to service of a response.

The 2013 changes to Civ.R. 15(A) are modeled on the 2009 amendments to Fed.R.Civ.P. 15(a) and made for the same reasons that prompted those amendments.

RULE 42. Consolidation; Separate Trials

(A) Consolidation.

(1) *Generally.* When actions involving a common question of law or fact are pending before a court, that court after a hearing may order a joint hearing or trial of any or all the matters in issue in the actions; it may order some or all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(2) *Asbestos, silicosis, or mixed dust disease actions.* In tort actions involving an asbestos claim, a silicosis claim, or a mixed dust disease claim, the court may consolidate pending actions for case management purposes. For purposes of trial, the court may consolidate pending actions only with the consent of all parties. Absent the consent of all parties, the court may consolidate, for purposes of trial, only those pending actions relating to the same exposed person and members of the exposed person's household.

(3) As used in division (A)(2) of this rule:

(a) "Asbestos claim" has the same meaning as in section 2307.91 of the Revised Code;

(b) "Silicosis claim" and "mixed dust disease claim" have the same meaning as in section 2307.84 of the Revised Code;

(c) In reference to an asbestos claim, "tort action" has the same meaning as in section 2307.91 of the Revised Code;

(d) In reference to a silicosis claim or a mixed dust disease claim, "tort action" has the same meaning as in section 2307.84 of the Revised Code.

(B) Separate trials. The court, after a hearing, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or third-party claims, or issues, always preserving inviolate the right to trial by jury.

[Effective: July 1, 1970; amended effective July 1, 2005.]

Staff Note (July 1, 2005 Amendment)

Civ. R. 42 is amended in response to requests from the General Assembly contained in Section 3 of Am. Sub. H.B. 342 of the 125th General Assembly, effective September 1, 2004, and Section 4 of Am. Sub. H.B. 292 of the 125th General Assembly, effective September 2, 2004. These acts contain provisions governing tort claims that allege exposure and injury by persons exposed to asbestos, silica, or mixed dust.

RULE 75. Divorce, Annulment, and Legal Separation Actions

(A) Applicability. The Rules of Civil Procedure shall apply in actions for divorce, annulment, legal separation, and related proceedings, with the modifications or exceptions set forth in this rule.

(B) Joinder of parties. Civ.R. 14, 19, 19.1, and 24 shall not apply in divorce, annulment, or legal separation actions, however:

(1) A person or corporation having possession of, control of, or claiming an interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support, may be made a party defendant;

(2) When it is essential to protect the interests of a child, the court may join the child of the parties as a party defendant and appoint a guardian ad litem and legal counsel, if necessary, for the child and tax the costs;

(3) The court may make any person or agency claiming to have an interest in or rights to a child by rule or statute, including but not limited to R.C. 3109.04 and R.C. 3109.051, a party defendant;

(4) When child support is ordered, the court, on its own motion or that of an interested person, after notice to the party ordered to pay child support and to his or her employer, may make the employer a party defendant.

(C) Trial by court or magistrate. In proceedings under this rule there shall be no right to trial by jury. All issues may be heard either by the court or by a magistrate as the court on the request of any party or on its own motion, may direct. Civ. R. 53 shall apply to all cases or issues directed to be heard by a magistrate.

(D) Investigation. On the filing of a complaint for divorce, annulment, or legal separation, where minor children are involved, or on the filing of a motion for the modification of a decree allocating parental rights and responsibilities for the care of children, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of the parties to the action. The report of the investigation shall be made available to either party or their counsel of record upon written request not less than seven days before trial. The report shall be signed by the investigator and the investigator shall be subject to cross-examination by either party concerning the contents of the report. The court may tax as costs all or any part of the expenses for each investigation.

(E) Subpoena where custody involved. In any case involving the allocation of parental rights and responsibilities for the care of children, the court, on its own motion, may cite a party to the action from any point within the state to appear in court and testify.

RULE 10. Complaint

(A) Filing. Any person having knowledge of a child who appears to be a juvenile traffic offender, delinquent, unruly, neglected, dependent, or abused may file a complaint with respect to the child in the juvenile court of the county in which the child has a residence or legal settlement, or in which the traffic offense, delinquency, unruliness, neglect, dependency, or abuse occurred.

Persons filing complaints that a child appears to be an unruly or delinquent child for being an habitual or chronic truant and the parent, guardian, or other person having care of the child has failed to cause the child to attend school may also file the complaint in the county in which the child is supposed to attend public school.

Any person may file a complaint to have determined the custody of a child not a ward of another court of this state, and any person entitled to the custody of a child and unlawfully deprived of such custody may file a complaint requesting a writ of habeas corpus. Complaints concerning custody shall be filed in the county where the child is found or was last known to be.

Any person with standing may file a complaint for the determination of any other matter over which the juvenile court is given jurisdiction by the Revised Code. The complaint shall be filed in the county in which the child who is the subject of the complaint is found or was last known to be. In a removal action, the complaint shall be filed in the county where the foster home is located.

When a case concerning a child is transferred or certified from another court, the certification from the transferring court shall be considered the complaint. The juvenile court may order the certification supplemented upon its own motion or that of a party.

(B) Complaint: general form. The complaint, which may be upon information and belief, shall satisfy all of the following requirements:

(1) State in ordinary and concise language the essential facts that bring the proceeding within the jurisdiction of the court, and in juvenile traffic offense and delinquency proceedings, shall contain the numerical designation of the statute or ordinance alleged to have been violated;

(2) Contain the name and address of the parent, guardian, or custodian of the child or state that the name or address is unknown;

(3) Be made under oath.

(C) Complaint: juvenile traffic offense. A Uniform Traffic Ticket shall be used as a complaint in juvenile traffic offense proceedings.

(D) Complaint: permanent custody. A complaint seeking permanent custody of a child shall state that permanent custody is sought.

