AMENDMENTS TO THE OHIO RULES
OF PRACTICE AND PROCEDURE

The following amendments to the Ohio Rules of Civil Procedure (16, 26, 34, and 37), the Ohio Rules of Criminal Procedure (11, 19, 33, and 41), the Ohio Rules of Appellate Procedure (4 and 21), the Ohio Rules of Evidence (601). The history of these amendments is as follows:

September 21, 2020	First publication for public comment (ENDING Nov. 5, 2020)
January 13, 2021	Filed with General Assembly and published for second publication for public commend (ENDING Feb. 27, 2021)
April 29, 2021	Filed with the General Assembly for enactment on July 1, 2021

Key to Adopted Amendments:

1. Unaltered language appears in regular type. Example: text
2. Language that has been deleted appears in strikethrough. Example: ~~text~~
3. New language that has been added appears in underline. Example: text

Summary

1. OHIO RULES OF CIVIL PROCEDURE

- Destruction of Electronic Discovery
(Civ.R. 37)

The Commission recommends this amendment to conform Rule 37(E) to match the corresponding federal rule. The current rule requires a trial court to issue a sanction against a party for destruction of electronic discovery, and then inquire into the culpability of the party which destroyed the material. The proposed amendment would require such an inquiry first, then allow the trial court to proscribe an appropriate remedy.

The Commission did propose amending the title of Rule 37(E) to reference failure to *preserve* electronic discovery as opposed to a failure to disclose it. This title change better tracks the substance of the proposed rule.

- Cross-Reference and Style Fixes
(**Civ.R. 16, 26, and 34**)

Over the last two years, these three rules have been amended. Practitioners and commission members have located a handful of cross-references that need corrected or made clearer. The Commission also made changes to rule references that use Supreme Court of Ohio-specific citation style, such as using "Civ.R. 26" instead of "Rule 26."

2. OHIO RULES OF CRIMINAL PROCEDURE

- Video Appearance for Pleas and Search Warrants
(Crim.R. 11 and 41)

The Commission proposes these amendments to make clear that defendants and affiants may appear before the court electronically for plea hearings and search warrant applications, respectively. These proposals came about after the Commission reviewed the criminal rules for possible changes in light of the COVID-19 pandemic.

The Commission found that some jurisdictions were uncertain if plea hearings and search warrant applications could be handled by way of video or other electronic means. This amendment would provide clarity in that regard.

Following public comment, the Commission voted to add language that made it clear that the return of a search warrant could also be conducted by electronic means under Crim.R. 41.

- Motion for New Trial
*(**Crim.R. 33**)*

The Commission proposes amendments to Crim.R. 33 following the Supreme Court of Ohio's decision in *State v. Ramirez*, 2020-Ohio-602. In *Ramirez*, the Court held that while Crim.R. 33 implies the defendant would receive a new trial, a finding of insufficient evidence for a conviction would mean double jeopardy should attach and bar any new trial. As such, the Commission has proposed removing the option to grant a new trial if the evidence is not sufficient to sustain a conviction. The defendant could still raise that same argument by way of Crim.R. 29, and Crim.R. 33 would then follow current case law.

- Magistrates Serving on Specialized Dockets
(**Crim.R. 19 and Sup.R. 36.33**)

The Commission also proposes amendments to Crim.R. 19 to allow magistrates to preside over specialized dockets when specifically permitted by the Ohio Rules of Superintendence. This proposal was submitted for public comment in 2019, but ultimately pulled from consideration after the Specialized Dockets Committee was continuing to work toward companion language in the Rules of Superintendence to allow magistrates to handles these dockets. That language is now complete, and is proposed as follows by the Commission on the Rules of Superintendence:

> **RULE 36.33. Magistrate Authority**
>
> During the temporary absence or disability of the judge of a specialized docket in the general, probate, or domestic relations division of a court of common pleas; a municipal court; a county court; or a division of the court due to the vacation, illness, leave of absence, or unavailability due to judicial obligations of the judge, the following shall apply:
>
> (A) A magistrate of the court or division may conduct treatment team meetings and status review hearings for the specialized docket;
>
> (B) The magistrate shall act in accordance with the authority and limitations granted by this rule and the "Specialized Dockets Standards," as set forth in Appendix I to this rule;
>
> (C) The magistrate shall have the same authority granted to the judge in conducting the proceedings of the specialized docket, excluding the imposition of jail.

It is the intention of both Commissions that the changes to Sup.R. 36.33 and Crim.R. 19 would be enacted at the same time. The Court will also be accepting public comment on proposed Sup.R. 36.33 at this time.

3. OHIO RULES OF APPELLATE PROCEDURE

- "Judgment" Language
(App.R. 4)

The Commission recommends amendments to this rule which would bring it in compliance with recent change to Civ.R. 58 in regards to the use of the term "judgment."

- Audio Recording of Oral Arguments
(App.R. 21)

The Commission proposes this amendment which would require an appellate court to maintain an audio recording or video recording of any oral argument on a case. This proposal was made by a member of the public, and the Commission learned that it is common practice in some appellate districts but not all. Under this proposal, the recording would be made available to the public on request. This requirement would not be effective until September 1, 2021, to allow appellate courts time to prepare for such recordings.

4. OHIO RULES OF EVIDENCE

- Correction of Numbering and Lettering
(**Evid.R. 601**)

Following the enactment of amended Evid.R. 601, it was discovered that the rule was organized in such a way as to be confusing. This proposed amendment is intended to clarify and simplify the numbering and lettering of the rule's subsections.

<u>OHIO RULES OF CIVIL PROCEDURE</u>

RULE 16. Pretrial Procedure

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

(B) Scheduling.

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

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

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

(c) sua sponte by the court.

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

(3) Contents. The scheduling order may:

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

(b) modify the timing of disclosures under Civ. R. 26~~(A)~~<u>(B)(3)</u>;

(c) modify the extent of discovery;

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

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

(f) set dates for pretrial conferences and for trial; and

(g) include other appropriate matters.

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

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

RULE 26. General Provisions Governing Discovery

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

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

(1) In General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

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

(3) Initial Disclosure by a Party

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

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

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

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

(iv) for inspection and copying as under Civ. R. 34, any insurance agreement under which an insurance business may be liable to satisfy all or

part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

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

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

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

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

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

(v) an action to enforce an arbitration award.

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

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

(e) A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(4) Trial preparation: materials. Subject to the provisions of subdivision (B)(5) and (6) of this rule, a party may obtain discovery of documents, electronically stored information and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing of good cause therefor. A statement concerning the action or its subject matter previously given by the party seeking the statement may be obtained without showing good cause. A statement of a party is (a) a written statement signed or otherwise adopted or approved by the party, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement which was made by the party and contemporaneously recorded.

(5) Specific Limitations on Electronically Stored Information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a

protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(B)(6). The court may specify conditions for the discovery.

(6) Limitations on Frequency and Extent.

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

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

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

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

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

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

(7) Disclosure of Expert Testimony.

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

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

(c) Other than under subsection (d), a party may not call an expert witness to testify unless a written report has been procured from the witness and provided to opposing counsel. The report of an expert must disclose a complete statement of all opinions and the basis and reasons for them as to each matter on which the expert will testify. It must also state the compensation for the expert's study or testimony. Unless good cause is shown, all reports and, if applicable, supplemental reports must be supplied no later than thirty (30)

days prior to trial. An expert will not be permitted to testify or provide opinions on matters not disclosed in his or her report.

(d) Healthcare Providers. A witness who has provided medical, dental, optometric, chiropractic, or mental health care may testify as an expert and offer opinions as to matters addressed in the healthcare provider's records. Healthcare providers' records relevant to the case shall be provided to opposing counsel in lieu of an expert report in accordance with the time schedule established by the Court.

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

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

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

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

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

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

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

(i) as provided in ~~Rule 35(b)~~ <u>Civ.R. 35(B)</u>; or

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

(iii) The party seeking discovery under division (B)(7) of this rule shall pay the expert a reasonable fee for time spent in deposition.

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

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

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

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

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

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

(2) Conference Content; Parties' Responsibilities. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Civ. R. 26~~(A)(1)~~(B)(3); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for filing with the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

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

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

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

273 schedule already issued under Civ. R. 16, and compliance with Sup. R 39 and 42.
274
275 (c) the subjects on which discovery may be needed, when discovery should be
276 completed, and whether discovery should be conducted in phases or be limited to or
277 focused on particular issues;
278
279 (d) any issues about disclosure, discovery, or preservation of electronically
280 stored information, including the form or forms in which it should be produced;
281
282 (e) disclosure and the exchange of documents obtained through public records
283 requests;
284
285 (f) any issues about claims of privilege or of protection as trial-preparation
286 materials;
287
288 (g) what changes should be made in the limitations on discovery imposed under
289 these rules or by local rule, and what other limitations should be imposed;
290
291 (h) any other orders that the court should issue under Civ. R. 26(C) or under
292 Civ. R. 16(B) and (C); and any modifications required or to be requested under any scheduling
293 order issued under Civ. R. 16.
294
295 **[Existing language unaffected by the amendments is omitted to conserve space]**
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RULE 34. Producing documents, electronically stored information, and tangible things, or entering onto land, for inspection and other purposes.

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

(B) Procedure. Without leave of court, the request may be served upon the plaintiff after commencement of the action and upon any other party after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced, but may not require the production of the same information in more than one form. The party serving the request shall serve an electronic copy of the request on a shareable medium and in an editable format by electronic mail, or by other means agreed to by the parties. A party who is unable to provide an electronic copy of the ~~interrogatories~~ requests may seek leave of court to be relieved of this requirement.

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

RULE 37. Failure to Make Discovery: Sanctions

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

(E) Failure to ~~provide~~ preserve electronically stored information.

~~Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system. The court may consider the following factors in determining whether to impose sanctions under this division:~~

~~(1) Whether and when any obligation to preserve the information was triggered;~~

~~(2) Whether the information was lost as a result of the routine alteration or deletion of information that attends the ordinary use of the system in issue;~~

~~(3) Whether the party intervened in a timely fashion to prevent the loss of information;~~

~~(4) Any steps taken to comply with any court order or party agreement requiring preservation of specific information;~~

~~(5) Any other facts relevant to its determination under this division.~~

If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(a) presume that the lost information was unfavorable to the party;

(b) instruct the jury that it may or must presume the information was unfavorable to the party; or

(c) dismiss the action or enter a default judgment.

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

OHIO RULES OF CRIMINAL PROCEDURE

RULE 11. Pleas, Rights Upon Plea

(A) Pleas. A defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant's attorney. All other pleas may be made orally either in-person or by remote contemporaneous video in conformity with Crim.R. 43(A). The pleas of not guilty and not guilty by reason of insanity may be joined. If a defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.

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

(C) Pleas of guilty and no contest in felony cases.

(1) Where in a felony case the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim.R. 44 by appointed counsel, waives this right.

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally either in-person or by remote contemporaneous video in conformity with Crim.R. 43(A) and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

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

RULE 19. Magistrates

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

(C) Authority

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

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

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

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

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

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

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

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

(f) Hear and decide the following motions:

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

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

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

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

(i) Conduct proceedings in Supreme Court certified dockets only when authorized and only in accordance with the authority granted by Sup.R. 36.33.

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

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

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

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

(c) Putting witnesses under oath and examining them;

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

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

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

RULE 33. New Trial

(A) Grounds. A new trial may be granted on motion of the defendant for any of the following causes affecting materially his substantial rights:

(1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial;

(2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) That the verdict ~~is not sustained by sufficient evidence or~~ is contrary to law. If the evidence shows the defendant is not guilty of the degree of crime for which he was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding accordingly, without granting or ordering a new trial, and shall pass sentence on such verdict or finding as modified;

(5) Error of law occurring at the trial;

(6) When new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is reasonable under all the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.

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

RULE 41. Search and Seizure

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

(C) Issuance and contents.

(1) A warrant shall issue on either an affidavit or affidavits sworn to before a judge of a court of record or an affidavit or affidavits communicated to the judge by reliable electronic means establishing the grounds for issuing the warrant. In the case of a search warrant, the affidavit shall name or describe the person to be searched or particularly describe the place to be searched, name or describe the property to be searched for and seized, state substantially the offense in relation thereto, and state the factual basis for the affiant's belief that such property is there located. In the case of a tracking device warrant, the affidavit shall name or describe the person to be tracked or particularly describe the property to be tracked, and state substantially the offense in relation thereto, state the factual basis for the affiant's belief that the tracking will yield evidence of the offense. If the affidavit is provided by reliable electronic means, the applicant communicating the affidavit shall be placed under oath and shall swear to or affirm the affidavit communicated.

(2) If the judge is satisfied that probable cause exists, the judge shall issue a warrant identifying the property to be seized and naming or describing the person or place to be searched or the person or property to be tracked. The warrant may be issued to the requesting prosecuting attorney or other law enforcement officer through reliable electronic means. The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the judge may require the affiant to appear personally or by reliable electronic means, and may examine under oath the affiant and any witnesses the affiant may produce. Such testimony shall be admissible at a hearing on a motion to suppress if taken down by a court reporter or recording equipment, transcribed, and made part of the affidavit. The warrant shall be directed to a law enforcement officer. A search warrant shall command the officer to search, within three days, the person or place named for the property specified. A tracking device warrant shall command the officer to complete any installation authorized by the warrant within a specified time no longer than 10 days, and shall specify the time that the device may be used, not to exceed 45 days. The court may, for good cause shown, grant one or more extensions of time that the device may be used, for a reasonable period not to exceed 45 days each. The warrant shall be executed in the daytime, unless the issuing court, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. The warrant shall provide that the warrant shall be returned to a designated judge or clerk of court.

(D) Execution and return of the warrant.

(1) *Search warrant.* The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly, either in person or by reliable electronic

540 means, and shall be accompanied by a written inventory of any property taken. The inventory shall
541 be made in the presence of the applicant for the warrant and the person from whose possession or
542 premises the property was taken, if they are present, or in the presence of at least one credible
543 person other than the applicant for the warrant or the person from whose possession or premises
544 the property was taken, and shall be verified by the officer. The judge shall upon request deliver a
545 copy of the inventory to the person from whom or from whose premises the property was taken
546 and to the applicant for the warrant. Property seized under a warrant shall be kept for use as
547 evidence by the court which issued the warrant or by the law enforcement agency which executed
548 the warrant.
549
550 (2) *Tracking Device warrant.* The officer executing a tracking device warrant shall
551 enter onto the warrant the exact date and time the device was installed and the period during which
552 it was used. The return shall be made promptly, either in person or by reliable electronic means,
553 after the use of the tracking device has ended. Within 10 days after the use of the tracking device
554 has ended, the officer executing a tracking device warrant must serve a copy of the warrant on the
555 person who was tracked or whose property was tracked. Service may be accomplished by
556 delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the
557 person's residence or usual place of abode with an individual of suitable age and discretion who
558 resides at that location and by mailing a copy to the person's last known address. Upon the request
559 of a prosecuting attorney or a law enforcement officer, and for good cause shown, the court may
560 authorize notice to be delayed for a reasonable period.
561
562 **[Existing language unaffected by the amendments is omitted to conserve space]**
563

OHIO RULES OF APPELLATE PROCEDURE

RULE 4. Appeals as of Right – How 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~~ notice of the judgment 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.

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

587 **RULE 21. Oral Argument**
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589 **[Existing language unaffected by the amendments is omitted to conserve space]**
590
591 **(J)** Beginning September 1, 2021, the court shall make an audio or video recording of
592 all oral arguments. Such recordings shall be made available to the parties or public upon request,
593 at their actual cost pursuant to Sup.R. 44.
594
595 **[Existing language unaffected by the amendments is omitted to conserve space]**
596

OHIO RULES OF EVIDENCE

RULE 601. General Rule of Competency

(A) **General rule.** Every person is competent to be a witness except as otherwise provided in these rules.

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

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

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

~~(C)~~(3) A spouse testifying against the other spouse charged with a crime except when either of the following applies:

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

~~(2)~~(b) the testifying spouse elects to testify.

~~(D)~~(4) An officer, while on duty for the exclusive or main purpose of enforcing traffic laws, arresting or assisting in the arrest of a person charged with a traffic violation punishable as a misdemeanor where the officer at the time of the arrest was not using a properly marked motor vehicle as defined by statute or was not wearing a legally distinctive uniform as defined by statute.

~~(E)~~(5) A person giving expert testimony on the issue of liability in any medical claim, as defined in R.C. 2305.113, asserted in any civil action against a physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person by a physician or podiatrist, unless:

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

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

~~(3)~~(c) The person practices in the same or a substantially similar specialty as the defendant. The court shall not permit an expert in one medical specialty to testify against a health care provider in another medical specialty unless the expert shows both that the standards of care and practice in the two specialties are similar and that the expert has substantial familiarity between the specialties.

If the person is certified in a specialty, the person must be certified by a board recognized by the American board of medical specialties or the American board of osteopathic specialties in

a specialty having acknowledged expertise and training directly related to the particular health care matter at issue.

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

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

~~(F)~~(6) As otherwise provided in these rules.