

OHIO RULES OF CRIMINAL PROCEDURE

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 criminal jurisdiction, with the exceptions stated in division (C) of this rule.

(B) Purpose and construction. These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed and applied to secure the fair, impartial, speedy, and sure administration of justice, simplicity in procedure, and the elimination of unjustifiable expense and delay.

(C) Exceptions. These rules, to the extent that specific procedure is provided by other rules of the Supreme Court or 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) upon extradition and rendition of fugitives, (3) in cases covered by the Uniform Traffic Rules, (4) upon the application and enforcement of peace bonds, (5) in juvenile proceedings against a child as defined in Rule 2(D) of the Rules of Juvenile Procedure, (6) upon forfeiture of property for violation of a statute of this state, or (7) upon the collection of fines and penalties. Where any statute or rule provides for procedure by a general or specific reference to the statutes governing procedure in criminal actions, the procedure shall be in accordance with these rules.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1996.]

RULE 2. Definitions

As used in these rules:

- (A) "Felony" means an offense defined by law as a felony.
- (B) "Misdemeanor" means an offense defined by law as a misdemeanor.
- (C) "Serious offense" means any felony, and any misdemeanor for which the penalty prescribed by law includes confinement for more than six months.
- (D) "Petty offense" means a misdemeanor other than a serious offense.
- (E) "Judge" means judge of the court of common pleas, juvenile court, municipal court, or county court, or the mayor or mayor's court magistrate of a municipal corporation having a mayor's court.
- (F) "Magistrate" means any person appointed by a court pursuant to Crim. R. 19. "Magistrate" does not include an official included within the definition of magistrate contained in section 2931.01 of the Revised Code, or a mayor's court magistrate appointed pursuant to section 1905.05 of the Revised Code.
- (G) "Prosecuting attorney" means the attorney general of this state, the prosecuting attorney of a county, the law director, city solicitor, or other officer who prosecutes a criminal case on behalf of the state or a city, village, township, or other political subdivision, and the assistant or assistants of any of them. As used in Crim. R. 6, "prosecuting attorney" means the attorney general of this state, the prosecuting attorney of a county, and the assistant or assistants of either of them.
- (H) "State" means this state, a county, city, village, township, other political subdivision, or any other entity of this state that may prosecute a criminal action.
- (I) "Clerk of court" means the duly elected or appointed clerk of any court of record, or the deputy clerk, and the mayor or mayor's court magistrate of a municipal corporation having a mayor's court.
- (J) "Law enforcement officer" means a sheriff, deputy sheriff, constable, municipal police officer, marshal, deputy marshal, or state highway patrolman, and also means any officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, the authority to arrest violators is conferred, when the officer, agent, or employee is acting within the limits of statutory authority. The definition of "law enforcement officer" contained in this rule shall not be construed to limit, modify, or expand any statutory definition, to the extent the statutory definition applies to matters not covered by the Rules of Criminal Procedure.

[Effective: July 1, 1973; amended effective July 1, 1976; July 1, 1990.]

RULE 3. Complaint

The complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths.

[Effective: July 1, 1973.]

RULE 4. Warrant or Summons; Arrest

(A) Issuance.

(1) Upon complaint. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.

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 issuing authority may require the complainant to appear personally and may examine under oath the complainant and any witnesses. The testimony shall be admissible at a hearing on a motion to suppress, if it was taken down by a court reporter or recording equipment.

The issuing authority shall issue a summons instead of a warrant upon the request of the prosecuting attorney, or when issuance of a summons appears reasonably calculated to ensure the defendant's appearance.

(2) By law enforcement officer with warrant. In misdemeanor cases where a warrant has been issued to a law enforcement officer, the officer, unless the issuing authority includes a prohibition against it in the warrant, may issue a summons in lieu of executing the warrant by arrest, when issuance of a summons appears reasonably calculated to ensure the defendant's appearance. The officer issuing the summons shall note on the warrant and the return that the warrant was executed by issuing summons, and shall also note the time and place the defendant shall appear. No alias warrant shall be issued unless the defendant fails to appear in response to the summons, or unless subsequent to the issuance of summons it appears improbable that the defendant will appear in response to the summons.

(3) By law enforcement officer without a warrant. In misdemeanor cases where a law enforcement officer is empowered to arrest without a warrant, the officer may issue a summons in lieu of making an arrest, when issuance of a summons appears reasonably calculated to ensure the defendant's appearance. The officer issuing the summons shall file, or cause to be filed, a complaint describing the offense. No warrant shall be issued unless the defendant fails to appear in response to the summons, or unless subsequent to the issuance of summons it appears improbable that the defendant will appear in response to the summons.

(B) Multiple issuance; sanction. More than one warrant or summons may issue on the same complaint. If the defendant fails to appear in response to summons, a warrant or alias warrant shall issue.

(C) Warrant and summons: form.

(1) Warrant. The warrant shall contain the name of the defendant or, if that is unknown, any name or description by which the defendant can be identified with reasonable certainty, a description of the offense charged in the complaint, whether the warrant is being issued before the defendant has appeared or was scheduled to appear, and the numerical designation of the applicable statute or ordinance. A copy of the complaint shall be attached to the warrant.

(a) If the warrant is issued after the defendant has made an initial appearance or has failed to appear at an initial appearance, the warrant shall command that the defendant be arrested and either of the following:

(i) That the defendant shall be required to post a sum of cash or secured bail bond with the condition that the defendant appear before the issuing court at a time and date certain;

(ii) That the defendant shall be held without bail until brought before the issuing court without unnecessary delay.

(b) If the warrant is issued before the defendant has appeared or is scheduled to appear, the warrant shall so indicate and the bail provisions of Crim.R. 46 shall apply.

(2) Summons. The summons shall be in the same form as the warrant, except that it shall not command that the defendant be arrested, but shall order the defendant to appear at a stated time and place and inform the defendant that he or she may be arrested if he or she fails to appear at the time and place stated in the summons. A copy of the complaint shall be attached to the summons, except where an officer issues summons in lieu of making an arrest without a warrant, or where an officer issues summons after arrest without a warrant.

(D) Warrant and summons: execution or service; return.

(1) By whom. Warrants shall be executed and summons served by any officer authorized by law.

(2) Territorial limits. Warrants may be executed or summons may be served at any place within this state.

(3) Manner. Except as provided in division (A)(2) of this rule, warrants shall be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest. In such case, the officer shall inform the defendant of the offense charged and of the fact that the warrant has been issued. A copy of the warrant shall be given to the defendant as soon as possible.

Summons may be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's usual place of residence with some person of suitable age and discretion then residing therein, or, except when the summons is issued in lieu of executing a warrant by arrest, by mailing it to the defendant's last known address by certified mail with a return receipt requested. When service of summons is made by certified mail it shall be served by the clerk in the manner prescribed by Civil Rule 4.1(1). A summons to a corporation shall be served in the manner provided for service upon corporations in Civil Rules 4 through 4.2 and 4.6(A) and (B), except that the waiver provisions of Civil Rule 4(D) shall not apply. Summons issued under division (A)(2) of this rule in lieu of executing a warrant by arrest shall be served by personal or residence service. Summons issued under division (A)(3) of this rule in lieu of arrest and summons issued after arrest under division (F) of this rule shall be served by personal service only.

(4) Return. The officer executing a warrant shall make return of the warrant to the issuing court before whom the defendant is brought pursuant to Crim.R. 5. At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the issuing court and canceled by a judge of that court.

When the copy of the summons has been served, the person serving summons shall endorse that fact on the summons and return it to the clerk, who shall make the appropriate entry on the appearance docket.

When the person serving summons is unable to serve a copy of the summons within twenty-eight days of the date of issuance, the person serving summons shall endorse that fact and the reasons for the failure of service on the summons and return the summons and copies to the clerk, who shall make the appropriate entry on the appearance docket.

At the request of the prosecuting attorney, made while the complaint is pending, a warrant returned unexecuted and not canceled, or a summons returned unserved, or a copy of either, may be delivered by the court to an authorized officer for execution or service.

(E) Arrest.

(1) Arrest upon warrant.

(a) Where a person is arrested upon a warrant that states it was issued before a scheduled initial appearance, or the warrant is silent as to when it was issued, the judicial officer before whom the person is brought shall apply Crim.R. 46.

(b) Where a person is arrested upon a warrant that states it was issued after an initial appearance or the failure to appear at an initial appearance and the arrest occurs either in the county from which the warrant issued or in an adjoining county, the arresting officer shall, except as provided in division (F) of this rule, where the warrant provides for the posting of bail, permit the arrested person to post a sum of cash or secured bail bond as contained in the warrant with the requirement that the arrested person appear before the warrant issuing court at a time

and date certain, or bring the arrested person without unnecessary delay before the court that issued the warrant.

(c) Where a person is arrested upon a warrant that states it was issued after an initial appearance or the failure to appear at an initial appearance and the arrest occurs in any county other than the county from which the warrant was issued or in an adjoining county, the following sequence of procedures shall be followed:

(i) Where the warrant provides for the posting of bail, the arrested person shall be permitted to post a sum of cash or secured bail bond as contained in the warrant with the requirement that the arrested person appear before the warrant issuing court at a time and date certain.

(ii) The arrested person may in writing waive the procedures in division (E)(1)(c)(iii) of this rule after having been informed in writing and orally by a law enforcement officer of those procedures, and consenting to being removed to the warrant issuing court without further delay. This waiver shall contain a representation by a law enforcement officer that the waiver was read to the arrested person and that the arrested person signed the waiver in the officer's presence.

(iii) Where the warrant is silent as to the posting of bail, requires that the arrested person be held without bail, the arrested person chooses not to post bail, or the arrested person chooses not to waive the procedures contained in division (E)(1) of this rule, the arrested person shall, except as provided in division (F) of this rule, be brought without unnecessary delay before a court of record therein, having jurisdiction over such an offense, and the arrested person shall not be removed from that county until the arrested person has been given a reasonable opportunity to consult with an attorney, or individual of the arrested person's choice, and to post bail to be determined by the judge or magistrate of that court not inconsistent with the directions of the issuing court as contained in the warrant or after consultation with the issuing court. If the warrant is silent as to the posting of bail or holding the arrested person without bail, the court may permit the arrested person to post bail, hold the arrested person without bail, or consult with the warrant issuing court on the issue of bail.

(d) If the arrested person is not released, the arrested person shall then be removed from the county and brought before the court issuing the warrant, without unnecessary delay. If the arrested person is released, the release shall be on condition that the arrested person appear in the issuing court at a time and date certain.

(F) Release after arrest. In misdemeanor cases where a person has been arrested with or without a warrant, the arresting officer, the officer in charge of the detention facility to which the person is brought or the superior of either officer, without unnecessary delay, may release the arrested person by issuing a summons when issuance of a summons appears reasonably calculated to assure the person's appearance. The officer issuing such summons shall note on the summons the time and place the person must appear and, if the person was arrested without a warrant, shall file or cause to be filed a complaint describing the offense. No warrant or alias warrant shall be issued unless the person fails to appear in response to the summons.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1990; July 1, 1998.]

RULE 4.1 Optional Procedure in Minor Misdemeanor Cases

(A) Procedure in minor misdemeanor cases. Notwithstanding Rule 3, Rule 5(A), Rule 10, Rule 11(A), Rule 11(E), Rule 22, Rule 43(A), and Rule 44, a court may establish the following procedure for all or particular minor misdemeanors other than offenses covered by the Uniform Traffic Rules.

(B) Definition of minor misdemeanor. A minor misdemeanor is an offense for which the potential penalty does not exceed a fine of one hundred fifty dollars. With respect to offenses committed prior to January 1, 2004, a minor misdemeanor is an offense for which the potential penalty does not exceed a fine of one hundred dollars.

(C) Form of citation. In minor misdemeanor cases a law enforcement officer may issue a citation. The citation shall: contain the name and address of the defendant; describe the offense charged; give the numerical designation of the applicable statute or ordinance; state the name of the law enforcement officer who issued the citation; and order the defendant to appear at a stated time and place.

The citation shall inform the defendant that, in lieu of appearing at the time and place stated, he may, within that stated time, appear personally at the office of the clerk of court and upon signing a plea of guilty and a waiver of trial pay a stated fine and stated costs, if any. The citation shall inform the defendant that, in lieu of appearing at the time and place stated, he may, within a stated time, 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 violations bureau. The citation shall inform the defendant that he may be arrested if he fails to appear either at the clerk's office or at the time and place stated in the citation.

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

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

(F) Procedure upon failure to appear. When a defendant fails to appear, the court may issue a supplemental citation, or a summons or warrant under Rule 4. Supplemental citations shall be in the form prescribed by division (C) of this rule, but shall be issued and signed by the clerk and served in the same manner as a summons under Rule 4.

(G) Procedure where defendant does not enter a waiver. Where a defendant appears but does not sign a guilty plea and waiver of trial, the court shall proceed in accordance with Rule 5.

[Effective: July 1, 1973; amended effective July 1, 1978; July 1, 2004.]

Staff Note (July 1, 2004 Amendment)

Rule 4.1(B) Definition of minor misdemeanor.

Effective January 1, 2004, R.C.2901.02(G) changed the maximum penalty for a minor misdemeanor from \$100 to \$150. Crim. R. 4.1(B) was modified to reflect the change in the maximum penalty for a minor misdemeanor.

RULE 5. Initial Appearance, Preliminary Hearing

(A) Procedure upon initial appearance. When a defendant first appears before a judge or magistrate, the judge or magistrate shall permit the accused or his counsel to read the complaint or a copy thereof, and shall inform the defendant:

- (1) Of the nature of the charge against him;
- (2) That he has a right to counsel and the right to a reasonable continuance in the proceedings to secure counsel, and, pursuant to Crim. R. 44, the right to have counsel assigned without cost to himself if he is unable to employ counsel;
- (3) That he need make no statement and any statement made may be used against him;
- (4) Of his right to a preliminary hearing in a felony case, when his initial appearance is not pursuant to indictment;
- (5) Of his right, where appropriate, to jury trial and the necessity to make demand therefor in petty offense cases.

In addition, if the defendant has not been admitted to bail for a bailable offense, the judge or magistrate shall admit the defendant to bail as provided in these rules.

In felony cases the defendant shall not be called upon to plead either at the initial appearance or at a preliminary hearing.

In misdemeanor cases the defendant may be called upon to plead at the initial appearance. Where the defendant enters a plea the procedure established by Crim. R. 10 and Crim. R. 11 applies.

(B) Preliminary hearing in felony cases; procedure.

(1) In felony cases a defendant is entitled to a preliminary hearing unless waived in writing. If the defendant waives preliminary hearing, the judge or magistrate shall forthwith order the defendant bound over to the court of common pleas. If the defendant does not waive the preliminary hearing, the judge or magistrate shall schedule a preliminary hearing within a reasonable time, but in any event no later than ten consecutive days following arrest or service of summons if the defendant is in custody and not later than fifteen consecutive days following arrest or service of summons if he is not in custody. The preliminary hearing shall not be held, however, if the defendant is indicted. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this division may be extended. In the absence of such consent by the defendant, time limits may be extended only as required by law, or upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

(2) At the preliminary hearing the prosecuting attorney may state orally the case for the state, and shall then proceed to examine witnesses and introduce exhibits for the state. The defendant and the judge or magistrate have full right of cross-examination, and the defendant has the right of inspection of exhibits prior to their introduction. The hearing shall be conducted under the rules of evidence prevailing in criminal trials generally.

(3) At the conclusion of the presentation of the state's case, defendant may move for discharge for failure of proof, and may offer evidence on his own behalf. If the defendant is not represented by counsel, the court shall advise him, prior to the offering of evidence on behalf of the defendant:

(a) That any such evidence, if unfavorable to him in any particular, may be used against him at later trial.

(b) That he may make a statement, not under oath, regarding the charge, for the purpose of explaining the facts in evidence.

(c) That he may refuse to make any statement, and such refusal may not be used against him at trial.

(d) That any statement he makes may be used against him at trial.

(4) Upon conclusion of all the evidence and the statement, if any, of the accused, the court shall do one of the following:

(a) Find that there is probable cause to believe the crime alleged or another felony has been committed and that the defendant committed it, and bind the defendant over to the court of common pleas of the county or any other county in which venue appears.

(b) Find that there is probable cause to believe that a misdemeanor was committed and that the defendant committed it, and retain the case for trial or order the defendant to appear for trial before an appropriate court.

(c) Order the accused discharged.

(5) Any finding requiring the accused to stand trial on any charge shall be based solely on the presence of substantial credible evidence thereof. No appeal shall lie from such decision and the discharge of defendant shall not be a bar to further prosecution.

(6) In any case in which the defendant is ordered to appear for trial for any offense other than the one charged the court shall cause a complaint charging such offense to be filed.

(7) Upon the conclusion of the hearing and finding, the court or the clerk of such court, shall, within seven days, complete all notations of appearance, motions, pleas, and findings on the criminal docket of the court, and shall transmit a transcript of the appearance docket entries, together with a copy of the original complaint and affidavits, if any, filed with the complaint, the journal or docket entry of reason for changes in the charge, if any, together with the order setting bail and the bail including any bail deposit, if any, filed, to the clerk of the court in which defendant is to appear. Such transcript shall contain an itemized account of the costs accrued.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1976; July 1, 1982; July 1, 1990.]

RULE 6. The Grand Jury

(A) Summoning grand juries. The judge of the court of common pleas for each county, or the administrative judge of the general division in a multi-judge court of common pleas or a judge designated by him, shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of nine members, including the foreman, plus not more than five alternates.

(B) Objections to grand jury and to grand jurors.

(1) Challenges. The prosecuting attorney, or the attorney for a defendant who has been held to answer in the court of common pleas, may challenge the array of jurors or an individual juror on the ground that the grand jury or individual juror was not selected, drawn, or summoned in accordance with the statutes of this state. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(2) Motion to dismiss. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified, if it appears from the record kept pursuant to subdivision (C) that seven or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(C) Foreman and deputy foreman. The court may appoint any qualified elector or one of the jurors to be foreman and one of the jurors to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall upon the return of the indictment file the record with the clerk of court, but the record shall not be made public except on order of the court. During the absence or disqualification of the foreman, the deputy foreman shall act as foreman.

(D) Who may be present. The prosecuting attorney, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(E) Secrecy of proceedings and disclosure. Deliberations of the grand jury and the vote of any grand juror shall not be disclosed. Disclosure of other matters occurring before the grand jury may be made to the prosecuting attorney for use in the performance of his duties. A grand juror, prosecuting attorney, interpreter, stenographer, operator of a recording device, or typist who transcribes recorded testimony, may disclose matters occurring before the grand jury, other than the deliberations of a grand jury or the vote of a grand juror, but may disclose such matters only when so directed by the court preliminary to or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No grand juror, officer of the court, or other person shall disclose that an indictment

has been found against a person before such indictment is filed and the case docketed. The court may direct that an indictment shall be kept secret until the defendant is in custody or has been released pursuant to Rule 46. In that event the clerk shall seal the indictment, the indictment shall not be docketed by name until after the apprehension of the accused, and no person shall disclose the finding of the indictment except when necessary for the issuance of a warrant or summons. No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(F) Finding and return of indictment. An indictment may be found only upon the concurrence of seven or more jurors. When so found the foreman or deputy foreman shall sign the indictment as foreman or deputy foreman. The indictment shall be returned by the foreman or deputy foreman to a judge of the court of common pleas and filed with the clerk who shall endorse thereon the date of filing and enter each case upon the appearance and trial dockets. If the defendant is in custody or has been released pursuant to Rule 46 and seven jurors do not concur in finding an indictment, the foreman shall so report to the court forthwith.

(G) Discharge and excuse. A grand jury shall serve until discharged by the court. A grand jury may serve for four months, but the court upon a showing of good cause by the prosecuting attorney may order a grand jury to serve more than four months but not more than nine months. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another eligible person in place of the juror excused.

(H) Alternate grand jurors. The court may order that not more than five grand jurors, in addition to the regular grand jury, be called, impaneled and sit as alternate grand jurors. Alternate grand jurors, in the order in which they are called, shall replace grand jurors who, prior to the time the grand jury votes on an indictment, are found to be unable or disqualified to perform their duties. Alternate grand jurors shall be drawn in the same manner, shall have the same qualifications, shall be subjected to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular grand jurors. Alternate grand jurors may sit with the regular grand jury, but shall not be present when the grand jury deliberates and votes.

[Effective: July 1, 1973.]

RULE 7. The Indictment and the Information

(A) Use of indictment or information. A felony that may be punished by death or life imprisonment shall be prosecuted by indictment. All other felonies shall be prosecuted by indictment, except that after a defendant has been advised by the court of the nature of the charge against the defendant and of the defendant's right to indictment, the defendant may waive that right in writing and in open court.

Where an indictment is waived, the offense may be prosecuted by information, unless an indictment is filed within fourteen days after the date of waiver. If an information or indictment is not filed within fourteen days after the date of waiver, the defendant shall be discharged and the complaint dismissed. This division shall not prevent subsequent prosecution by information or indictment for the same offense.

A misdemeanor may be prosecuted by indictment or information in the court of common pleas, or by complaint in the juvenile court, as defined in the Rules of Juvenile Procedure, and in courts inferior to the court of common pleas. An information may be filed without leave of court.

(B) Nature and contents. The indictment shall be signed in accordance with Crim. R. 6(C) and (F) and contain a statement that the defendant has committed a public offense specified in the indictment. The information shall be signed by the prosecuting attorney or in the name of the prosecuting attorney by an assistant prosecuting attorney and shall contain a statement that the defendant has committed a public offense specified in the information. The statement may be made in ordinary and concise language without technical averments or allegations not essential to be proved. The statement may be in the words of the applicable section of the statute, provided the words of that statute charge an offense, or in words sufficient to give the defendant notice of all the elements of the offense with which the defendant is charged. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. Each count of the indictment or information shall state the numerical designation of the statute that the defendant is alleged to have violated. Error in the numerical designation or omission of the numerical designation shall not be ground for dismissal of the indictment or information, or for reversal of a conviction, if the error or omission did not prejudicially mislead the defendant.

(C) Surplusage. The court on motion of the defendant or the prosecuting attorney may strike surplusage from the indictment or information.

(D) Amendment of indictment, information, or complaint. The court may at any time before, during, or after a trial amend the indictment, information, complaint, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged. If any amendment is made to the substance of the indictment, information, or complaint, or to cure a variance between the indictment, information, or complaint and the proof, the defendant is entitled to a discharge of the jury on the defendant's motion, if a jury has been impaneled, and to a reasonable continuance, unless it clearly appears from the whole

proceedings that the defendant has not been misled or prejudiced by the defect or variance in respect to which the amendment is made, or that the defendant's rights will be fully protected by proceeding with the trial, or by a postponement thereof to a later day with the same or another jury. Where a jury is discharged under this division, jeopardy shall not attach to the offense charged in the amended indictment, information, or complaint. No action of the court in refusing a continuance or postponement under this division is reviewable except after motion to grant a new trial therefor is refused by the trial court, and no appeal based upon such action of the court shall be sustained nor reversal had unless, from consideration of the whole proceedings, the reviewing court finds that a failure of justice resulted.

(E) Bill of particulars. When the defendant makes a written request within twenty-one days after arraignment but not later than seven days before trial, or upon court order, the prosecuting attorney shall furnish the defendant with a bill of particulars setting up specifically the nature of the offense charge and of the conduct of the defendant alleged to constitute the offense. A bill of particulars may be amended at any time subject to such conditions as justice requires.

[Effective: July 1, 1973; amended effective July 1, 1993; July 1, 2000.]

Staff Note (July 1, 2000 Amendment)

Rule 7(A) Use of Indictment or Information

The July 1, 2000 amendment permits the prosecution of misdemeanor charges by complaint in the juvenile division of a common pleas court. Prior to this amendment, a misdemeanor could only be prosecuted in the common pleas court by an indictment or information.

The impetus for the amendment was statutes holding parents criminally accountable for their children's chronic truancy. Since these charges are misdemeanors, prior to the amendment of this rule a parent could be prosecuted only by a grand jury indictment or an information. Obtaining a grand jury indictment is costly and time consuming, and a defendant must first waive indictment before an information can be used. This amendment, which limits the use of complaints to proceedings in juvenile court, is intended to help prosecutors and juvenile authorities handle truancy and other misdemeanor charges in a more expeditious and less costly manner than under the prior rule.

RULE 8. Joinder of Offenses and Defendants

(A) Joinder of offenses. Two or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.

(B) Joinder of defendants. Two or more defendants may be charged in the same indictment, information or complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, or in the same course of criminal conduct. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

[Effective: July 1, 1973.]

RULE 9. Warrant or Summons Upon Indictment or Information

(A) Issuance. Upon the request of the prosecuting attorney the clerk shall forthwith issue a warrant for each defendant named in the indictment or in the information. The clerk shall issue a summons instead of a warrant where the defendant has been released pursuant to Rule 46 and is indicted for the same offense for which he was bound over pursuant to Rule 5. In addition, the clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney or by direction of the court.

Upon like request or direction, the clerk shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons to any officer authorized by law to execute or serve it. If a defendant fails to appear in response to summons, a warrant shall issue.

(B) Form of warrant and summons.

(1) Warrant. The form of the warrant shall be as provided in Rule 4(C)(1) except that it shall be signed by the court or clerk. It shall describe the offense charged in the indictment or information. A copy of the indictment or information shall be attached to the warrant which shall command that the defendant be arrested and brought before the court issuing the warrant without unnecessary delay.

(2) Summons. The summons shall be in the same form as the warrant, except that it shall not command that the defendant be arrested, but shall order the defendant to appear before the court at a stated time and place and inform him that he may be arrested if he fails to appear at the time and place stated in the summons. A copy of the indictment or information shall be attached to the summons.

(C) Execution or service; return.

(1) Execution or service. Warrants shall be executed or summons served as provided in Rule 4(D) and the arrested person shall be treated in accordance with Rule 4(E)(1).

(2) Return. The officer executing a warrant shall make return thereof to the court.

When the person serving summons is unable to serve a copy of the summons within twenty-eight days of the date of issuance, he shall endorse that fact and the reasons therefor on the summons and return the summons, and copies to the clerk, who shall make the appropriate entry on the appearance docket.

At the request of the prosecuting attorney made at any time while the indictment or information is pending, a warrant returned unexecuted and not canceled, or a summons returned unserved, or a copy thereof, may be delivered by the clerk to the sheriff or other authorized person for execution or service.

[Effective: July 1, 1973; amended effective July 1, 1975.]

RULE 10. Arraignment

(A) Arraignment procedure. Arraignment shall be conducted in open court, and shall consist of reading the indictment, information or complaint to the defendant, or stating to him the substance of the charge, and calling on him to plead thereto. The defendant may in open court waive the reading of the indictment, information, or complaint. The defendant shall be given a copy of the indictment, information, or complaint, or shall acknowledge receipt thereof, before being called upon to plead.

(B) Presence of defendant. The defendant must be present except that the court, with the written consent of the defendant and the approval of the prosecuting attorney, may permit arraignment without the presence of the defendant, if a plea of not guilty is entered.

(C) Explanation of rights. When a defendant not represented by counsel is brought before a court and called upon to plead, the judge or magistrate shall cause him to be informed and shall determine that he understands all of the following:

(1) He has a right to retain counsel even if he intends to plead guilty, and has a right to a reasonable continuance in the proceedings to secure counsel.

(2) He has a right to counsel, and the right to a reasonable continuance in the proceedings to secure counsel, and, pursuant to Crim. R. 44, the right to have counsel assigned without cost to himself if he is unable to employ counsel.

(3) He has a right to bail, if the offense is bailable.

(4) He need make no statement at any point in the proceeding, but any statement made can and may be used against him.

(D) Joint arraignment. If there are multiple defendants to be arraigned, the judge or magistrate may by general announcement advise them of their rights as prescribed in this rule.

[Effective: July 1, 1973; amended effective July 1, 1990.]

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. 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.

(B) Effect of guilty or no contest pleas. With reference to the offense or offenses to which the plea is entered:

(1) The plea of guilty is a complete admission of the defendant's guilt.

(2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.

(3) When a plea of guilty or no contest is accepted pursuant to this rule, the court, except as provided in divisions (C)(3) and (4) of this rule, shall proceed with sentencing under Crim.R. 32.

(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 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.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

(3) With respect to aggravated murder committed on and after January 1, 1974, the defendant shall plead separately to the charge and to each specification, if any. A plea of guilty or no contest to the charge waives the defendant's right to a jury trial, and before accepting a plea of guilty or no contest the court shall so advise the defendant and determine that the defendant understands the consequences of the plea.

If the indictment contains no specification, and a plea of guilty or no contest to the charge is accepted, the court shall impose the sentence provided by law.

If the indictment contains one or more specifications, and a plea of guilty or no contest to the charge is accepted, the court may dismiss the specifications and impose sentence accordingly, in the interests of justice.

If the indictment contains one or more specifications that are not dismissed upon acceptance of a plea of guilty or no contest to the charge, or if pleas of guilty or no contest to both the charge and one or more specifications are accepted, a court composed of three judges shall: (a) determine whether the offense was aggravated murder or a lesser offense; and (b) if the offense is determined to have been a lesser offense, impose sentence accordingly; or (c) if the offense is determined to have been aggravated murder, proceed as provided by law to determine the presence or absence of the specified aggravating circumstances and of mitigating circumstances, and impose sentence accordingly.

(4) With respect to all other cases the court need not take testimony upon a plea of guilty or no contest.

(D) Misdemeanor cases involving serious offenses. In misdemeanor cases involving serious offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first addressing the defendant personally and informing the defendant of the effect of the pleas of guilty, no contest, and not guilty and determining that the defendant is making the plea voluntarily. Where 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.

(E) Misdemeanor cases involving petty offenses. In misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty.

The counsel provisions of Crim.R. 44(B) and (C) apply to division (E) of this rule.

(F) Negotiated plea in felony cases. When, in felony cases, a negotiated plea of guilty or no contest to one or more offenses charged or to one or more other or lesser offenses is offered, the underlying agreement upon which the plea is based shall be stated on the record in open court.

(G) Refusal of court to accept plea. If the court refuses to accept a plea of guilty or no contest, the court shall enter a plea of not guilty on behalf of the defendant. In such cases neither plea shall be admissible in evidence nor be the subject of comment by the prosecuting attorney or court.

(H) Defense of insanity. The defense of not guilty by reason of insanity must be pleaded at the time of arraignment, except that the court for good cause shown shall permit such a plea to be entered at any time before trial.

[Effective: July 1, 1973; amended effective July 1, 1976; July 1, 1980; July 1, 1998.]

RULE 12. Pleadings and Motions Before Trial: Defenses and Objections

(A) Pleadings and motions. Pleadings in criminal proceedings shall be the complaint, and the indictment or information, and the pleas of not guilty, not guilty by reason of insanity, guilty, and no contest. All other pleas, demurrers, and motions to quash, are abolished. Defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(B) Filing with the court defined. The filing of documents with the court, as required by these rules, shall be made by filing them with the clerk of court, except that the judge may permit the documents to be filed with the judge, in which event the judge shall note the filing date on the documents and transmit them to the clerk. A court may provide, by local rules adopted pursuant to the Rules of Superintendence, for the filing of documents by electronic means. If the court adopts such local rules, they shall include all of the following:

(1) The complaint, if permitted by local rules to be filed electronically, shall comply with Crim. R. 3.

(2) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall order the filing stricken.

(3) A provision shall specify the days and hours during which electronically transmitted documents will be received by the court, and a provision shall specify when documents received electronically will be considered to have been filed.

(4) Any document filed electronically that requires a filing fee may be rejected by the clerk of court unless the filer has complied with the mechanism established by the court for the payment of filing fees.

(C) Pretrial motions. Prior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue. The following must be raised before trial:

(1) Defenses and objections based on defects in the institution of the prosecution;

(2) Defenses and objections based on defects in the indictment, information, or complaint (other than failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding);

(3) Motions to suppress evidence, including but not limited to statements and identification testimony, on the ground that it was illegally obtained. Such motions shall be filed in the trial court only.

(4) Requests for discovery under Crim. R. 16;

(5) Requests for severance of charges or defendants under Crim. R. 14.

(D) Motion date. All pretrial motions except as provided in Crim. R. 7(E) and 16(F) shall be made within thirty-five days after arraignment or seven days before trial, whichever is earlier. The court in the interest of justice may extend the time for making pretrial motions.

(E) Notice by the prosecuting attorney of the intention to use evidence.

(1) At the discretion of the prosecuting attorney. At the arraignment or as soon thereafter as is practicable, the prosecuting attorney may give notice to the defendant of the prosecuting attorney's intention to use specified evidence at trial, in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under division (C)(3) of this rule.

(2) At the request of the defendant. At the arraignment or as soon thereafter as is practicable, the defendant, in order to raise objections prior to trial under division (C)(3) of this rule, may request notice of the prosecuting attorney's intention to use evidence in chief at trial, which evidence the defendant is entitled to discover under Crim. R. 16.

(F) Ruling on motion. The court may adjudicate a motion based upon briefs, affidavits, the proffer of testimony and exhibits, a hearing, or other appropriate means.

A motion made pursuant to divisions (C)(1) to (C)(5) of this rule shall be determined before trial. Any other motion made pursuant to division (C) of this rule shall be determined before trial whenever possible. Where the court defers ruling on any motion made by the prosecuting attorney before trial and makes a ruling adverse to the prosecuting attorney after the commencement of trial, and the ruling is appealed pursuant to law with the certification required by division (K) of this rule, the court shall stay the proceedings without discharging the jury or dismissing the charges.

Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(G) Return of tangible evidence. Where a motion to suppress tangible evidence is granted, the court upon request of the defendant shall order the property returned to the defendant if the defendant is entitled to possession of the property. The order shall be stayed pending appeal by the state pursuant to division (K) of this rule.

(H) Effect of failure to raise defenses or objections. Failure by the defendant to raise defenses or objections or to make requests that must be made prior to trial, at the time set by the court pursuant to division (D) of this rule, or prior to any extension of time made by the court, shall constitute waiver of the defenses or objections, but the court for good cause shown may grant relief from the waiver.

(I) Effect of plea of no contest. The plea of no contest does not preclude a defendant from asserting upon appeal that the trial court prejudicially erred in ruling on a pretrial motion, including a pretrial motion to suppress evidence.

(J) Effect of determination. If the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint, it may also order that the defendant be held in custody or that the defendant's bail be continued for a specified time not exceeding fourteen days, pending the filing of a new indictment, information, or complaint. Nothing in this rule shall affect any statute relating to periods of limitations. Nothing in this rule shall affect the state's right to appeal an adverse ruling on a motion under divisions (C)(1) or (2) of this rule, when the motion raises issues that were formerly raised pursuant to a motion to quash, a plea in abatement, a demurrer, or a motion in arrest of judgment.

(K) Appeal by state. When the state takes an appeal as provided by law from an order suppressing or excluding evidence, the prosecuting attorney shall certify that both of the following apply:

- (1) the appeal is not taken for the purpose of delay;
- (2) the ruling on the motion or motions has rendered the state's proof with respect to the pending charge so weak in its entirety that any reasonable possibility of effective prosecution has been destroyed.

The appeal from an order suppressing or excluding evidence shall not be allowed unless the notice of appeal and the certification by the prosecuting attorney are filed with the clerk of the trial court within seven days after the date of the entry of the judgment or order granting the motion. Any appeal taken under this rule shall be prosecuted diligently.

If the defendant previously has not been released, the defendant shall, except in capital cases, be released from custody on his or her own recognizance pending appeal when the prosecuting attorney files the notice of appeal and certification.

This appeal shall take precedence over all other appeals.

If an appeal pursuant to this division results in an affirmance of the trial court, the state shall be barred from prosecuting the defendant for the same offense or offenses except upon a showing of newly discovered evidence that the state could not, with reasonable diligence, have discovered before filing of the notice of appeal.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1980; July 1, 1995; July 1, 1998; July 1, 2001.]

RULE 12.1 Notice of Alibi

Whenever a defendant in a criminal case proposes to offer testimony to establish an alibi on his behalf, he shall, not less than seven days before trial, file and serve upon the prosecuting attorney a notice in writing of his intention to claim alibi. The notice shall include specific information as to the place at which the defendant claims to have been at the time of the alleged offense. If the defendant fails to file such written notice, the court may exclude evidence offered by the defendant for the purpose of proving such alibi, unless the court determines that in the interest of justice such evidence should be admitted.

[Effective: July 1, 1973.]

RULE 13. Trial Together of Indictments or Informations or Complaints

The court may order two or more indictments or informations or both to be tried together, if the offenses or the defendants could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

The court may order two or more complaints to be tried together, if the offenses or the defendants could have been joined in a single complaint. The procedure shall be the same as if the prosecution were under such single complaint.

[Effective: July 1, 1973.]

RULE 14. Relief From Prejudicial Joinder

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment, information, or complaint, or by such joinder for trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts, grant a severance of defendants, or provide such other relief as justice requires. In ruling on a motion by a defendant for severance, the court shall order the prosecuting attorney to deliver to the court for inspection pursuant to Rule 16(B)(1)(a) any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.

When two or more persons are jointly indicted for a capital offense, each of such persons shall be tried separately, unless the court orders the defendants to be tried jointly, upon application by the prosecuting attorney or one or more of the defendants, and for good cause shown.

[Effective: July 1, 1973.]

RULE 15. Deposition

(A) When taken. If it appears probable that a prospective witness will be unable to attend or will be prevented from attending a trial or hearing, and if it further appears that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment, information, or complaint shall upon motion of the defense attorney or the prosecuting attorney and notice to all the parties, order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

If a witness is committed for failure to give bail or to appear to testify at a trial or hearing, the court on written motion of the witness and notice to the parties, may direct that his deposition be taken. After the deposition is completed, the court may discharge the witness.

(B) Notice of taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or fix the place of deposition.

(C) Attendance of defendant. The defendant shall have the right to attend the deposition. If he is confined the person having custody of the defendant shall be ordered by the court to take him to the deposition. The defendant may waive his right to attend the deposition, provided he does so in writing and in open court, is represented by counsel, and is fully advised of his right to attend by the court at a recorded proceeding.

(D) Counsel. Where a defendant is without counsel the court shall advise him of his right to counsel and assign counsel to represent him unless the defendant waives counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that all deposition expenses, including but not limited to travel and subsistence of the defendant's attorney for attendance at such examination together with a reasonable attorney fee, in addition to the compensation allowed for defending the defendant, and the expenses of the prosecuting attorney in the taking of such deposition, shall be paid out of public funds upon the certificate of the court making such order. Waiver of counsel shall be as prescribed in Rule 44(C).

(E) How taken. Depositions shall be taken in the manner provided in civil cases. The prosecution and defense shall have the right, as at trial, to full examination of witnesses. A deposition taken under this rule shall be filed in the court in which the action is pending.

(F) Use. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: that the witness is dead; or, that the witness is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any

party for the purpose of refreshing the recollection, or contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, any party may offer other parts.

(G) Objections to admissibility. Objections to receiving in evidence a deposition or a part thereof shall be made as provided in civil actions.

[Effective: July 1, 1973.]

RULE 16. Discovery and Inspection

(A) Demand for discovery. Upon written request each party shall forthwith provide the discovery herein allowed. Motions for discovery shall certify that demand for discovery has been made and the discovery has not been provided.

(B) Disclosure of evidence by the prosecuting attorney.

(1) Information subject to disclosure.

(a) Statement of defendant or co-defendant. Upon motion of the defendant, the court shall order the prosecuting attorney to permit the defendant to inspect the copy or photograph any of the following which are available to, or within the possession, custody, or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney:

(i) Relevant written or recorded statements made by the defendant or co-defendant, or copies thereof;

(ii) Written summaries of any oral statement, or copies thereof, made by the defendant or co-defendant to a prosecuting attorney or any law enforcement officer;

(iii) Recorded testimony of the defendant or co-defendant before a grand jury.

(b) Defendant's prior record. Upon motion of the defendant the court shall order the prosecuting attorney to furnish defendant a copy of defendant's prior criminal record, which is available to or within the possession, custody or control of the state.

(c) Documents and tangible objects. Upon motion of the defendant the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, available to or within the possession, custody or control of the state, and which are material to the preparation of his defense, or are intended for use by the prosecuting attorney as evidence at the trial, or were obtained from or belong to the defendant.

(d) Reports of examination and tests. Upon motion of the defendant the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, available to or within the possession, custody or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney.

(e) Witness names and addresses; record. Upon motion of the defendant, the court shall order the prosecuting attorney to furnish to the defendant a written list of the names and addresses of all witnesses whom the prosecuting attorney intends to call at trial, together with any record of prior felony convictions of any such witness, which record is within the knowledge

of the prosecuting attorney. Names and addresses of witnesses shall not be subject to disclosure if the prosecuting attorney certifies to the court that to do so may subject the witness or others to physical or substantial economic harm or coercion. Where a motion for discovery of the names and addresses of witnesses has been made by a defendant, the prosecuting attorney may move the court to perpetuate the testimony of such witnesses in a hearing before the court, in which hearing the defendant shall have the right of cross-examination. A record of the witness' testimony shall be made and shall be admissible at trial as part of the state's case in chief, in the event the witness has become unavailable through no fault of the state.

(f) Disclosure of evidence favorable to defendant. Upon motion of the defendant before trial the court shall order the prosecuting attorney to disclose to counsel for the defendant all evidence, known or which may become known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment. The certification and the perpetuation provisions of subsection (B)(1)(e) apply to this subsection.

(g) In camera inspection of witness' statement. Upon completion of a witness' direct examination at trial, the court on motion of the defendant shall conduct an in camera inspection of the witness' written or recorded statement with the defense attorney and prosecuting attorney present and participating, to determine the existence of inconsistencies, if any, between the testimony of such witness and the prior statement.

If the court determines that inconsistencies exist, the statement shall be given to the defense attorney for use in cross-examination of the witness as to the inconsistencies.

If the court determines that inconsistencies do not exist the statement shall not be given to the defense attorney and he shall not be permitted to cross-examine or comment thereon.

Whenever the defense attorney is not given the entire statement, it shall be preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Information not subject to disclosure. Except as provided in subsections (B)(1)(a), (b), (d), (f), and (g), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal documents made by the prosecuting attorney or his agents in connection with the investigation or prosecution of the case or of statements made by witnesses or prospective witnesses to state agents.

(3) Grand jury transcripts. The discovery or inspection of recorded proceedings of a grand jury shall be governed by Rule 6(E) and subsection (B)(1)(a) of this rule.

(4) Witness list; no comment. The fact that a witness' name is on a list furnished under subsections (B)(1)(b) and (f), and that such witness is not called shall not be commented upon at the trial.

(C) Disclosure of evidence by the defendant.

(1) Information subject to disclosure.

(a) Documents and tangible objects. If on request or motion the defendant obtains discovery under subsection (B)(1)(c), the court shall, upon motion of the prosecuting attorney order the defendant to permit the prosecuting attorney to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, available to or within the possession, custody or control of the defendant and which the defendant intends to introduce in evidence at the trial.

(b) Reports of examinations and tests. If on request or motion the defendant obtains discovery under subsection (B)(1)(d), the court shall, upon motion of the prosecuting attorney, order the defendant to permit the prosecuting attorney to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, available to or within the possession or control of the defendant, and which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial, when such results or reports relate to his testimony.

(c) Witness names and addresses. If on request or motion the defendant obtains discovery under subsection (B)(1)(e), the court shall, upon motion of the prosecuting attorney, order the defendant to furnish the prosecuting attorney a list of the names and addresses of the witnesses he intends to call at the trial. Where a motion for discovery of the names and addresses of witnesses has been made by the prosecuting attorney, the defendant may move the court to perpetuate the testimony of such witnesses in a hearing before the court in which hearing the prosecuting attorney shall have the right of cross-examination. A record of the witness' testimony shall be made and shall be admissible at trial as part of the defendant's case in chief in the event the witness has become unavailable through no fault of the defendant.

(d) In camera inspection of witness' statement. Upon completion of the direct examination, at trial, of a witness other than the defendant, the court on motion of the prosecuting attorney shall conduct an in camera inspection of the witness' written or recorded statement obtained by the defense attorney or his agents with the defense attorney and prosecuting attorney present and participating, to determine the existence of inconsistencies, if any, between the testimony of such witness and the prior statement.

If the court determines that inconsistencies exist the statement shall be given to the prosecuting attorney for use in cross-examination of the witness as to the inconsistencies.

If the court determines that inconsistencies do not exist the statement shall not be given to the prosecuting attorney, and he shall not be permitted to cross-examine or comment thereon.

Whenever the prosecuting attorney is not given the entire statement it shall be preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Information not subject to disclosure. Except as provided in subsections (C)(1)(b) and (d), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal documents made by the defense attorney or his agents in connection with the investigation or defense of the case, or of statements made by witnesses or prospective witnesses to the defense attorney or his agents.

(3) Witness list; no comment. The fact that a witness' name is on a list furnished under subsection (C)(1)(c), and that the witness is not called shall not be commented upon at the trial.

(D) Continuing duty to disclose. If, subsequent to compliance with a request or order pursuant to this rule, and prior to or during trial, a party discovers additional matter which would have been subject to discovery or inspection under the original request or order, he shall promptly make such matter available for discovery or inspection, or notify the other party or his attorney or the court of the existence of the additional matter, in order to allow the court to modify its previous order, or to allow the other party to make an appropriate request for additional discovery or inspection.

(E) Regulation of discovery.

(1) Protective orders. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party the court may permit a party to make such showing, or part of such showing, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such a showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Time, place and manner of discovery and inspection. An order of the court granting relief under this rule shall specify the time, place and manner of making the discovery and inspection permitted, and may prescribe such terms and conditions as are just.

(3) Failure to comply. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may make such other order as it deems just under the circumstances.

(F) Time of motions. A defendant shall make his motion for discovery within twenty-one days after arraignment or seven days before the date of trial, whichever is earlier, or at such reasonable time later as the court may permit. The prosecuting attorney shall make his

motion for discovery within seven days after defendant obtains discovery or three days before trial, whichever is earlier. The motion shall include all relief sought under this rule. A subsequent motion may be made only upon showing of cause why such motion would be in the interest of justice.

[Effective: July 1, 1973.]

RULE 17. Subpoena

(A) For attendance of witnesses; form; issuance. Every subpoena issued by the clerk shall be under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in and file a copy thereof with the clerk before service.

(B) Defendants unable to pay. The court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the presence of the witness is necessary to an adequate defense and that the defendant is financially unable to pay the witness fees required by subdivision (D). If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be taxed as costs.

(C) For production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein; but the court, upon motion made promptly and in any event made at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that the books, papers, documents or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time they are offered in evidence, and may, upon their production, permit them or portions thereof to be inspected by the parties or their attorneys.

(D) Service. A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, marshal, or a deputy of any, by a municipal or township policeman, by an attorney at law or by any person designated by order of the court who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by reading it to him in person or by leaving it at his usual place of residence, and by tendering to him upon demand the fees for one day's attendance and the mileage allowed by law. The person serving the subpoena shall file a return thereof with the clerk. If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand. The return may be forwarded through the postal service, or otherwise.

(E) Subpoena for taking depositions; place of examination. When the attendance of a witness before an official authorized to take depositions is required, the subpoena shall be issued by such person and shall command the person to whom it is directed to attend and give testimony at a time and place specified therein. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible objects which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 16.

A person whose deposition is to be taken may be required to attend an examination in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court.

(F) Subpoena for a hearing or trial. At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court in which the hearing or trial is held. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within this state.

(G) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court or officer issuing the subpoena.

[Effective: July 1, 1973.]

RULE 17.1 Pretrial Conference

At any time after the filing of an indictment, information or complaint the court may, upon its own motion or the motion of any party, order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or defendant's counsel at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and defendant's counsel. The court shall not conduct pretrial conferences in any case in which a term of imprisonment is a possible penalty unless the defendant is represented by counsel or counsel has been waived pursuant to Crim. R. 44. In any case in which the defendant is not represented by counsel, any pretrial conference shall be conducted in open court and shall be recorded as provided in Crim. R. 22.

[Effective: July 1, 1973; amended effective July 1, 2000.]

Staff Note (July 1, 2000 Amendment)

Rule 17.1 Pretrial Conference

The prior rule prohibited courts from conducting pretrial conferences in criminal cases until the defendant was represented by counsel. The amendment to Crim. R. 17.1 permits a court to conduct a pretrial conference with an unrepresented defendant in certain circumstances. Specifically, in cases in which a term of imprisonment is not a possible penalty, the court may conduct a pretrial conference with an unrepresented defendant when the defendant has waived counsel pursuant to Crim. R. 44. In such a case, the pretrial conference must be conducted on the record in open court.

RULE 18. Venue and Change of Venue

(A) General venue provisions. The venue of a criminal case shall be as provided by law.

(B) Change of venue; procedure upon change of venue. Upon the motion of any party or upon its own motion the court may transfer an action to any court having jurisdiction of the subject matter outside the county in which trial would otherwise be held, when it appears that a fair and impartial trial cannot be held in the court in which the action is pending.

(1) Time of motion. A motion under this rule shall be made within thirty-five days after arraignment or seven days before trial, whichever is earlier, or at such reasonable time later as the court may permit.

(2) Clerk's obligations upon change of venue. Where a change of venue is ordered the clerk of the court in which the cause is pending shall make copies of all of the papers in the action which, with the original complaint, indictment, or information, he shall transmit to the clerk of the court to which the action is sent for trial, and the trial and all subsequent proceedings shall be conducted as if the action had originated in the latter court.

(3) Additional counsel for prosecuting attorney. The prosecuting attorney of the political subdivision in which the action originated shall take charge of and try the case. The court to which the action is sent may on application appoint one or more attorneys to assist the prosecuting attorney in the trial, and allow the appointed attorneys reasonable compensation.

(4) Appearance of defendant, witnesses. Where a change of venue is ordered and the defendant is in custody, a warrant shall be issued by the clerk of the court in which the action originated, directed to the person having custody of the defendant commanding him to bring the defendant to the jail of the county to which the action is transferred, there to be kept until discharged. If the defendant on the date of the order changing venue is not in custody, the court in the order changing venue shall continue the conditions of release and direct the defendant to appear in the court to which the venue is changed. The court shall recognize the witnesses to appear before the court in which the accused is to be tried.

(5) Expenses. The reasonable expenses of the prosecuting attorney incurred in consequence of a change of venue, compensation of counsel appointed pursuant to Rule 44, the fees of the clerk of the court to which the venue is changed, the sheriff or bailiff, and of the jury shall be allowed and paid out of the treasury of the political subdivision in which the action originated.

[Effective: July 1, 1973.]

RULE 19. Magistrates

(A) Appointment. A court other than a mayor's court may appoint one or more magistrates. A magistrate shall be an attorney admitted to practice in Ohio. A magistrate may serve in more than one county or in two or more courts of the same criminal jurisdiction within the same county.

(B) Compensation. The compensation for the services of a magistrate shall be fixed by the court, and no part of the compensation shall be taxed as costs.

(C) Reference and powers.

(1) Order of reference. A court of record may by order refer any of the following to a magistrate:

- (a) Initial appearances and preliminary hearings conducted pursuant to Crim. R. 5.
- (b) Arraignments conducted pursuant to Crim. R. 10.
- (c) Proceedings at which a plea may be entered in accordance with Crim. R. 11, only as follows:
 - (i) A magistrate may accept and enter not guilty pleas in felony and misdemeanor cases;
 - (ii) In misdemeanor cases, a magistrate may 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 the offense charged is an offense for which imprisonment is a possible penalty, the matter may be referred only with the unanimous consent of the parties, in writing or on the record in open court.
- (d) Pretrial conferences conducted pursuant to Crim. R. 17.1.
- (e) Proceedings to establish bail pursuant to Crim. R. 46.
- (f) Motions. A magistrate may hear and decide motions in referred cases as follows:
 - (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 possible penalty.
- (g) Proceedings for the issuance of a temporary protection order as authorized by law.

(h) 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.

(2) Except as is otherwise provided in this rule, an order of reference may be specific to a particular case or may refer categories of motions or cases.

(3) The order of reference to a magistrate may do all of the following:

(a) Specify or limit the magistrate's powers;

(b) Direct the magistrate to report only upon particular issues, do or perform particular acts, or receive and report evidence only;

(c) Fix the time and place for beginning and closing the hearings and for the filing of the magistrate's decision.

(4) General powers. Subject to the specifications and limitations stated in the order of reference, the magistrate shall regulate all proceedings in every hearing as if by the court and do all acts and take all measures necessary or proper for the efficient performance of the magistrate's duties under the order. The magistrate may do all of the following:

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

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

(c) Put witnesses under oath and examine them;

(d) In cases involving direct or indirect contempt of court, and when necessary to obtain the alleged contemnor's presence for hearing, issue an attachment for the alleged contemnor and set bail to secure the alleged contemnor's appearance, considering the conditions of release prescribed in Crim. R. 46.

(5) Power to enter orders.

(a) **Orders.** Unless otherwise specified in the order of reference, the magistrate may enter pretrial orders without judicial approval which are necessary to regulate the proceedings and are not dispositive of a claim or a defense of a party.

(b) **Appeal of orders.** Any party may appeal to the court from any order of a magistrate entered under division (C)(5)(a) of this rule by filing a motion to set the order aside, stating the party's objections with particularity. The motion shall be filed no later than fourteen days after the magistrate's order is entered. The pendency of a motion to set aside does not stay the effectiveness of the magistrate's order unless the magistrate or the court grants a stay. A

party's failure to appeal pursuant to division (C)(5)(b) of this rule does not preclude review of the order on objection to the magistrate's decision pursuant to division (E) of this rule.

(c) Contempt in the magistrate's presence. In cases of contempt in the presence of the magistrate, the magistrate may impose an appropriate civil or criminal contempt sanction. Contempt sanctions under division (C)(5)(c) of this rule may be imposed only by a written order that recites the facts and certifies that the magistrate saw or heard the conduct constituting contempt. The contempt order shall be filed and a copy provided by the clerk to the appropriate judge of the court forthwith. The contemnor may by motion obtain immediate review of the magistrate's contempt order by a judge, or the judge or magistrate may set bail pending judicial review.

(d) Powers conveyed by statute. Unless prohibited by the order of reference, a magistrate shall continue to be authorized to enter orders when authority is specifically conveyed by statute to magistrates.

(e) Form of magistrate's orders. All orders of a magistrate shall be in writing, signed by the magistrate, identified as a magistrate's order in the caption, and filed with the clerk, who shall serve copies on all parties or their attorneys.

(D) Proceedings.

(1) All proceedings before the magistrate shall be in accordance with these rules and any applicable statutes, as if before the court.

(2) Except as otherwise provided by law, all proceedings before the magistrate shall be recorded in accordance with procedures established by the court.

(E) Decisions in referred matters. Unless specifically required by the order of reference, a magistrate is not required to prepare any report other than the magistrate's decision. All matters referred to magistrates shall be decided as follows:

(1) Magistrate's decision. The magistrate promptly shall conduct all proceedings necessary for decision of referred matters. All decisions of a magistrate shall be in writing, signed by the magistrate, identified as a magistrate's decision in the caption, and filed with the clerk, who shall serve copies on all parties or their attorneys.

(2) Objections.

(a) Time for filing. Within fourteen days after the filing of a magistrate's decision, a party may file written objections to the magistrate's decision. If any party timely files objections, any other party may also file objections no later than seven days after the first objections are filed.

(b) **Form of objections.** Objections shall be specific and state with particularity the grounds for the objections. A party shall not assign as error on appeal the court's adoption of the decision of the magistrate unless the party has timely objected to the magistrate's decision.

(3) **Court's action on magistrate's decision.**

(a) **When effective.** The magistrate's decision shall become effective when adopted by the court. The court may adopt the magistrate's decision and enter judgment if no written objections are filed or the parties have waived the filing of objections in writing or on the record in open court, unless the court determines that there is an error of law or other defect on the face of the magistrate's decision. No sentence recommended by a magistrate shall be enforced until the court has entered judgment.

(b) **Disposition of objections.** The court shall rule on any objections. The court may adopt, reject, or modify the magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions, or hear the matter. The court may refuse to consider additional evidence proffered upon objections unless the objecting party demonstrates that with reasonable diligence the party could not have produced that evidence for the magistrate's consideration.

[Effective: July 1, 1990; amended effective July 1, 1995; July 1, 2000.]

Staff Note (July 1, 2000 Amendment)

Rule 19 Magistrates

Rule 19(A) Appointment

This division was amended by deleting the reference to compensation and moving it to a new division (B) of the rule. The amendment also deleted the reference to "traffic referee" consistent with the 1996 amendment of Rule 14 of the Ohio Traffic Rules. The inconsistency in the rules between the titles of "magistrate" and "referee" has been eliminated.

Rule 19(B) Compensation

This entirely new division (B) restates the existing rule that the compensation of a magistrate shall be set by the court, adds new language that is consistent with Civ. R. 53 and Juv. R. 40, and states that no part of the compensation of a magistrate shall be taxed as costs.

Rule 19(C) Reference and powers

Rule 19(C)(1) Order of reference

This division of the rule was revised substantially to expand the authority of magistrates in the criminal areas beyond arraignment and preliminary, non-dispositive matters. This division incorporates all the powers and duties set out in division (B)(1) of the prior rule, with the exception of motion practice pursuant to Crim. R. 47, the authority to compel witnesses and the magistrate's duty to issue orders in writing. A new division (C)(1)(f) expands the authority of

magistrates to hear motions in misdemeanor cases, subject to the unanimous consent of the parties if imprisonment is a possible penalty. The authority to compel witnesses has been moved to a new division (C)(4) that sets out a magistrate's general powers. The requirement that a magistrate's order be in writing and in the record has been moved to new division (C)(5)(e). [See staff note for Rule 19(C)(5)(e) below.]

This new division (C) further expands the authority of magistrates in misdemeanor cases to accept guilty and no contest pleas, hear non-jury contested cases with the consent of all parties if imprisonment is a possible penalty, recommend sentences, and issue temporary protection orders. The authority of the magistrates in felony cases has not been expanded beyond that which exists under the current rule. Although magistrates have the authority to preside over jury trials, see *Hartt v. Munobe* (1993), 67 Ohio St. 3d 3, and Civ. R. 53 and Juv. R. 40, the rule expressly limits a magistrate's authority to preside over criminal trials to non-jury misdemeanor cases.

Rule 19(C)(2)

This new division tracks the language of Civ. R. 53(C)(1)(b) and Juv. R. 40(C)(1)(b) and makes it clear that magistrates have authority to act only on matters referred to them by a judge in an order of reference pursuant to division (C)(1), but permits an order of reference to be categorical or specific to a particular case or motion in a case.

Rule 19(C)(3)

This new division tracks language of Civ. R. 53(C)(1)(c) and Juv. R. 40 (C)(1)(c) and makes it clear that a particular judge in a given order of reference may limit the powers generally provided in this rule for magistrates.

Rule 19(C)(4) General powers

This new division substantially tracks the language of Civ. R. 53(C)(2) and Juv. R. 40(C)(2) and outlines the general powers of magistrates to regulate proceedings as if by the court, including the power to issue an order of attachment and set bail in cases involving direct or indirect contempt.

Rule 19(C)(5) Power to enter orders

Division (C)(5)(a) retained the essence of the prior rule which permits magistrates, in certain specifically identified proceedings, to enter orders that are effective without judicial approval. The amendment expands the number of proceedings in which a magistrate might issue such an order by describing the order in more general terms rather than specifically identifying the nature of each order. [See Civ. R. 53(C)(3)(a) and Juv. R. 40(C)(3)(a).] A magistrate may issue an order pursuant to division (C)(5)(a) only if it is a pretrial order necessary to regulate the proceedings, is temporary in nature and is not dispositive of a claim or defense of a party. The following are examples of the types of proceedings in which a magistrate might issue an order that would become effective without judicial approval: 1) proceedings described in division

(C)(1) of this rule; 2) motions to amend the complaint pursuant to Crim. R. 7; 3) pretrial discovery proceedings under Crim. R. 15 and Crim. R. 16; 4) assignment of counsel under Crim. R. 44; and 5) requests for continuances.

Division (C)(5)(b) is consistent with the prior rule that permitted an appeal of a magistrate's order, but was amended in several ways. The mechanism for an appeal of the magistrate's order is no longer an objection but a motion to set aside the order, a procedure consistent with the current practice under Civ. R. 53(C)(3)(b) and Juv. R. 40(C)(3)(b). The amendment also extended the time within which an appeal of the order might be filed from seven to fourteen days and clarified that the order remains effective unless a stay is granted. Finally, although the better practice is to file a timely motion to set aside, if a party fails to appeal an order under this division, the order may still be reviewed by a judge in a later objection to a subsequent magistrate's decision.

Rule 19(C)(5)(c) Contempt in the magistrate's presence

Division (C)(5)(c), Contempt in the magistrate's presence, codified the inherent power of magistrates, as judicial officers, to deal with contempt of court that occurs in their actual presence. This authority is consistent with that granted to magistrates in Civ. R. 53(C)(3)(c) and Juv. R. 40(C)(3)(c).

Rule 19(C)(5)(d) Powers conveyed by statute

Division (C)(5)(d), a new division, makes it clear that nothing in this rule is intended to override those statutes that have expressly conferred authority on referees and magistrates.

Rule 19(C)(5)(e) Form of magistrate's orders

Division (C)(5)(e), a new division, tracks the language of Civ. R. 53(C)(3)(e) and Juv. R. 40(C)(3)(e) and clarifies the form in which magistrate's orders are to be prepared so that they will be easily identified as such by parties and on the dockets.

Rule 19(D) Proceedings

This entirely new division emphasizes that proceedings before a magistrate should be conducted in the same manner as if by the court and shall be recorded in accordance with procedures established by the court. Language identical to Civ. R. 53(D) and substantially similar to that in Juv. R. 40 was included.

Rule 19(E) Decisions in referred matters

This entirely new division of the rule incorporates the procedures for the issuance and judicial review of magistrates' decisions that have been applied in civil and juvenile cases since 1995. Although criminal matters present special constitutional and procedural issues when a magistrate is involved in such matters, the familiar procedures outlined in Civ. R. 53(E) and Juv. R. 40(E) provide a reliable framework for judicial review.

Rule 19(E)(1) Magistrate's decision

The language of this division tracks that in Civ. R. 53(E)(1) but contains an additional requirement that the decision be captioned as a magistrate's decision in order to distinguish it from a magistrate's order issued under division (C)(5) of the rule.

Rule 19(E)(2) Objections

The language of this division tracks that of Civ. R. 53(E)(2) except that the period of time within which a party may respond to the filing of an objection has been reduced from fourteen days to seven days in consideration of the shorter period of time in which courts must dispose of misdemeanor cases.

Rule 19(E)(3) Court's action on magistrate's decision

Rule 19(E)(3)(a) When effective

This new division of the rule contains language similar to Civ. R. 53(E)(4)(a) and Juv. R. 40(E)(4)(a) but departs from that language in a significant way. Because a magistrate's decision in a criminal case may include a sentence of imprisonment, the rule permits a court to enter judgment on a magistrate's decision only after the period for objections has expired or all parties have waived the right to file an objection. Finally, the new division underscores the rule that no sentence based upon a magistrate's decision shall be enforced until it has been adopted by the court and judgment has been entered.

Rule 19(E)(3)(b) Disposition of Objections

The language in this new division is identical to Civ. R. 53(E)(4)(b) and Juv. R. 40(E)(4)(b).

RULE 20. [RESERVED]

RULE 21. Transfer From Common Pleas Court for Trial

(A) When permitted. Where an indictment or information charging only misdemeanors is filed in the court of common pleas, the court may retain the case for trial or the administrative judge, within fourteen days after the indictment or information is filed with the clerk of the court of common pleas, may transfer it to the court from which the bind over to the grand jury was made or to the court of record of the jurisdiction in which venue appears.

(B) Proceedings on transfer. When a transfer is ordered, the clerk of the court of common pleas, within three days, shall transmit to the clerk of the court to which the case is transferred, certified copies of the indictment, information, and all other papers in the case, and any bail taken, and the prosecution shall continue in that court.

[Effective: July 1, 1973; amended effective July 1, 2004.]

Staff Note (July 1, 2004 Amendment)

Rule 21 Transfer from common pleas court for trial.

Criminal Rule 21(B) was revised to mandate that the clerk for the court of common pleas transmit certified copies of indictments, information and all other papers in the case within three days after the transfer has been ordered. The purpose for the revision is to ensure the timely transfer of this information so that there is no delay in the prosecution of the case.

RULE 22. Recording of Proceedings

In serious offense cases all proceedings shall be recorded.

In petty offense cases all waivers of counsel required by Rule 44(B) shall be recorded, and if requested by any party all proceedings shall be recorded.

Proceedings may be recorded in shorthand, or stenotype, or by any other adequate mechanical, electronic or video recording device.

[Effective: July 1, 1973.]

RULE 23. Trial by Jury or by the Court

(A) Trial by jury. In serious offense cases the defendant before commencement of the trial may knowingly, intelligently and voluntarily waive in writing his right to trial by jury. Such waiver may also be made during trial with the approval of the court and the consent of the prosecuting attorney. In petty offense cases, where there is a right of jury trial, the defendant shall be tried by the court unless he demands a jury trial. Such demand must be in writing and filed with the clerk of court not less than ten days prior to the date set for trial, or on or before the third day following receipt of notice of the date set for trial, whichever is later. Failure to demand a jury trial as provided in this subdivision is a complete waiver of the right thereto.

(B) Number of jurors.

In felony cases juries shall consist of twelve.

In misdemeanor cases juries shall consist of eight.

If a defendant is charged with a felony and with a misdemeanor or, if a felony and a misdemeanor involving different defendants are joined for trial, the jury shall consist of twelve.

(C) Trial without a jury. In a case tried without a jury the court shall make a general finding.

[Effective: July 1, 1973; amended effective July 1, 1980.]

RULE 24 Trial Jurors

(A) Brief introduction of case. To assist prospective jurors in understanding the general nature of the case, the court, in consultation with the parties, may give jurors a brief introduction to the case.

(B) Examination of prospective jurors. Any person called as a prospective juror for the trial of any cause shall be examined under oath or upon affirmation as to the prospective juror's qualifications. The court may permit the attorney for the defendant, or the defendant if appearing *pro se*, and the attorney for the state to conduct the examination of the prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the state and defense to supplement the examination by further inquiry.

(C) Challenge for cause. A person called as a juror may be challenged for the following causes:

(1) That the juror has been convicted of a crime which by law renders the juror disqualified to serve on a jury.

(2) That the juror is a chronic alcoholic, or drug dependent person.

(3) That the juror was a member of the grand jury that found the indictment in the case.

(4) That the juror served on a petit jury drawn in the same cause against the same defendant, and the petit jury was discharged after hearing the evidence or rendering a verdict on the evidence that was set aside.

(5) That the juror served as a juror in a civil case brought against the defendant for the same act.

(6) That the juror has an action pending between him or her and the State of Ohio or the defendant.

(7) That the juror or the juror's spouse is a party to another action then pending in any court in which an attorney in the cause then on trial is an attorney, either for or against the juror.

(8) That the juror has been subpoenaed in good faith as a witness in the case.

(9) That the juror is possessed of a state of mind evincing enmity or bias toward the defendant or the state; but no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from the examination of the juror or from other evidence, that the juror will render an impartial verdict according to the law and the evidence submitted to the jury at the trial.

(10) That the juror is related by consanguinity or affinity within the fifth degree to the person alleged to be injured or attempted to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted; or to the defendant.

(11) That the juror is the person alleged to be injured or attempted to be injured by the offense charged, or the person on whose complaint the prosecution was instituted, or the defendant.

(12) That the juror is the employer or employee, or the spouse, parent, son, or daughter of the employer or employee, or the counselor, agent, or attorney, of any person included in division (B)(11) of this rule.

(13) That English is not the juror's native language, and the juror's knowledge of English is insufficient to permit the juror to understand the facts and the law in the case.

(14) That the juror is otherwise unsuitable for any other cause to serve as a juror.

The validity of each challenge listed in division (B) of this rule shall be determined by the court.

(D) Peremptory challenges. In addition to challenges provided in division (C) of this rule, if there is one defendant, each party peremptorily may challenge three prospective jurors in misdemeanor cases, four prospective jurors in felony cases other than capital cases, and six prospective jurors in capital cases. If there is more than one defendant, each defendant peremptorily may challenge the same number of prospective jurors as if the defendant was the sole defendant.

In any case where there are multiple defendants, the prosecuting attorney peremptorily may challenge a number of prospective jurors equal to the total peremptory challenges allowed all defendants. In case of the consolidation of any indictments, informations, or complaints for trial, the consolidated cases shall be considered, for purposes of exercising peremptory challenges, as though the defendants or offenses had been joined in the same indictment, information, or complaint.

(E) Manner of exercising peremptory challenges. Peremptory challenges may be exercised after the minimum number of jurors allowed by the Rules of Criminal Procedure has been passed for cause and seated on the panel. Peremptory challenges shall be exercised alternately, with the first challenge exercised by the state. The failure of a party to exercise a peremptory challenge constitutes a waiver of that challenge, but does not constitute a waiver of any subsequent challenge. However, if all parties, alternately and in sequence, fail to exercise a peremptory challenge, the joint failure constitutes a waiver of all peremptory challenges.

A prospective juror peremptorily challenged by either party shall be excused and another prospective juror shall be called who shall take the place of the prospective juror excused and be sworn and examined as other prospective jurors. The other party, if that party has peremptory challenges remaining, shall be entitled to challenge any prospective juror then seated on the panel.

(F) Challenge to array. The prosecuting attorney or the attorney for the defendant may challenge the array of petit jurors on the ground that it was not selected, drawn or summoned in accordance with law. A challenge to the array shall be made before the examination of the jurors pursuant to division (A) of this rule and shall be tried by the court.

No array of petit jurors shall be set aside, nor shall any verdict in any case be set aside because the jury commissioners have returned such jury or any juror in any informal or irregular manner, if in the opinion of the court the irregularity is unimportant and insufficient to vitiate the return.

(G) Alternate jurors.

(1) Non-capital cases. The court may direct that not more than six jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, have the same qualifications, be subject to the same examination and challenges, take the same oath, and have the same functions, powers, facilities, and privileges as the regular jurors. Except in capital cases, an alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each party is entitled to one peremptory challenge in addition to those otherwise allowed if one or two alternate jurors are to be impaneled, two peremptory challenges if three or four alternate jurors are to be impaneled, and three peremptory challenges if five or six alternative jurors are to be impaneled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by this rule may not be used against an alternate juror.

(2) Capital cases. The procedure designated in division (F)(1) of this rule shall be the same in capital cases, except that any alternate juror shall continue to serve if more than one deliberation is required. If an alternate juror replaces a regular juror after a guilty verdict, the court shall instruct the alternate juror that the juror is bound by that verdict. No alternate juror shall be substituted during any deliberation. Any alternate juror shall be discharged after the trial jury retires to consider the penalty.

(H) Control of juries.

(1) Before submission of case to jury. Before submission of a case to the jury, the court, upon its own motion or the motion of a party, may restrict the separation of jurors or may sequester the jury.

(2) After submission of case to jury.

(a) Misdemeanor cases. After submission of a misdemeanor case to the jury, the court, after giving cautionary instructions, may permit the separation of jurors.

(b) Non-capital felony cases. After submission of a non-capital felony case to the jury, the court, after giving cautionary instructions, may permit the separation of jurors during any period of court adjournment or may require the jury to remain under the supervision of an officer of the court.

(c) Capital cases. After submission of a capital case to the jury, the jury shall remain under the supervision of an officer of the court until a verdict is rendered or the jury is discharged by the court.

(3) Separation in emergency. Where the jury is sequestered or after a capital case is submitted to the jury, the court may, in an emergency and upon giving cautionary instructions, allow temporary separation of jurors.

(4) Duties of supervising officer. Where jurors are required to remain under the supervision of an officer of the court, the court shall make arrangements for their care, maintenance and comfort.

When the jury is in the care of an officer of the court and until the jury is discharged by the court, the officer may inquire whether the jury has reached a verdict, but shall not:

- (a) Communicate any matter concerning jury conduct to anyone except the judge or;
- (b) Communicate with the jurors or permit communications with jurors, except as allowed by court order.

(I) Taking of notes by jurors. The court, after providing appropriate cautionary instructions, may permit jurors who wish to do so to take notes during a trial. If the court permits the taking of notes, notes taken by a juror may be carried into deliberations by that juror. The court shall require that all juror notes be collected and destroyed promptly after the jury renders a verdict.

(J) Juror questions to witnesses. The court may permit jurors to propose questions for the court to ask of the witnesses. If the court permits jurors to propose questions, the court shall use procedures that minimize the risk of prejudice, including all of the following:

- (1) Require jurors to propose any questions to the court in writing;
- (2) Retain a copy of each proposed question for the record;
- (3) Instruct the jurors that they shall not display or discuss a proposed question with other jurors;

- (4) Before reading a question to a witness, provide counsel with an opportunity to object to each question on the record and outside the hearing of the jury;
- (5) Read the question, either as proposed or rephrased, to the witness;
- (6) Permit counsel to reexamine the witness regarding a matter addressed by a juror question;
- (7) If a question proposed by a juror is not asked, instruct the jurors that they should not draw any adverse inference from the court's refusal to ask any question proposed by a juror.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 2002; July 1, 2005.]

Staff Note (July 1, 2005 Amendment)

Crim. R. 24 is amended to reflect four recommendations of the Task Force on Jury Service. See *Report and Recommendations of the Supreme Court of Ohio Task Force on Jury Service* (February 2004).

Rule 24(A) Brief introduction of case

A new Crim. R. 24(A) is added to permit the trial judge, prior to jury selection, to provide a brief introduction to the case to persons called as prospective jurors. See *Report and Recommendations, supra*, at 1 (recommending “a brief statement of the case by the court or counsel prior to the beginning of voir dire” and inclusion of “the legal claims and defenses of the parties’ in the list of instructions the court may give at the commencement of trial”). The Rules Advisory Committee shares the views of the Task Force that the preliminary statement may “help the jury selection process run smoothly” and “increase the satisfaction of jurors.” *Report and Recommendations, supra*, at 9. The preliminary statement is intended to help prospective jurors to understand why certain questions are asked during voir dire, recognize personal bias, and give candid responses to questions during voir dire.

The Committee recognizes that there may be instances in which the brief introduction is unnecessary; thus the rule vests discretion with the trial judge as to whether an introduction will be provided in a particular case. The rule also requires the trial judge to consult with the parties as to whether to provide the introduction and the content of the introduction. The consultation is required in recognition that the parties can aid the trial judge in determining whether a statement is necessary and developing the content of the statement.

Unlike its counterpart in the Civil Rules [Civ. R. 47(A)], Crim. R. 24(A) does not contain language indicating that “[t]he brief introduction may include a general description of the legal claims and defenses of the parties.” The Committee recommends this

distinction given the unique nature of criminal cases. For example, if the statement given prior to voir dire referred to a potential claim of an alibi, the jury could draw an inappropriate inference from the defendant's subsequent decision to not offer any evidence of an alibi. For this reason, the Committee believes the opening statement in criminal cases should be more limited in scope.

Former divisions (A) through (G) of Crim. R. 24 are relettered to reflect the addition of new division (A).

Rule 24(E) Manner of exercising peremptory challenges

New Crim. R. 24(E) (formerly Crim. R. 24(D)) is amended to make two related principles regarding peremptory challenges more clear. One principle is that failure of a party to exercise a given peremptory challenge waives that challenge but does not waive any other peremptory challenges to which the party may otherwise be entitled.

The other principle is that consecutive passes by all parties or sides waives all remaining peremptory challenges. The Task Force concluded that, contrary to the language and intent of former Crim. R. 24(D), "often courts and attorneys will assume that once a peremptory challenge is waived all remaining peremptory challenges are waived." *Report and Recommendations, supra*, at 22. The amended language is designed to deter the incorrect assumption perceived by the Task Force.

Rule 24(I) Taking of notes by jurors

A new Crim. R. 24(I) is added to explicitly authorize trial courts, after providing appropriate cautionary instructions, to permit jurors who wish to do so to take notes during trial and to take notes into deliberations. The Rules Advisory Committee agrees with the Task Force that allowing jurors to take notes potentially promotes the fact-finding process and aids juror comprehension and recollection.

The reference in sentence one of new division (I) to "appropriate cautionary instructions" reflects the apparent requirements of *State v. Waddell*, 75 Ohio St.3d 163 (1996), which held that "[a] trial court has the discretion to permit or prohibit note-taking by jurors," *Waddell*, 75 Ohio St.3d at 163 (syl. 1), and explained that "[i]f a trial court determines that a particular case warrants note-taking, the court can, *sua sponte*, furnish jurors with materials for taking notes and instruct the jurors that they are permitted to take notes during the trial." *Id.* at 170. The *Waddell* opinion appears to condition the permitting of note-taking on the giving of instructions to jurors that (1) "they are not required to take notes;" *id.* (syl. 2), (2) "their notes are to be confidential;" (3) "note-taking should not divert their attention from hearing the evidence in the case;" (4) "a juror who has not taken notes should not be influenced by those jurors who decided to take notes;" and (5) "notes taken by jurors are to be used solely as memory aids and should not be allowed to take precedence over their independent memory of facts." *Id.* (syl. 3); see also *State v. Blackburn*, 1996 WL 570869 at *3 and n.1, No. 93 CA 10 (5th Dist. Ct. App., Fairfield, 9-26-96) (finding no plain error in the trial court's decision to permit juror note-taking despite lack of instruction on items (3) through (5) but noting that "in the future, it would be better

practice for trial courts to instruct and caution the jury as suggested by the Ohio Supreme Court in *Waddell*"); *cf.* 1 Ohio Jury Instructions 2.52, § 1 ("Note-taking Prohibited") and § 2 ("Note-taking Permitted") (2002). The Task Force noted that many of the judges who participated in the pilot project that it sponsored "instructed jurors to make notes only when there was a break in the testimony (e.g., while judge and attorneys are busy at sidebar)." *Report and Recommendations, supra*, at 14.

Sentence two of new division (I) explicitly authorizes a practice perhaps only implicitly approved in *Waddell*, i.e., the carrying into deliberations by a juror of any notes taken pursuant to permission of the court. See Markus, *Trial Handbook for Ohio Lawyers* § 37:6 (2003) (citing *Waddell* for the proposition that "[w]hen the court permits the jurors to take notes during the trial, it may allow the jurors to retain those notes during their deliberations").

The requirement of sentence three of new division (I) that the court require that all juror notes be collected and destroyed promptly after verdict reflects in part the *Waddell* prescription that "notes are to be confidential." See *also State v. Williams*, 80 Ohio App.3d 648, 654 (1992) (cited with apparent approval by the Court in *Waddell* and rejecting the argument that notes taken by jurors should have been preserved for review rather than destroyed).

Rule 24(J) Juror questions to witnesses

A new Crim. R. 24(J) is added to set forth a procedure to be followed if the trial court permits jurors to propose questions to be asked of witnesses during trial. See *Report and Recommendations, supra*, at 15-16 and *State v. Fisher* 99 Ohio St.3d 127, 2003-Ohio-2761. The rule incorporates the holding of the Supreme Court in *State v. Fisher, supra*, by stating that the practice of allowing jurors to propose questions to witnesses is discretionary with the trial judge, and codifies procedures that have been sanctioned by the Supreme Court in *Fisher*. See *State v. Fisher* 99 Ohio St.3d at 135. In addition to the procedures outlined in *Fisher*, the rule provides that the court must retain a copy of all written questions proposed by the jury for the record and that the court may rephrase any question proposed by the jury before posing it to a witness. These added procedures ensure the existence of a proper record, should an issue regarding juror questions be raised on appeal, and recognize that a question proposed by a juror may need to be rephrased for clarity, admissibility, or other reason appropriate under the circumstances.

The amendments to Crim. R. 24 also include nonsubstantive changes that include gender-neutral language and uniform usage of the term "prospective juror."

Staff Note (July 1, 2002 Amendment)

Criminal Rule 24 Trial Jurors **Criminal Rule 24(A), (B), (C), (D), and (E)**

Throughout divisions (A) – (E), masculine references were changed to gender-neutral language, the style used for rule references was changed, and other grammatical changes were made. No substantive amendment to any of these divisions was intended.

Criminal Rule 24 (F) Alternate jurors

The amendment effective July 1, 2002 divided division F of the previous rule into divisions (F)(1) and (F)(2). Division (F)(1) [Non-capital cases] contains the substance of previous division (F), plus the inclusion of an exception for capital cases. Division (F)(2) [Capital cases] was added to permit alternate jurors in capital murder cases to continue to sit as alternate jurors after a guilty verdict has been rendered. If an alternate juror replaces a regular juror for the penalty phase of the trial, the trial judge shall instruct the alternate juror that the alternate juror is bound by the guilty verdict.

RULE 25. Disability of a Judge

(A) During trial. If for any reason the judge before whom a jury trial has commenced is unable to proceed with the trial, another judge designated by the administrative judge, or, in the case of a single-judge division, by the Chief Justice of the Supreme Court of Ohio, may proceed with and finish the trial, upon certifying in the record that he has familiarized himself with the record of the trial. If such other judge is satisfied that he cannot adequately familiarize himself with the record, he may in his discretion grant a new trial.

(B) After verdict or finding of guilt. If for any reason the judge before whom the defendant has been tried is unable to perform the duties of the court after a verdict or finding of guilt, another judge designated by the administrative judge, or, in the case of a single-judge division, by the Chief Justice of the Supreme Court of Ohio, may perform those duties. If such other judge is satisfied that he cannot perform those duties because he did not preside at the trial, he may in his discretion grant a new trial.

[Effective: July 1, 1973.]

RULE 26. Substitution of Photographs for Physical Evidence

Physical property, other than contraband, as defined by statute, under the control of a Prosecuting Attorney for use as evidence in a hearing or trial should be returned to the owner at the earliest possible time. To facilitate the early return of such property, where appropriate, and by court order, photographs, as defined in Evid. R. 1001(2), may be taken of the property and introduced as evidence in the hearing or trial. The admission of such photographs is subject to the relevancy requirements of Evid. R. 401, Evid. R. 402, Evid. R. 403, the authentication requirements of Evid. R. 901, and the best evidence requirements of Evid. R. 1002.

[Adopted effective July 1, 1981.]

RULE 27. Proof of Official Record; Judicial Notice: Determination of Foreign Law

The proof of official records provisions of Civil Rule 44, and the judicial notice and determination of foreign law provisions of Civil Rule 44.1 apply in criminal cases.

[Effective: July 1, 1973.]

RULE 28. [RESERVED]

RULE 29. Motion for Acquittal

(A) Motion for judgment of acquittal. The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case.

(B) Reservation of decision on motion. If a motion for a judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict, or after it returns a verdict of guilty, or after it is discharged without having returned a verdict.

(C) Motion after verdict or discharge of jury. If a jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within fourteen days after the jury is discharged or within such further time as the court may fix during the fourteen day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned, the court may enter judgment of acquittal. It shall not be a prerequisite to the making of such motion that a similar motion has been made prior to the submission of the case to the jury.

[Effective: July 1, 1973.]

RULE 30. Instructions

(A) Instructions; error; record. At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. Copies shall be furnished to all other parties at the time of making the requests. The court shall inform counsel of its proposed action on the requests prior to counsel's arguments to the jury and shall give the jury complete instructions after the arguments are completed. The court also may give some or all of its instructions to the jury prior to counsel's arguments. The court shall reduce its final instructions to writing or make an audio, electronic, or other recording of those instructions, provide at least one written copy or recording of those instructions to the jury for use during deliberations, and preserve those instructions for the record.

On appeal, a party may not assign as error the giving or the failure to give any instructions unless the party objects before the jury retires to consider its verdict, stating specifically the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(B) Cautionary instructions. At the commencement and during the course of the trial, the court may give the jury cautionary and other instructions of law relating to trial procedure, credibility and weight of the evidence, and the duty and function of the jury and may acquaint the jury generally with the nature of the case.

[Effective: July 1, 1973; amended effective July 1, 1975; July 1, 1982; July 1, 1992; July 1, 2005.]

Staff Note (July 1, 2005 Amendments)

Rule 30(A) Instructions; error; record

Crim. R. 30 is amended to reflect a recommendation of the Task Force on Jury Service. See *Report and Recommendations of the Supreme Court of Ohio Task Force on Jury Service* at 1 and 12-13 (February 2004). The amendment mandates practices that trial courts have frequently chosen to adopt in particular criminal actions: (1) reducing final jury instructions to writing or making an audio, electronic, or other recording of those instructions; (2) providing at least one written copy or recording of those instructions to the jury for use during deliberations; and (3) preserving those instructions for the record.

The practices mandated by the amendment are intended to increase juror comprehension of jury instructions, reduce juror questions of the court during deliberations, and help juries structure their deliberations. The Task Force recommended that "each individual juror be given a copy of written instructions but, in the event of budgetary constraints, one copy of written instructions be provided to the jury to use during the deliberation process." *Report and Recommendations, supra*, at 13.

RULE 31. Verdict

(A) Return. The verdict shall be unanimous. It shall be in writing, signed by all jurors concurring therein, and returned by the jury to the judge in open court.

(B) Several defendants. If there are two or more defendants the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(C) Conviction of lesser offense. The defendant may be found not guilty of the offense charged but guilty of an attempt to commit it if such an attempt is an offense at law. When the indictment, information, or complaint charges an offense including degrees, or if lesser offenses are included within the offense charged, the defendant may be found not guilty of the degree charged but guilty of an inferior degree thereof, or of a lesser included offense.

(D) Poll of jury. When a verdict is returned and before it is accepted the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

[Effective: July 1, 1973.]

RULE 32. Sentence

(A) Imposition of sentence. Sentence shall be imposed without unnecessary delay. Pending sentence, the court may commit the defendant or continue or alter the bail. At the time of imposing sentence, the court shall do all of the following:

(1) Afford counsel an opportunity to speak on behalf of the defendant and address the defendant personally and ask if he or she wishes to make a statement in his or her own behalf or present any information in mitigation of punishment.

(2) Afford the prosecuting attorney an opportunity to speak;

(3) Afford the victim the rights provided by law;

(4) In serious offenses, state its statutory findings and give reasons supporting those findings, if appropriate.

(B) Notification of right to appeal.

(1) After imposing sentence in a serious offense that has gone to trial, the court shall advise the defendant that the defendant has a right to appeal the conviction.

(2) After imposing sentence in a serious offense, the court shall advise the defendant of the defendant's right, where applicable, to appeal or to seek leave to appeal the sentence imposed.

(3) If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule, the court also shall advise the defendant of all of the following:

(a) That if the defendant is unable to pay the cost of an appeal, the defendant has the right to appeal without payment;

(b) That if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost;

(c) That if the defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost;

(d) That the defendant has a right to have a notice of appeal timely filed on his or her behalf.

Upon defendant's request, the court shall forthwith appoint counsel for appeal.

(C) Judgment.

A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

[Effective: July 1, 1973; amended effective July 1, 1992; July 1, 1998, July 1, 2004.]

Staff Note (July 1, 2004 Amendment)

Rule 32(A) Imposition of sentence.

Criminal Rule 32(A) was amended to conform with the Supreme Court of Ohio's decision in *State v. Comer*, 99 Ohio St. 3d 463, 2003-Ohio 4165. The *Comer* decision mandates that a trial court must make specific statutory findings and the reasons supporting those findings when a trial court, in serious offenses, imposes consecutive sentences or nonminimum sentences on a first offender pursuant to R.C.2929.14(B), 2929.14(E)(4) and 2929.19(B)(2). Crim. R. 32(A) was modified to ensure there was no discrepancy in the criminal rules and the Court's holding in *Comer*.

RULE 32.1 Withdrawal of Guilty Plea

A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.

[Effective: July 1, 1973; amended effective July 1, 1998.]

RULE 32.2 Presentence Investigation

In felony cases the court shall, and in misdemeanor cases the court may, order a presentence investigation and report before imposing community control sanctions or granting probation.

[Effective: July 1, 1973; amended effective July 1, 1976; July 1, 1998.]

RULE 32.3 Revocation of Probation

(A) Hearing. The court shall not impose a prison term for violation of the conditions of a community control sanction or revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which action is proposed. The defendant may be admitted to bail pending hearing.

(B) Counsel. The defendant shall have the right to be represented by retained counsel and shall be so advised. Where a defendant convicted of a serious offense is unable to obtain counsel, counsel shall be assigned to represent the defendant, unless the defendant after being fully advised of his or her right to assigned counsel, knowingly, intelligently, and voluntarily waives the right to counsel. Where a defendant convicted of a petty offense is unable to obtain counsel, the court may assign counsel to represent the defendant.

(C) Confinement in petty offense cases. If confinement after conviction was precluded by Crim.R. 44(B), revocation of probation shall not result in confinement.

If confinement after conviction was not precluded by Crim.R. 44(B), revocation of probation shall not result in confinement unless, at the revocation hearing, there is compliance with Crim.R.44(B).

(D) Waiver of counsel. Waiver of counsel shall be as prescribed in Crim.R. 44(C).

[Effective: July 1, 1973; amended effective July 1, 1998.]

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.

(B) Motion for new trial; form, time. Application for a new trial shall be made by motion which, except for the cause of newly discovered evidence, shall be filed within fourteen days after the verdict was rendered, or the decision of the court where a trial by jury has been waived, unless it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial, in which case the motion shall be filed within seven days from the order of the court finding that the defendant was unavoidably prevented from filing such motion within the time provided herein.

Motions for new trial on account of newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered, or the decision of the court where trial by jury has been waived. If it is made to appear by clear and convincing proof that the defendant was unavoidably prevented from the discovery of the evidence upon which he must rely, such motion shall be filed within seven days from an order of the court finding that he was unavoidably prevented from discovering the evidence within the one hundred twenty day period.

(C) Affidavits required. The causes enumerated in subsection (A)(2) and (3) must be sustained by affidavit showing their truth, and may be controverted by affidavit.

(D) Procedure when new trial granted. When a new trial is granted by the trial court, or when a new trial is awarded on appeal, the accused shall stand trial upon the charge or charges of which he was convicted.

(E) Invalid grounds for new trial. No motion for a new trial shall be granted or verdict set aside, nor shall any judgment of conviction be reversed in any court because of:

(1) An inaccuracy or imperfection in the indictment, information, or complaint, provided that the charge is sufficient to fairly and reasonably inform the defendant of all the essential elements of the charge against him.

(2) A variance between the allegations and the proof thereof, unless the defendant is misled or prejudiced thereby;

(3) The admission or rejection of any evidence offered against or for the defendant, unless the defendant was or may have been prejudiced thereby;

(4) A misdirection of the jury, unless the defendant was or may have been prejudiced thereby;

(5) Any other cause, unless it affirmatively appears from the record that the defendant was prejudiced thereby or was prevented from having a fair trial.

(F) Motion for new trial not a condition for appellate review. A motion for a new trial is not a prerequisite to obtain appellate review.

[Effective: July 1, 1973.]

RULE 34. Arrest of Judgment

The court on motion of the defendant shall arrest judgment if the indictment, information, or complaint does not charge an offense or if the court was without jurisdiction of the offense charged. The motion shall be made within fourteen days after verdict, or finding of guilty, or after plea of guilty or no contest, or within such further time as the court may fix during the fourteen day period.

When the judgment is arrested, the defendant shall be discharged, and his position with respect to the prosecution is as if the indictment, information, or complaint had not been returned or filed.

[Effective: July 1, 1973.]

RULE 35. Post-Conviction Petition

(A) A petition for post-conviction relief pursuant to section 2953.21 of the Revised Code shall contain a case history, statement of facts, and separately identified grounds for relief. Each ground for relief shall not exceed three pages in length. (See recommended Form XV in Appendix of Forms.) A petition may be accompanied by an attachment of exhibits or other supporting materials. A trial court may extend the page limits provided in this rule, request further briefing on any ground for relief presented, or direct the petitioner to file a supplemental petition in the recommended form.

(B) The clerk of court immediately shall send a copy of the petition to the prosecuting attorney. Upon order of the trial court, the clerk of court shall duplicate all or any part of the record that the trial court requires.

(C) The trial court shall file its ruling upon a petition for post-conviction relief, including findings of fact and conclusions of law if required by law, not later than one hundred eighty days after the petition is filed.

[Effective: July 1, 1997.]

RULE 36. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time.

[Effective: July 1, 1973.]

RULES 37 TO 40. [RESERVED]

RULE 41. Search and Seizure

(A) Authority to issue warrant. A search warrant authorized by this rule may be issued by a judge of a court of record to search and seize property located within the court's territorial jurisdiction, upon the request of a prosecuting attorney or a law enforcement officer.

(B) Property which may be seized with a warrant. A warrant may be issued under this rule to search for and seize any: (1) evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

(C) Issuance and contents. A warrant shall issue under this rule only on an affidavit or affidavits sworn to before a judge of a court of record and establishing the grounds for issuing the 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. If the judge is satisfied that probable cause for the search exists, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. 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, and may examine under oath the affiant and any witnesses he 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. It shall command the officer to search, within three days, the person or place named for the property specified. The warrant shall be served 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 designate a judge to whom it shall be returned.

(D) Execution and return with inventory. 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 and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant. Property seized under a warrant shall be kept for use as evidence by the court which issued the warrant or by the law enforcement agency which executed the warrant.

(E) **Return of papers to clerk.** The judge before whom the warrant is returned shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and shall file them with the clerk.

(F) **Definition of property and daytime.** The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 7:00 a.m. to 8:00 p.m.

[Effective: July 1, 1973.]

RULE 42. [RESERVED]

RULE 43. Presence of the Defendant

(A) Defendant's presence. The defendant shall be present at the arraignment and every stage of the trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence, except as otherwise provided by these rules. In all prosecutions, the defendant's voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the verdict. A corporation may appear by counsel for all purposes.

(B) Defendant excluded because of disruptive conduct. Where a defendant's conduct in the courtroom is so disruptive that the hearing or trial cannot reasonably be conducted with his continued presence, the hearing or trial may proceed in his absence, and judgment and sentence may be pronounced as if he were present. Where the court determines that it may be essential to the preservation of the constitutional rights of the defendant, it may take such steps as are required for the communication of the courtroom proceedings to the defendant.

[Effective: July 1, 1973.]

RULE 44. Assignment of Counsel

(A) Counsel in serious offenses. Where a defendant charged with a serious offense is unable to obtain counsel, counsel shall be assigned to represent him at every stage of the proceedings from his initial appearance before a court through appeal as of right, unless the defendant, after being fully advised of his right to assigned counsel, knowingly, intelligently, and voluntarily waives his right to counsel.

(B) Counsel in petty offenses. Where a defendant charged with a petty offense is unable to obtain counsel, the court may assign counsel to represent him. When a defendant charged with a petty offense is unable to obtain counsel, no sentence of confinement may be imposed upon him, unless after being fully advised by the court, he knowingly, intelligently, and voluntarily waives assignment of counsel.

(C) Waiver of counsel. Waiver of counsel shall be in open court and the advice and waiver shall be recorded as provided in Rule 22. In addition, in serious offense cases the waiver shall be in writing.

(D) Assignment procedure. The determination of whether a defendant is able or unable to obtain counsel shall be made in a recorded proceeding in open court.

[Effective: July 1, 1973.]

RULE 45. Time

(A) Time: computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in computation.

(B) Time: enlargement. When an act is required or allowed to be performed at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion permit the act to be done after expiration of the specified period, if the failure to act on time was the result of excusable neglect or would result in injustice to the defendant. The court may not extend the time for taking any action under Rule 23, Rule 29, Rule 33, and Rule 34 except to the extent and under the conditions stated in them.

(C) Time: unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act in a criminal proceeding.

(D) Time: for motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than seven days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion. Opposing affidavits may be served not less than one day before the hearing, unless the court permits them to be served at a later time.

(E) Time: additional time after service by mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him, and the notice or other paper is served upon him by mail, three days shall be added to the prescribed period. This subdivision does not apply to responses to service of summons under Rule 4 and Rule 9.

[Effective: July 1, 1973.]

RULE 46. Bail

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

- (1) The personal recognizance of the accused or an unsecured bail bond;
- (2) A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;
- (3) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant.

(B) Conditions of bail. The court may impose any of the following conditions of bail:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise the person;
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
- (3) Place the person under a house arrest or work release program;
- (4) Regulate or prohibit the person's contact with the victim;
- (5) Regulate the person's contact with witnesses or others associated with the case upon proof of the likelihood that the person will threaten, harass, cause injury, or seek to intimidate those persons;
- (6) Require A person who is charged with an offense that is alcohol or drug related, and who appears to need treatment, to attend treatment while on bail;
- (7) Any other constitutional condition considered reasonably necessary to ensure appearance or public safety.

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

- (1) The nature and circumstances of the crime charged;
- (2) The weight of the evidence against the defendant;
- (3) The confirmation of the defendant's identity;

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

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

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

(E) Amendments. A court, at any time, may order additional or different types, amounts, or conditions of bail.

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

(G) Bond schedule. Each court shall establish a bail bond schedule covering all misdemeanors including traffic offenses, either specifically, by type, by potential penalty, or by some other reasonable method of classification. Each municipal or county court shall, by rule, establish a method whereby a person may make bail by use of a credit card. No credit card transaction shall be permitted when a service charge is made against the court or clerk unless allowed by law.

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

(I) Failure to appear; breach of conditions. Any person who fails to appear before any court as required is subject to the punishment provided by the law, and any bail given for the person's release may be forfeited. If there is a breach of condition of bail, the court may amend the bail.

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

[Effective: July 1, 1973; amended effective July 1, 1990; July 1, 1994; July 1, 1998.]

RULE 47. Motions

An application to the court for an order shall be by motion. A motion, other than one made during trial or hearing, shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority, and may also be supported by an affidavit.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

[Effective: July 1, 1973.]

RULE 48. Dismissal

(A) Dismissal by the state. The state may by leave of court and in open court file an entry of dismissal of an indictment, information, or complaint and the prosecution shall thereupon terminate.

(B) Dismissal by the court. If the court over objection of the state dismisses an indictment, information, or complaint, it shall state on the record its findings of fact and reasons for the dismissal.

[Effective: July 1, 1973.]

RULE 49. Service and Filing of Papers

(A) **Service: when required.** Written notices, requests for discovery, designation of record on appeal, written motions other than those heard ex parte, and similar papers, shall be served upon each of the parties.

(B) **Service: how made.** Whenever under these rules or by court order service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon the party shall be made in the manner provided in Civil Rule 5(B).

(C) **Filing.** All papers required to be served upon a party shall be filed simultaneously with or immediately after service. Papers filed with the court shall not be considered until proof of service is endorsed thereon or separately filed. The proof of service shall state the date and the manner of service and shall be signed and filed in the manner provided in Civil Rule 5(D).

[Effective: July 1, 1973.]

RULE 50. Calendars

Criminal cases shall be given precedence over civil matters and proceedings.

[Effective: July 1, 1973.]

RULE 51. Exceptions Unnecessary

An exception, at any stage or step of the case or matter, is unnecessary to lay a foundation for review, whenever a matter has been called to the attention of the court by objection, motion, or otherwise, and the court has ruled thereon.

[Effective: July 1, 1973.]

RULE 52. Harmless Error and Plain Error

(A) **Harmless error.** Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.

(B) **Plain error.** Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

[Effective: July 1, 1973.]

RULE 53. [RESERVED]

RULE 54. Amendment of Incorporated Civil Rules

An amendment to or rescision of any provision of the Ohio Rules of Civil Procedure which has been incorporated by reference in these rules, shall, without the necessity of further action, be incorporated by reference in these rules unless the amendment or rescision specifies otherwise, effective on the effective date of the amendment or rescision.

[Effective: July 1, 1973.]

RULE 55. Records

(A) Criminal appearance docket. The clerk shall keep a criminal appearance docket. Upon the commencement of a criminal action the clerk shall assign each action a number. This number shall be placed on the first page, and every continuation page, of the appearance docket which concerns the particular action. In addition this number and the names of the parties shall be placed on the case file and every paper filed in the action.

At the time the action is commenced the clerk shall enter in the appearance docket the names, except as provided in Rule 6(E), of the parties in full, the names of counsel and index the action by the name of each defendant. Thereafter the clerk shall chronologically note in the appearance docket all: process issued and returns, pleas and motions, papers filed in the action, orders, verdicts and judgments. The notations shall be brief but shall show the date of filing and the substance of each order, verdict and judgment.

An action is commenced for purposes of this rule by the earlier of, (a) the filing of a complaint, uniform traffic ticket, citation, indictment, or information with the clerk, or (b) the receipt by the clerk of the court of common pleas of a bind over order under Rule 5(B)(4)(a).

(B) Files. All papers filed in a case shall be filed in a separate file folder and on or after July 1, 1986 shall not exceed 8 1/2 inches x 11 inches in size and without backing or cover.

(C) Other books and records. The clerk shall keep such other books and records as required by law and as the supreme court or other court may from time to time require.

(D) Applicability to courts not of record. In courts not of record the notations required by subdivision (A) shall be placed on a separate sheet or card kept in the file folder.

[Effective: July 1, 1973; amended effective July 1, 1985.]

RULE 56. [RESERVED]

RULE 57. Rule of Court; Procedure Not Otherwise Specified

(A) Rule of court. (1) The expression "rule of court" as used in these rules means a rule promulgated by the Supreme Court or a rule concerning local practice adopted by another court that is not inconsistent with the rules promulgated by the Supreme Court and is filed with the Supreme Court.

(2) Local rules shall be adopted only after the court gives appropriate notice and an opportunity for comment. If the court determines that there is an immediate need for a rule, the court may adopt the rule without prior notice and opportunity for comment, but promptly shall afford notice and opportunity for comment.

(B) Procedure not otherwise specified. If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules of criminal procedure, and shall look to the rules of civil procedure and to the applicable law if no rule of criminal procedure exists.

[Effective: July 1, 1973; amended effective July 1, 1994.]

RULE 58. Forms

The forms contained in the Appendix of Forms which the supreme court from time to time may approve are illustrative and not mandatory.

[Effective: July 1, 1973.]

RULE 59. Effective Date

(A) Effective date of rules. These rules shall take effect on July 1, 1973, except for rules or portions of rules for which a later date is specified, which shall take effect on such later date. They govern all proceedings in actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(B) Effective date of amendments. The amendments submitted by the supreme court to the general assembly on January 10, 1975, shall take effect on July 1, 1975. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedures applies.

(C) Effective date of amendments. The amendments submitted by the supreme court to the general assembly on January 9, 1976, shall take effect on July 1, 1976. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(D) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 12, 1978, and on April 28, 1978, shall take effect on July 1, 1978. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(E) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 14, 1980, shall take effect on July 1, 1980. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(F) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 14, 1981, and on April 29, 1981, shall take effect on July 1, 1981. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(G) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 14, 1982 shall take effect on July 1, 1982. They

govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(H) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on December 24, 1984 and January 8, 1985 shall take effect on July 1, 1985. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(I) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 12, 1990 and further revised and submitted on April 16, 1990, shall take effect on July 1, 1990. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(J) Effective date of amendments. The amendments filed by the Supreme Court with the General Assembly on January 14, 1992 and further revised and filed on April 30, 1992, shall take effect on July 1, 1992. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(K) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 8, 1993 and further filed on April 30, 1993 shall take effect on July 1, 1993. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(L) Effective date of amendments. The amendments submitted by the Supreme Court to the General Assembly on January 14, 1994 and further filed on April 29, 1994 shall take effect on July 1, 1994. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(M) Effective date of amendments. The amendments to rules 12 and 19 filed by the Supreme Court with the General Assembly on January 11, 1995 shall take effect on July 1, 1995. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(N) Effective date of amendments. The amendments to Rule 1 filed by the Supreme Court with the General Assembly on January 5, 1996 and refiled on April 26, 1996 shall take effect on July 1, 1996. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(O) Effective date of amendments. The amendments to Rule 35 filed by the Supreme Court with the General Assembly on January 10, 1997 and refiled on April 24, 1997 shall take effect on July 1, 1997. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(P) Effective date of amendments. The amendments to Rules 4, 11, 12, 32, 32.1, 32.2, 32.3, and 46 filed by the Supreme Court with the General Assembly on January 15, 1998 and further revised and refiled on April 30, 1998 shall take effect on July 1, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Q) Effective date of amendments. The amendments to Criminal Rules 7, 17.1, and 19 filed by the Supreme Court with the General Assembly on January 13, 2000 and refiled on April 27, 2000 shall take effect on July 1, 2000. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(R) Effective date of amendments. The amendments to Criminal Rule 12 filed by the Supreme Court with the General Assembly on January 12, 2001, and refiled on April 26, 2001, shall take effect on July 1, 2001. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(S) Effective date of amendments. The amendments to Criminal Rule 24 filed by the Supreme Court with the General Assembly on January 11, 2002, and refiled on April 18, 2002, shall take effect on July 1, 2002. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(T) Effective date of amendments. The amendments to Criminal Rules 4.1, 21, and 32, filed by the Supreme Court with the General Assembly on January 7, 2004 and refiled on April 28, 2004 shall take effect on July 1, 2004. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(U) Effective date of amendments. The amendments to Criminal Rules 24 and 30 filed by the Supreme Court with the General Assembly on January 14, 2005 and revised and refiled on April 20, 2005 shall take effect on July 1, 2005. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

RULE 60. Title

These rules shall be known as the Ohio Rules of Criminal Procedure and may be cited as "Criminal Rules" or "Crim.R.____."

[Effective: July 1, 1973.]

APPENDIX OF FORMS

* * *

FORM XV. UNIFORM PETITION FORM

IN THE COURT OF COMMON PLEAS

_____ COUNTY, OHIO

CASE NOS.: _____

JUDGE: _____

STATE OF OHIO

Plaintiff-Respondent

-vs-

POST-CONVICTION PETITION

Defendant-Petitioner

I. CASE HISTORY

TRIAL:

Charge (include specifications)

Disposition

Date Sentenced: _____

Name of Attorney: _____

Was this conviction the result of a (circle one): **Guilty Plea** **No Contest Plea** **Trial**

If the conviction resulted in a trial, what was the length of the trial? _____

Appeal to Court of Appeals

Number or citation _____

Disposition _____

Name of Attorney _____

Appeal to Supreme Court of Ohio

Number or citation _____

Disposition _____

Name of Attorney _____

HAS A POST-CONVICTION PETITION BEEN FILED BEFORE IN THIS CASE?

YES

NO

If YES, attach a copy of the Petition and the Judgment Entry showing how it was disposed.

IF THIS IS NOT THE FIRST POST-CONVICTION PETITION, OR IT IS FILED OUTSIDE THE TIME LIMITS PROVIDED BY LAW, STATE THE REASONS WHY THE COURT SHOULD CONSIDER THIS PETITION: _____

OTHER RELEVANT CASE HISTORY: _____

II. STATEMENT OF FACTS

III. GROUNDS FOR RELIEF
(each ground not to exceed three pages)

Ground for relief 1: _____

Attached exhibit numbers which support ground for relief:

Legal authority (constitutional provisions, statutes, cases, rules,
etc.) in support of ground for relief: _____

(name)