



THE SUPREME COURT *of* OHIO

COURSE OUTLINES FOR THE OHIO LAW COMPONENT

OHIO BOARD OF BAR EXAMINERS

JUNE 2020



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INTRODUCTION

Effective June 1, 2020, the Supreme Court of Ohio adopted proposed amendments to Rule I of the Rules Governing the Bar, which included the adoption of the Uniform Bar Examination, beginning with the administration of the July 2020 Bar Examination.

Rule I, Section 7. of the Rules Governing the Bar provides that before being admitted to the practice of law in Ohio by examination or by transferred UBE score, an applicant shall take and pass the Ohio Law Component prepared and maintained by the Board of Bar Examiners.

The purpose of the Ohio Law Component is to ensure that attorneys who desire to be licensed in Ohio are aware of the unique aspects and rules of the Ohio judicial system, as well as state-specific legal principles. The focus of the following outlines is on awareness of, and access to, critical information about being a licensed Ohio Attorney, the Ohio judicial system, and state-law distinctions. It is not intended that any outline include everything an attorney may need to know regarding any topic.

The following outlines were prepared by the Board of Bar Examiners in 2020 utilizing the assistance of subject matter experts. The Board owes special thanks to everyone who contributed their help and support.

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I. OHIO LICENSURE REQUIREMENT/ATTORNEY REGISTRATION/NEW LAWYER TRAINING AND MENTORING/NOTARY

OHIO LICENSURE REQUIREMENTS

[The Rules of the Government of the Bar of Ohio](#) (“Gov.Bar R.”) were established by the Supreme Court and address licensure requirements including registration, continuing legal education (CLE), attorney discipline, client protection fund, and the unauthorized practice of law.

It is important to note that while state bar associations may regulate attorneys in some jurisdictions, the [Ohio Constitution](#) grants the [Supreme Court of Ohio](#) exclusive jurisdiction over the practice of law. Ohio Constitution, Article IV, Section 2(B)(1)(g). The [Ohio State Bar Association](#) is a voluntary bar association and has no regulatory authority over the practice of law in Ohio.

There are two basic licensure requirements with which attorneys must comply, which are similar to many other jurisdictions:

- A. Attorney registration (Gov.Bar R. VI); and
- B. Continuing legal education (Gov.Bar R. X).

ATTORNEY REGISTRATION

I. REGISTRATION

- A. Attorney’s date of admission is the date of swearing in (oath of office).
- B. Attorneys must register within 30 days of admission to avoid a \$50 late fee and/or suspension from the practice of law.
- C. Registration can be done online through the [Attorney Services Portal](#) or by mail by submitting a [certificate of registration](#).
- D. The registration period covers two years and begins on Sept. 1 of every odd-numbered year. The 2019/2021 biennium is from Sept. 1, 2019 – Aug. 1, 2021.
- E. After the attorney’s initial registration, the attorney will need to register every two years.

II. ATTORNEY REGISTRATION NUMBER

A unique seven-digit identifier is assigned to an attorney upon being admitted to the practice of law in Ohio. It must be included in all pleadings and filings with any court.

Rule 6 of the Rules of Superintendence for the Courts of Ohio:

Each court shall require an attorney to include the attorney or pro hac vice registration number issued by the Supreme Court on all documents filed with the court. Each court shall use the attorney or pro hac vice registration number issued by the Supreme Court as the exclusive number or code to identify attorneys who file documents with the court.

III. REGISTRATION STATUS

A. Active Status

1. Active status is required for attorneys who are engaged in the practice of law.
2. Biennial registration fee is \$350 and set by rule.
3. Fees are used to fund the attorney/judicial disciplinary system, for investigations relating to the unauthorized practice of law, to support the Lawyers' Fund for Client Protection, to support the Commission on Continuing Legal Education, and to support Bar Admissions operations.
4. Attorneys on active status have a CLE requirement.

B. Inactive Status

1. Inactive status is for attorneys who are not practicing law for an extended period of time (e.g., two years or longer).
2. Attorneys who are on inactive status are not authorized to practice law.
3. Status may be changed from inactive to active at any time through the Attorney Services Portal.
4. Inactive attorneys have neither a registration nor a CLE requirement.

C. Other Registration Statuses

1. Corporate Counsel

For out-of-state attorneys who serve as general counsel for a non-governmental employer (corporations, non-profit organizations), excluding law firms. Gov.Bar R. VI(6).

2. Emeritus Pro Bono

Only available to attorneys who have practiced law for at least 15 years. Legal services limited to pro bono services in association with legal aid, law school clinic, or public defender's office. Gov.Bar R. VI(8).

3. Military Spouse Attorney Admission

Temporary admission for attorney spouses of active military duty personnel stationed in Ohio. Gov.Bar R. I(16).

4. Military Legal Assistance Attorney Registration

An attorney, not admitted in Ohio, permitted to represent lower-ranking service members in Ohio tribunals. Gov.Bar R. IV(7).

IV. OBLIGATIONS TO UPDATE CONTACT INFORMATION – GOV.BAR R. VI(4-5)

- A. All attorneys, regardless of their registration status, are required to update their contact information with the Office of Attorney Services. Address, employment, and changes to status may be made through the Attorney Services Portal.
- B. A name change due to marriage, divorce, or by court order requires documentation in support of the name change.

- C. The following information is maintained by the office but is considered confidential [Gov.Bar R. VI(15)]:
 - 1. Residence address (unless a valid business address is not provided);
 - 2. Social security number; and
 - 3. Email address.

V. CERTIFICATE OF GOOD STANDING - GOV.BAR R. VI(15)

- A. Certificates of good standing are issued by the Office of Attorney Services. Attorneys may need to submit a certificate of good standing in connection with job applications or admission to another jurisdiction, or upon request by any agency.
- B. Requests can be submitted online. There is a \$10 fee for requesting a standard certificate of good standing, and \$25 for a certificate with disciplinary information.

VI. FAILURE TO REGISTER AND SUSPENSION

- A. A notice of apparent noncompliance is sent by regular mail to attorneys who do not register within 30 days of admission. Gov.Bar R.VI(10).
- B. The notice provides a deadline by which the attorney must register or be suspended from the practice of law.
- C. Failure to register by the deadline will result in an order of suspension.
- D. Service of the order of suspension is deemed complete when sent by certified mail to the most recent address provided by the attorney.
- E. Attorneys who are suspended cannot be reinstated until they file an application for reinstatement and pay a \$300 reinstatement fee, along with the applicable registration fee.
- F. Any sanctions or suspensions are public record and are permanent.

NEW LAWYER TRAINING

In Ohio, attorneys who are admitted by examination, admitted by transfer of a Uniform Bar Examination score, or registered as corporate counsel are required to complete New Lawyer Training (NLT). NLT requirements are set forth in Section 14 of Gov.Bar R. X. NLT is distinct from the general CLE requirements for active attorneys, and must be completed by the end of the attorney's first biennial compliance period.

I. NLT REQUIREMENTS

Lawyers subject to NLT must complete 12 total credit hours, including nine general credit hours and three specialized hours.

- A. The three specialized hours include:
 - 1. 60 minutes of instruction on topics related to professional conduct, professional relationships, obligations of attorneys, or aspirational ideals of the profession;

2. 60 minutes of instruction on topics related to fundamental law office management practices; and
 3. 60 minutes of instruction on topics related to client fund management.
- B. For the remaining nine general credit hours, lawyers must complete programming in one or more substantive law topics focusing on handling legal matters in specific practice areas.
- C. The nine general NLT credits may also be obtained by successful completion of the [Supreme Court Lawyer to Lawyer Mentoring Program](#).
- D. Lawyers who fail to timely complete NLT are subject to a late fee and suspension from the practice of law.
- E. Exemptions
By rule, certain lawyers are exempt from the NLT requirement:
1. Attorneys admitted without examination (on motion);
 2. Attorneys registered for inactive status;
 3. Attorneys granted a military or other exemption by the Commission on Continuing Legal Education;
 4. Attorneys admitted temporarily as military spouses; and
 5. Attorneys registered as foreign legal consultants.

II. NLT ACCREDITATION STANDARDS

- A. Activities must be specifically approved for NLT credit.
- B. Any NLT completed before an attorney is admitted to practice or registered as active will not qualify for credit.
- C. To receive accreditation for NLT, an activity must meet the following requirements:
1. Provide live instruction in a setting physically suited to the educational activity of the program (education may be in person, live webcast, or live teleconference);
 2. Consist of a minimum length of 30 minutes; and
 3. Include high-quality written materials with a focus on procedural checklists, practical instructions, and forms with guidance as to how they should be completed and when they should be used.
- D. Attorneys who complete more than the 12 minimum hours of NLT may carryover up to 12 hours to be applied to the next biennial compliance period.
- E. NLT credit hours are awarded in 30-minute increments (i.e., 30 minutes is equal to one-half credit hour).

LAWYER TO LAWYER MENTORING PROGRAM

The Lawyer to Lawyer Mentoring Program links experienced attorneys with lawyers who recently have been admitted to the practice of law. By fostering positive mentoring relationships, Lawyer to Lawyer Mentoring seeks to elevate the competence, professionalism, and the success of Ohio lawyers. Mentoring is a one-on-one relationship designed to assist lawyers as they begin their legal careers. Mentoring participants meet in person six times during the course of a year to discuss topics and engage in activities they select as part of a personalized mentoring plan. Upon completion of the program, mentors receive CLE credit and new lawyers receive required general NLT credit.

I. IMPLEMENTATION PLAN AND PROGRAM RULES

A. Registration

All mentoring participants must register to participate in the program. Mentors must be approved by the Commission on Professionalism after a determination that they satisfy eligibility requirements.

B. Participant Matching

Mentees may request to be matched with a senior attorney in their organization or another attorney they know in their community. The Commission on Professionalism also maintains a list of pre-approved attorneys and judges available to mentor new lawyers. Mentees will be given access to online profiles of available mentors and are able to nominate their top choices for mentoring partner. Matches are made by the Commission on Professionalism in the order applications are received.

C. Meetings

Participants must complete at least nine hours of mentoring during the course of at least six in-person meetings. Times and locations of meetings are scheduled by the participants.

D. Length of Mentoring Term

The mentoring term lasts approximately 11 months.

E. NLT and CLE Credit

Mentees who successfully complete the program will fulfill their NLT requirement, provided they also receive three hours of classroom instruction on professionalism, office management, and client fund management. Mentors receive 12 hours of CLE credit, which includes 2.5 hours of attorney conduct credit. There is no cost to participate in the mentoring program.

F. Mentoring Plan

Participants must complete all activities and topics selected as part of their individualized mentoring plan, including required discussions about mental health/substance use and access to justice/pro-bono service.

G. Submissions

To receive credit for the program, all participants must submit a program application, mentoring agreement, mentoring plan, and certificate of satisfactory completion.

H. Orientation

Mentors will receive training at a mentor orientation and will receive additional CLE credit for attending the orientation. Mentors may choose to watch the orientation online if unable to attend an in-person orientation.

II. MENTEE ELIGIBILITY

To participate as a mentee in the Lawyer to Lawyer Mentoring Program, an attorney must satisfy the following requirements:

- A. Be admitted to practice law in Ohio and registered as active or registered for corporate status;
- B. Submit a mentee application within 60 days of the date of admission or corporate registration; and
- C. Be subject to the New Lawyers Training requirement under Gov.Bar R. X.

III. MENTOR ELIGIBILITY

To participate as a mentor in the Lawyer to Lawyer Mentoring Program, an attorney or judge must satisfy all of the following requirements:

- A. Have been admitted to practice law or registered for corporate status for not less than five years;
- B. Have active registration status or be a federal judicial officer, member of law school faculty, or law school administration; or recently retired from the active practice of law;
- C. Be in good standing;
- D. Have a reputation for competence and ethical professional conduct;
- E. Never have been suspended or disbarred from practice in any jurisdiction nor have voluntarily surrendered a license to dispose a pending disciplinary proceeding;
- F. Not have been otherwise sanctioned in any jurisdiction during the 10 years preceding application to serve as a mentor;
- G. Not have a formal disciplinary complaint pending before the Supreme Court of Ohio;
- H. Not have not been administratively suspended in any jurisdiction during the prior 10 years, including suspensions resulting from a deficiency in continuing legal education hours or a failure to complete attorney registration in a timely fashion;
- I. Not have been held in contempt by any tribunal within the prior 10 years;
- J. Not have been found to have violated Civ.R. 11 or Fed.R.Civ.P. 11 or to have engaged in frivolous conduct pursuant to R.C. 2323.51 within the prior 10 years;
- K. Not have not been subjected to a monetary sanction resulting from a deficiency in continuing legal education hours within the prior five years;

- L. Carry professional liability insurance with minimum limits of \$100,000 per occurrence and \$300,000 in the aggregate, or fall within one of the exemptions to this requirement; and
- M. Submit an online mentor application and be approved by the Commission on Professionalism.

CONTINUING LEGAL EDUCATION (CLE)

Each attorney admitted to the practice of law in Ohio and registered for active status shall comply with CLE requirements pursuant to [Gov.Bar R. X](#). In addition to Gov.Bar R. X, there are [CLE regulations](#) including definitions, standards for accreditation, and a schedule of fees.

CLE is distinct from NLT requirements for newly admitted attorneys which must be completed by the end of the attorney's first biennial compliance period.

I. AUTHORITY OF COMMISSION ON CONTINUING LEGAL EDUCATION

The Supreme Court Commission of Continuing Legal Education (“the Commission”) administers the continuing legal education requirements for attorneys pursuant to Rule X of the Rules for the Government of the Bar of Ohio and for judges pursuant to Rule IV of the Rules for the Government of the Judiciary. The Commission consists of 19 members appointed by the Supreme Court. The Director of Attorney Services serves as the Secretary to the Commission. Gov.Bar R. X(2).

II. CONTINUING LEGAL EDUCATION REQUIREMENTS

Attorneys registered for active status must complete 24 hours of CLE each biennium (two-year period), including 2.5 hours of professional conduct. Gov.Bar R. X(3).

- A. As part of the minimum 24 credit hours of continuing legal education required, an attorney shall complete a minimum 2.5 credit hours of instruction on one or any combination of the following professional conduct topics:
 - 1. Alcoholism, substance abuse, or mental health issues, which shall include instruction on any of their causes, prevention, detection, and treatment alternatives, as applicable;
 - 2. Access to justice and fairness in the courts and how these issues impact public trust and confidence in the judicial system and the perception of justice in Ohio, which shall include instruction on one or any combination of the following topics:
 - a. Interacting with self-represented litigants;
 - b. Encouraging pro bono representation; and/or
 - c. Accommodating language interpretation.
- B. The biennial compliance period is based on the first letter of the attorney's last name. If the name of an attorney changes after the attorney is admitted to the practice of law, the attorney shall remain in the same alphabetical grouping as when admitted to the practice of law. Gov.Bar R. X(4). The biennial compliance period is from Jan. 1 – Dec. 31 and spans two years. This is separate from the attorney registration biennium, which also is for a two year period from Sept. 1 (odd-numbered year) to Aug. 31 of the following odd-numbered year.

1. An attorney whose last name begins with A through L shall complete the number of continuing legal education credit hours on or before Dec. 31 of each odd-numbered year;
 2. An attorney whose last name begins with a letter from M through Z shall complete the number of continuing legal education credit hours required on or before Dec. 31 of each even-numbered year.
- C. The CLE requirements may be subject to proration based on when the attorney becomes subject to the rule within the biennium. Gov.Bar R. X(7).
- D. Attorneys and judges who comply with the CLE requirements, may carryover up to 12 hours to the next biennial compliance period. Carryover is awarded as general hours and do not count towards any caps in the next compliance period. Gov.Bar R. X(8).
- E. Sanctions may be imposed against attorneys and judges who fail to timely complete the CLE requirements which may include a monetary sanction and/or suspension from the practice of law. Gov.Bar. R. X(17).
- F. Exemptions
1. Upon approval by the Commission, the following attorneys may be exempt from the CLE requirements [Gov.Bar R. X(12)]:
 - a. An attorney on full-time military duty who does not engage in the private practice of law in Ohio;
 - b. An attorney suffering from severe, prolonged illness or disability, preventing participation in CLE courses during the duration of the illness or disability; or
 - c. An attorney who has demonstrated special circumstances unique to that attorney constituting good cause to grant an exemption for the period of time not to exceed one year and subject to any prorated adjustment of the continuing legal education requirements.
 2. An attorney who because of a permanent physical disability, or other compelling reason, has difficulty attending programs may request, and the Commission may grant, approval of a substitute program.
 3. An attorney registered as inactive pursuant to Gov.Bar R. VI, Section 5 shall be exempt from the CLE requirements.

III. CLE ACCREDITATION STANDARDS

A CLE activity shall meet the following requirements for accreditation pursuant to Reg. 406.

- A. A program shall have significant intellectual or practical content and the primary objective shall be to improve the participant's professional competence as an attorney or judge (CLE Reg. 406(A));
- B. The activity shall be an organized program of learning dealing with matters directly related to the practice of law, professional responsibility or ethical obligations, or law-office economics (CLE Reg. 406(B));
- C. The programs leaders or lecturers shall be qualified by education or have the

necessary practical skill to conduct the program effectively (CLE Reg. 406(C));

- D. A course shall be held in a setting conducive to learning with matters directly related to the practice of law, professional conduct or ethical obligations, law office-economics, or other subjects maintaining and improving the quality of legal services in Ohio (CLE Reg. 406(E));
- E. The amount of credit hours granted is based on 60 minutes of actual instruction constituting one credit hour. Thirty minutes of instruction constitute one-half credit hour. CLE Reg. 406(H) A minimum of 30 minutes must be completed to receive CLE credit; and
- F. Before or at the time of the CLE Activity, each attendee shall be provided with course materials. CLE Reg. 406(D).

IV. ALLOWANCE OF CREDIT HOURS

Attorneys may meet the CLE requirements through various methods of instructions pursuant to Gov.Bar R. X(5).

- A. An attorney may complete the CLE requirements by attending CLE programs held in-person in Ohio and/or out-of-state;
 - 1. If the sponsor of an out-of-state activity has not received accreditation in Ohio, an individual attorney may apply for accreditation of an out-of-state program within 60 days of attending the course;
 - 2. Only sponsors may apply for programs held in Ohio and for self-study activities. Self-study activities include live interactive webinars, live webcasts, on-demand, and teleconferences.
- B. An attorney may earn up to a maximum of 12 hours of in-house credit for attending a program offered by their employer complying with the requirements of Reg. 407;
- C. CLE Teaching Credit
 - 1. An attorney may receive three credit hours for each credit hour taught in an approved CLE program or activity the first time the program or activity is presented by the instructor [Gov.Bar R. X(5)(B)];
 - 2. An attorney may receive two credit hours for each credit hour taught as part of a panel presentation (*Id.*); and,
 - 3. An attorney may receive one credit hour taught in subsequent presentations of the same program or activity by that instructor with a maximum of one-half the required credit hours for teaching during the biennial compliance period. *Id.*
- D. Law School Teaching Credit
 - 1. Full-time professors may receive one-half credit hour for each semester hour taught by a full-time professor at a law school accredited by the American Bar Association [Gov.Bar R. X(5)(C)];
 - 2. Adjunct or part-time professors may receive three credit hours for each semester hour of a course taught by an adjunct or part-time professor at a law school accredited by the American Bar Association the first time the course is taught by that professor (*Id.*); and

3. Adjunct or part-time professors may receive one-half credit hour for each semester hour the course is subsequently taught by that professor. *Id.*
- E. An attorney may receive three hours of CLE Credit for each semester hour of a course completed at an ABA-accredited law school. Gov.Bar R. X(5)(F).
- F. An attorney may receive up to 12 credit hours for the publication of an article or book personally authored by the applicant that is directly related to the practice of law, judicial administration, professional conduct, ethical obligations, law-office economics, or other subjects remaining and improving the quality of legal services in Ohio. Gov.Bar R. X(5)(D).

Self-study credit may be awarded for completing an approved activity offered by live-interactive webinar, live webcast, on-demand, teleconference, or other means by which an attorney participates from his/her own computer or phone. Gov.Bar R. X(5)(E).

1. An attorney may receive up to a maximum of 12 credit hours for approved self-study during a biennial compliance period;
 2. An attorney may receive up to a maximum of 24 credit hours for approved live interactive webinars; and
 3. Attorneys and judges may not apply for accreditation of self-study activities. Only sponsors may apply for accreditation of self-study activities.
- G. Pro bono credit may be granted for legal service provided either to a person of limited means or to a charitable organization. Gov.Bar R. X(5)(H).
1. The Commission may allow one credit hour for every six hours of pro bono legal service performed, with a maximum of six credit hours for service performed during a biennial compliance period, provided the legal service is assigned, verified, and reported to the Commission by any of the following:
 - a. An organization receiving funding for pro bono programs or services from the Legal Services Corporation or the Ohio Access to Justice Foundation;
 - b. A metropolitan or county bar association;
 - c. The Ohio State Bar Association;
 - d. The Ohio Access to Justice Foundation; or
 - e. Any other organization recognized by the Commission as providing pro bono programs or services in Ohio.

NOTARY PUBLIC

R.C. 147 contains statutes concerning notary public requirements in Ohio. The Ohio Secretary of State's office commissions and maintains records of all notaries public in Ohio. The legal requirements for notaries in Ohio recently changed under the Notary Modernization Act, taking effect on Sept. 20, 2019. Following the enactment of this law, many filings related to notaries, including applications for notary commissions, renewals, and updates to contact information, must be submitted electronically to the Secretary of State's office. This outline summarizes the statutory requirements to obtain and maintain a notary commission in Ohio.

Questions regarding the notary rules should be directed to the Ohio Secretary of State's office at 614.644.4559 or ohiosos.gov/notary.

I. APPOINTMENT AND COMMISSION

A. Appointment and Qualifications (R.C. 147.01, R.C. 147.022)

1. The Secretary of State appoints and commissions notaries in Ohio and maintains an online database of notaries in the state.
2. An individual seeking a notary commission must be at least 18 years of age and a legal resident of the state or, if not legal a resident, must be an attorney admitted to practice in the state by the Supreme Court of Ohio with a principal business or primary practice in the state.
3. An attorney seeking a notary commission may have either active or inactive registration status with the Supreme Court.
4. Applicants for a notary commission must submit a criminal-records check report completed within the prior six months. To receive a commission, an individual must not have been convicted of a disqualifying offense. Attorneys are not required to submit a criminal-records report to become a notary.

B. Education and Testing (R.C. 147.01, 147.021)

1. An individual seeking a commission must complete an educational program and pass a test demonstrating knowledge of the requirements of a notary.
2. After Sept. 20, 2019, attorneys must also complete an education program to become a notary but are not required to take the test. Attorneys commissioned prior to Sept. 20, 2019 are not subject to the education requirement.
3. The Secretary of State adopts the standards and curricula for the educational program, including who administers program and test. The Secretary of State and may authorize that the program be completed online.

C. Term of Office and Administrative Requirements (R.C. 147.03, 147.04, 147.05, 147.08)

1. A notary's term of office is five years unless the individual's commission is revoked. However, an attorney's notary commission does not expire as long as the attorney is a resident of the state or has their principal business or primary practice in the state, is in good standing with the Supreme Court of Ohio, and has not had their commission revoked.
2. A notary must take an oath before assuming the duties of the office.
3. Before beginning official duties, a notary must obtain the seal of a notary public. The name of the notary public may, instead of appearing on the seal, be printed, typewritten, or stamped near the notary public's signature on each document the notary signs.
4. A notary must inform the Secretary of State of any change in the notary's name or address within 30 days of the change.
5. A notary may charge a fee of \$5 per act for any notarial act that is not an online notarization. The fee can be up to \$25 for an online notarization. Fees may not be charged per signature, but instead per notarial act. The law also permits a reasonable travel fee as agreed upon by the notary and the signer prior to the act. No additional fees may be charged in connection to the notarization.

- D. Renewal and Resignation of Commission (R.C. 147.031, 147.05)
1. An attorney's commission as a notary does not require renewal.
 2. To renew their commission, all non-attorney notaries must complete an online renewal process, which requires submission of a new criminal-records report, a renewal fee, and an application for renewal. The renewal application can be submitted three months prior to the expiration of the current commission.
 3. If a notary's commission expires prior to renewal, it cannot be renewed. A new commission may be issued.
 4. To resign a commission, a notary shall deliver to the Secretary of State a written notice indicating the effective date of resignation, using the requisite form utilized by the Secretary of State's office.
 5. A notary is required to inform the Secretary of State if the notary is convicted of or pleads guilty or no contest to any disqualifying offense during the term of the notary's commission.
- E. Powers and Jurisdiction (R.C. 147.07)
1. A notary has jurisdiction throughout Ohio but may only notarize documents within the state.
 2. The powers of a notary include the abilities to administer oaths required or authorized by law; take and certify depositions; take and certify acknowledgments of deeds, mortgages, liens, powers of attorney, and other instruments of writing; and compel the attendance of witnesses at depositions and punish them for refusing to testify.

II. NOTARIAL ACTS

- A. Authorized Acts (R.C. 147.51-147.58)
1. A notary's authorized acts include oaths and affirmations, taking proof of execution and acknowledgment of instruments, attesting documents, and executing a jurat.
 2. Other individuals authorized to perform as a notary include a judge, clerk or deputy clerk of court; officer of the foreign service of the United States, consular agent, commissioned officer in active service with armed forces of the United States, member of the merchant marines or armed forces of the United States; and any other person authorized to perform notarial acts in the place in which the act is performed.
- B. Taking Depositions (R.C. 147.40)
1. Depositions will be taken on written interrogatories, on a written notice being given by the party desiring to take the deposition, including the names of the party plaintiff and defendant, the court or tribunal where the action is pending, and the names of witnesses.
 2. The notice shall be served upon the adverse party or their agent or attorney of record, at least 20 days prior to taking the deposition. Cross-interrogatories by the adverse party may be filed within six days after the notice of taking the depositions is served.

3. All processes issued by notaries for depositions must be served and/or returned by sheriffs or constables.
- C. Taking an Acknowledgment (R.C. 147.53)
The person taking an acknowledgment shall certify:
1. The person acknowledging appeared before them and acknowledged they executed the instrument; and
 2. The person acknowledging was known to the person taking the acknowledgment, or that person had satisfactory evidence that the person acknowledging was the person described therein and who executed the instrument.
- D. Administration of a Jurat
A jurat means a notarial act in which the signer of the notarized document is required to give an oath or affirmation that the statement in the notarized document is true and correct and that the signer signs the notarized document in the presence of the notary public.
- E. Electronic and Online Notarizations
1. An electronic notarization is a notarial act performed by a notary using his or her electronic seal and electronic signature on a digital document. An electronic notarization is an in-person act where the notarial act procedures are unchanged and include personal appearance, verifying the identity of the signer, completion of the notarial certificate by affixing the notary's electronic signature, and electronic seal to the certificate.
 2. A notary with an active commission in Ohio may perform electronic notarizations without any additional authorization from the Secretary of State's office.
 3. An online notarization is a notarial act performed by a notary who is authorized to perform online notarizations when a signer personally appears before the notary using audio-visual technology instead of being physically present in the same location as the notary. An online notarization requires the use of an online notarization system to perform the act as the signer is not located in the same location as the notary.
 4. A notary public, residing in Ohio, may be authorized to perform online notarizations upon approval from the Secretary of State's office. To be authorized, the notary must file an online authorization application showing proof of the completion of an education program, passing a test, and stating the name of the online notarization system/vendor to be used. All notaries authorized to perform online notarizations must be legal residents of Ohio and may only perform online notarizations when they are located in Ohio, although the signer can be outside of Ohio or outside of the United States at the time of the act.
 5. A non-attorney notary's authorization to perform online notarizations expires on the same date as the notary public's commission. Attorney notaries authorized to perform online notarizations must renew the authorization five years from the date of issuance.
 6. To renew an authorization for online notarizations, a notary must submit a renewal application and complete a continuing education requirement.

III. REVOCATION OF COMMISSION AND PENALTIES

A. Revocation and Removal (R.C. 147.01, 147.03)

1. The Secretary of State may revoke a commission for official misconduct or incapacity. The Secretary also will remove a notary for violation of the oath of office.
2. The Secretary of State shall revoke the commission of any person who is convicted of or pleads guilty or no contest to a disqualifying offense, including an attorney commissioned as a notary.
3. If a notary's commission is revoked, the person is ineligible for reappointment.

B. Investigation and Penalties (R.C. 147.032)

1. The Secretary of State may investigate possible violations upon a signed complaint from any person.
2. The Secretary of State may hold a disciplinary hearing after the investigation and a revocation, suspension, or letter of admonition may be issued.

IV. PROSCRIBED ACTS

A. Unauthorized Acts (R.C. 147.10, 147.13-147.14, 147.42)

1. An individual shall not perform an act as a notary public knowing their term of office has expired or the commission was resigned. A person appointed as a notary who performs such an act is subject to a fine of \$500 and shall not be eligible for reappointment.
2. An official act done by a notary public after the expiration of the notary public's term of office or after the notary resigns their commission is as valid as if done during the notary's term of office.
3. A notary who charges a fee greater than the amount prescribed by law, or who dishonestly or unfaithfully discharges any official duties as notary public, shall be removed from office. The notary shall be ineligible for reappointment.
4. Certifying an affidavit without administering the appropriate oath or affirmation to the person violates the statute and is punishable by a fine of no more than \$100, no more than 30 days imprisonment, or both. In addition, a notary who violates this provision will be removed from office and is ineligible for reappointment for a period of three years.
5. A notary public who is not a licensed attorney in Ohio shall not:
 - a. Represent or advertise himself or herself as an immigration consultant or an expert in immigration matters;
 - b. Provide any service constituting the unauthorized practice of law;
 - a. State or imply the notary is an attorney licensed to practice law in Ohio;
 - b. Solicit or accept compensation to prepare documents for, or otherwise represent, the interest of another person in a judicial or administrative proceeding; or
 - c. Use the phrase "notario" or "notario publico" to advertise the services of a notary public.

B. Prohibited Acts (R.C. 147.141)

A notary cannot do any of the following:

1. Perform a notarial act with regard to a record or document executed by the notary;
2. Notarize the notary's own signature;
3. Take the notary's own deposition;
4. Perform a notarial act if the notary has a conflict of interest with regard to the transaction in question;
5. Certify a document is either an original document or a true copy of another record;
6. Use a name or initial in signing certificates other than that by which the notary public is commissioned;
7. Use a facsimile signature stamp to sign a notarial certificate unless the notary has a physical disability;
8. Affix a notary signature to a blank form or affidavit or certificate of acknowledgment and deliver it to another person;
9. Take an acknowledgment or administer an oath to a person who the notary public knows to be adjudicated mentally incompetent by a court;
10. Notarize a signature on a document of a person who appears to be mentally incapable of understanding the nature and effect of the document at the time of notarization;
11. Alter any written instrument after it is signed by anyone;
12. Notarize a signature on a document that is incomplete or blank;
13. Notarize a signature on a document if it appears the signer was coerced or unduly influenced wherein they cannot exercise the persons own free will when signing the document; or
14. Determine the validity of a power of attorney document or other form designating a representative capacity unless the notary is an attorney licensed to practice law in Ohio.

II. ATTORNEY DISCIPLINE

The Supreme Court of Ohio has exclusive jurisdiction over the practice of law, including the admission and discipline of attorneys. As a self-regulating profession, the Supreme Court established the three following offices, which operate independently, to oversee attorney discipline: the Board of Professional Conduct, the Office of Disciplinary Counsel, and the Lawyers' Fund for Client Protection.

I. ATTORNEY DISCIPLINE STRUCTURE

A flowchart, maintained by the Board of Professional Conduct, illustrating the Disciplinary Process from filing of a grievance to final disposition, is attached at the end of this outline.

- A. Board of Professional Conduct [Gov.Bar R. V(1-3)] – Adjudicative Body
 1. The Board consists of 28 commissioners: 17 attorneys, seven judges, and four non-attorneys who are appointed by the Supreme Court to each serve a three-year term.
 2. The Board has exclusive authority to hear all complaints involving alleged misconduct of attorneys or judicial officers.
 3. The Board makes findings of fact and submits recommendations to the Supreme Court.
- B. Office of Disciplinary Counsel (ODC) [(Gov.Bar R. V(4)] – Investigative/Prosecutorial Authority
 1. ODC is an affiliated office of the Supreme Court of Ohio and exercises independent authority to investigate and prosecute allegations of attorney and judicial misconduct.
 2. Disciplinary Counsel is appointed by the Board with the approval of the Supreme Court.
 3. ODC investigates allegations and files formal complaints concerning ethical misconduct and/or mental illness of judges or attorneys.
 4. ODC may file a complaint alleging violation of the Rules of Professional Conduct, the Code of Judicial Conduct, and the rules governing the unauthorized practice of law.
- C. Certified Grievance Committees [Gov.Bar R. V(5)] – Limited Investigative/Prosecutorial Authority
 1. A certified grievance committee is any organized committee of the Ohio State Bar Association, or one or more local bar associations in Ohio certified by the Board.
 2. A certified grievance committee has authority to investigate a grievance filed against an attorney who resides or maintains an office in the geographic area served by the committee or where the misconduct alleged in the grievance occurred.
 3. Complaints may be referred to a certified grievance committee by ODC in the event of a conflict of interest.
 4. Limited jurisdiction a certified grievance committee does not have authority to investigate allegations against an attorney who is an officer of the bar association

or a judicial officer. The Ohio State Bar Association does have authority to investigate allegations against a judicial officer.

D. Lawyers' Fund for Client Protection ("the Fund") (Gov.Bar R. VIII)

The Fund was established to reimburse clients who have lost money or property as a result of an attorney's misconduct, up to a maximum of \$75,000.

The Board of Commissioners of the Fund consists of seven members appointed by the Supreme Court and is funded by a portion of attorney registration fees. The Fund has the authority to investigate applications by claimants for disbursement from the fund, to authorize and establish amount disbursement, and to adopt rules of procedure and prescribe forms.

II. APPLICABLE RULES

Attorneys and/or judicial officers may be prosecuted for violation of the following:

A. Ohio Rules of Professional Conduct ("Prof.Cond.")

The records of the Board of Professional Conduct indicate the following are the top disciplinary rule offenses based on the total number of grievances opened for investigation and the primary misconduct alleged from 2017-19.

In addition to the following rules, note that failure to respond to a demand from a disciplinary authority also is a violation of Prof.Cond. R. 8.1(b). In 2019, 21 percent of all discipline cases involved a violation of failing to cooperate or failure to disclose a material fact.

1. Neglect/Failure to Protect a Client's Interest
 - a. Prof.Cond. R. 1.1 (Competence)
 - b. Prof.Cond. R. 1.3 (Diligence)
 - c. Prof.Cond. R. 1.4 (Communication)
2. Failure to Maintain Funds in Trust - Prof.Cond. 1.15 (Safekeeping Funds and Property)
3. Excessive Fees - Prof.Cond. 1.5 (Fees and Expenses)
4. Trial Misconduct
 - a. Prof.Cond. 3.3 (Candor Toward the tribunal)
 - b. Prof.Cond. 3.4 (Fairness to opposing party and counsel)
 - c. Prof.Cond. 4.1 (Truthfulness in statements to others)
 - d. Prof.Cond. 4.2 (Communication with person represented by counsel)
 - e. Prof.Cond. 5.5 (Unauthorized Practice of Law)
5. Personal Misconduct - Prof.Cond. 8.4 (Misconduct)

B. Rule V of the Rules for the Government of the Bar of Ohio ("Gov.Bar R. V")

1. Establishes procedures for attorney/judicial misconduct cases.
2. Provides for suspension if an attorney is found to have an impairment affecting their ability to practice law; commission of a felony; to have committed a felony; or failed to pay required child support.

- C. Rules for the Government of the Judiciary (“Gov.Jud. R.”)
Judicial Misconduct
 - 1. Jud.Cond.R. 1.2 (Promoting confidence the judiciary)
 - 2. Jud.Cond.R. 1.3 (Avoiding abuse of the prestige of judicial office)
 - 3. Jud.Cond.R. 2.11(Disqualification)
 - 4. Canon 4 Violations (Political or Campaign Activity)

III. MANNER OF DISCIPLINE [GOV.BAR R. V(12)]

- A. An attorney or judicial officer found guilty of misconduct may be subject to any of the following:
 - 1. Disbarment from the practice of law (permanent);
 - 2. Suspension from the practice of law for an indefinite period subject to reinstatement;
 - 3. Suspension from the practice of law for a period of six months to two years subject to a stay in whole or in part;
 - 4. Probation; or
 - 5. Public reprimand.
- B. Interim Default Suspension [Gov.Bar R. V(14)]
 - 1. An order of interim default suspension may be issued by the Supreme Court upon a filing of a certificate of default when an attorney (respondent) does not file an answer to the complaint by the date set forth in the notice.
 - 2. After the certification is filed with the Supreme Court, an order to show cause is issued by the Supreme Court, providing the respondent with notice and opportunity to respond or file objections.
- C. Impairment Suspension [Gov.Bar R. V(15)]
 - 1. Suspension based upon adjudication of mental illness may be issued when a mental illness, supported by a certified copy of a journal entry of a court of competent jurisdiction adjudicating mental illness, and the Supreme Court determine the respondent’s ability to practice law is impaired by the mental illness.
 - 2. Suspension based on order of treatment for alcohol and other drug use may be ordered when respondent’s ability to practice law is substantially impaired by alcohol or drug abuse.
- D. Interim Suspension for a Felony Conviction or Default [Gov.Bar R. V(18)]

An attorney or judicial officer shall be subject to an interim suspension under either of the following circumstances:

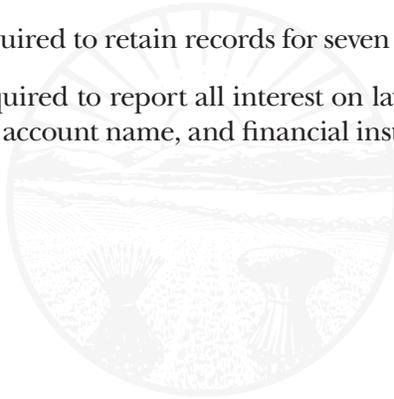
 - 1. The judicial officer or attorney is convicted in Ohio of a felony or an equivalent offense under the laws of any other state or federal jurisdiction; or
 - 2. The judicial officer or attorney is in default under a child support order and a final and enforceable determination is made pursuant to R.C. 3123.

IV. INTEREST ON LAWYER TRUST ACCOUNTS (IOLTA)/INTEREST ON TRUST ACCOUNTS (IOTA)

The Ohio Access to Justice Foundation is a statewide non-profit foundation statutorily charged with overseeing distribution of financial resources from IOLTA/IOTA and civil-filing-fee surcharge to civil legal aid offices throughout Ohio (civil legal aid for low-income and underserved Ohioans).

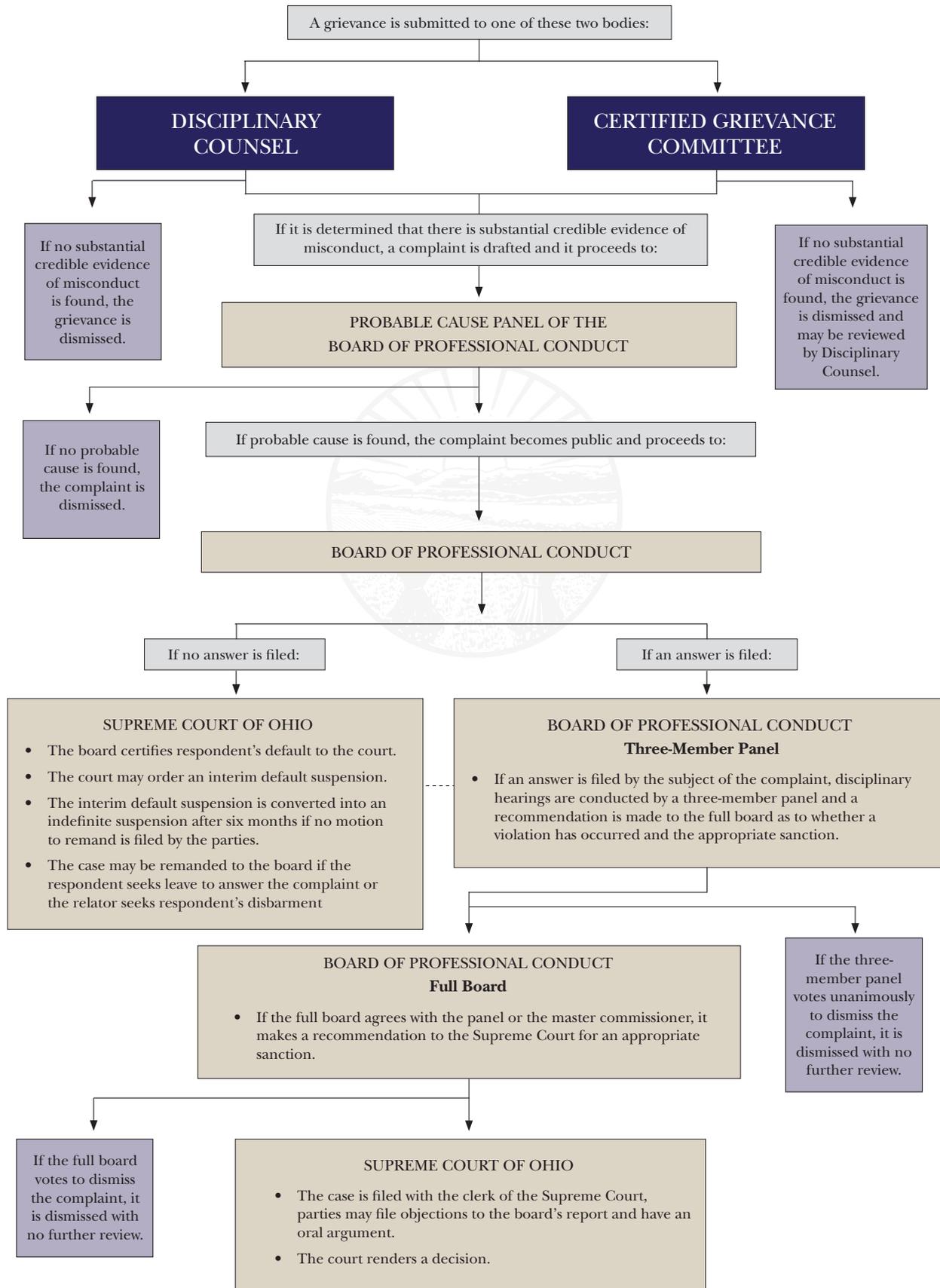
Attorneys are required to deposit client funds and maintain IOLTA (R.C. 4705.09).

- A. Requirements of financial institutions establishing and reporting IOLTA (R.C. 4705.10):
 - 1. If an account balance is \$0, the account may be overdrawn due to an account maintenance fee;
 - 2. If an account has a negative balance, the financial institution is required to report the account to ODC for investigation.
- B. Attorneys who also are title agents must maintain interest bearing trust accounts for deposit of non-directed escrow funds. (R.C. 3953.231)
- C. Attorneys are required to retain records for seven years. (Prof.Cond. R. 1.15)
- D. Attorneys are required to report all interest on lawyers trust accounts including: account number, account name, and financial institution. [Gov.Bar R. VI(4)(D)].



DISCIPLINARY PROCESS

A grievance against a judge or attorney may be submitted to the Disciplinary Council or a certified grievance committee of a local bar association. If either of those bodies determines that substantial credible evidence of professional misconduct exists, a formal complaint is drafted. It then moves to a probable cause panel of the Board of Professional Conduct, which determines if there is probable cause. If the panel determines that there is probable cause, the formal complaint becomes public and is filed with the Board of Professional Conduct. Hearings are then conducted by the board and if it finds a violation, a recommendation is made to the Supreme Court of Ohio. The Supreme Court of Ohio makes the final decision as to findings of misconduct, and issues an appropriate sanction.



III. RESOURCES FOR NEW ATTORNEYS

This outline is intended to provide a brief overview of various resources available to new attorneys in Ohio.

I. SUPREME COURT OF OHIO WEBSITE

The Supreme Court of Ohio [website](#) contains many resources for Ohio attorneys and judges.

A. Ohio Laws

The Supreme Court's website provides links to various sources of [federal and Ohio law](#), including the United States Constitution, Ohio Constitution, Ohio Revised Code, and Ohio Administrative Code.

B. Ohio Court Rules

The Supreme Court website also provides links to a number of [court rules](#) that new attorneys should be familiar with.

1. Supreme Court of Ohio Rules of Practice

The Rules of Practice of the Supreme Court of Ohio apply to practice and procedure in cases before the Supreme Court of Ohio. Appendices following the rules include prescribed forms and samples of the types of documents most commonly filed in the Supreme Court. The samples are included to illustrate to attorneys and litigants the proper form to be used for documents filed in the Supreme Court.

2. Rules of Practice and Procedure in Ohio Courts

The Supreme Court website also includes links to rules of practice and procedure to be followed in Ohio courts, including the Ohio Rules of Appellate Procedure, Ohio Rules of Civil Procedure, Ohio Rules of Criminal Procedure, Ohio Rules of Evidence, Ohio Rules of Juvenile Procedure, and Ohio Traffic Rules. Changes and proposed changes to these rules are updated on the website regularly.

3. Court of Claims Rules

Ohio has established a Court of Claims, which adjudicates claims asserted against the state for monetary damages or other claims within the court's jurisdiction. The Supreme Court's website provides a link to the Court of Claims Rules as well as its local rules.

4. Local Rules of Court

Rule 5 of the Rules of Superintendence provides that any court or division of a court may adopt local rules or practice providing the rules are not inconsistent with rules promulgated by the Supreme Court. Local rules are particular rules for practice and procedure in each court, reflecting the courts' traditional authority to manage their own affairs so to achieve the orderly and expeditious disposition of cases. The Supreme Court's website includes a [list of local rules](#) that have been adopted by courts located in each county in Ohio. The rules vary county by county. Newly admitted attorneys should familiarize themselves with the local rules before engaging in representing a client before a particular court.

5. Rules of Superintendence

The Rules of Superintendence primarily govern the internal operation of the courts of Ohio, including courts of appeal, courts of common pleas, municipal courts, and county courts. The Rules of Superintendence include standardized forms in various areas of practice, including civil protection orders, domestic violence protection orders, criminal protection orders, and probate matters.

6. Supreme Court Rules for the Government of the Bar of Ohio

The Rules for the Government of the Bar govern all aspects of the Court's regulation of attorneys in Ohio, including admission to the practice of law (Rule I), disciplinary procedure (Rule V), registration requirements (Rule VI), continuing legal education (Rule X), pro hac vice admission (Rule XII), and certification of attorneys as specialists (Rule XIV).

C. Writing Manual

The Supreme Court of Ohio [Writing Manual](#) provides instruction on proper citation format in Ohio court filings, as well as guidance in matters of writing style. Although lawyers are not required to follow the manual, it is useful in drafting briefs and pleadings.

D. Ethics Resources

The [Ohio Rules of Professional Conduct](#) establish standards of ethical conduct for all persons admitted to the practice of law in Ohio. The Supreme Court's website also contains an [overview of the attorney-discipline system](#) in Ohio.

The Board of Professional Conduct's [website](#) includes a number of resources on ethics issues, including advisory opinions on various topics, ethics guides, and frequently asked questions.

Lawyers with questions concerning compliance with the Rules of Professional Conduct may direct inquiries to staff at the Board of Professional Conduct or the [Office of Disciplinary Counsel](#).

E. Professionalism Resources

Consistent with the goal of encouraging all attorneys to strive to achieve the highest standards of the practice of law, the Supreme Court has published [Professional Ideals for Ohio Lawyers and Judges](#), which articulates an attorney's obligations to clients, opposing parties, the courts, professional colleagues, the legal profession, and the public. Additionally, the Supreme Court has published a list of [Professionalism Dos & Don'ts](#), which provide practical lists of how to conduct oneself professionally in various aspects of legal practice, including legal writing, depositions, courtroom decorum, working with opposing counsel and other lawyers, and conduct of prosecutors and defense attorneys.

Beyond these statements of general principles, the Supreme Court has published [A Consumer's Practical Guide to Managing a Relationship with a Lawyer](#). This publication discusses how lawyers and clients may work together effectively during the course of legal representation. Although this guide is primarily intended to educate legal consumers, it serves as a reminder of a lawyer's responsibilities in assisting clients.

II. LOCAL COURT WEBSITES

Local court rules are posted on the Supreme Court's website and often are available on the website of each individual court. Attorneys should be sure to check a court's website for local forms or protocols. Additionally, in courts with multiple judges, individual judges may post their judicial preferences on the management of their docket and courtroom on matters such as voir dire, discovery disputes, continuances, and settlement conferences.

III. LAWYER TO LAWYER MENTORING PROGRAM

The Lawyer to Lawyer Mentoring Program links experienced attorneys with lawyers who recently have been admitted to the practice of law. By fostering positive mentoring relationships, lawyer to lawyer mentoring seeks to elevate the competence, professionalism, and success of Ohio lawyers. Mentoring is a one-on-one relationship designed to assist lawyers as they begin their legal careers. Mentoring participants meet in person six times during the course of a year to discuss topics and engage in activities they select as part of a personalized mentoring plan. Upon completion of the program, mentors receive CLE credit and new lawyers receive required general New Lawyers Training credit. More detailed information about the mentoring program, including contact information for the program and registration instructions, may be found on the Supreme Court's [website](#).

IV. PROFESSIONAL DEVELOPMENT OPPORTUNITIES AND RESOURCES

A. Access to Justice and Pro Bono Service

New lawyers should educate themselves about access to justice issues in Ohio. The Ohio Access to Justice Foundation (formerly the Ohio Legal Assistance Foundation) gives voice to in-need Ohioans by providing high-quality civil legal help throughout Ohio's 88 counties. A great deal of information about access to justice issues and Ohio's legal-aid organizations is available on the Foundation's [website](#).

To promote access to justice, the Supreme Court [encourages](#) all lawyers to consider providing legal services on a pro bono basis. Lawyers have unique skills making a real difference in the lives of low-income or disadvantaged Ohioans. Additionally, pro bono work can provide new lawyers with a way to gain immediate, practical experience. Pro bono work can also help attorneys learn new areas of the law and build their practices. Discover pro bono opportunities offered in your geographical area and area of practice by accessing the Foundation's [Pro Bono Opportunities Guide](#).

B. Certification of Attorneys as Specialists

Ohio attorneys may pursue certification as specialists in their area of law. The Supreme Court of Ohio regulates certification of attorneys as specialists and created the [Commission on Certification of Attorneys as Specialists](#) to accredit organizations it has determined are qualified to certify attorneys as specialists. The Commission also is charged with recommending to the Supreme Court fields of law subject to specialization, adopting standards that certifying agencies shall establish in certifying attorneys as specialists, and evaluating the programs of certifying agencies to ensure compliance with this rule.

The Supreme Court has approved 18 fields of law subject to specialization certification, including elder law, family-relations law, and labor and employment law. The Commission has accredited four organizations to certify attorneys as specialists in these areas. Attorneys who are interested in pursuing certification should contact the [organizations](#) accredited by the Commission as qualified to certify attorneys as specialists in the area of law in which they practice.

C. Lawyer Referral and Information Services

The Supreme Court Office of Attorney Services administers requirements governing the operation of [lawyer-referral services](#) and prepaid legal plans. The office also maintains a list of registered referral services, including links to the services and a description of the geographic area served. Attorneys who are interested in being listed on a lawyer referral service panel should contact the registered referral service in their area.

D. Appointment of Counsel in Capital Cases

The Supreme Court [Commission on Appointment of Counsel in Capital Cases](#) administers the requirements of the Rules for Appointment of Counsel in Capital Cases, including the certification of attorneys who are eligible to be appointed to represent indigent capital defendants. Prior to appointment as counsel in a capital case, an attorney shall obtain certification from the Commission. To obtain certification as trial lead counsel, trial co-counsel, and/or appellate counsel, an application must be submitted to the Commission providing evidence of the required experience and completed hours of capital-defense training within two years of making application.

V. BAR ASSOCIATIONS

Newly admitted attorneys should consider availing themselves of the benefits available through membership in one or more bar associations.

A. Federal and Ohio Bar Associations

At the national or federal level, new attorneys may join the American Bar Association or the Federal Bar Association. At the state level, the Ohio State Bar Association provides a number of free resources to new attorneys. Links to the websites of these bar associations is available on the Supreme Court [website](#).

B. County and Metro Bar Associations

There are six metropolitan bar associations in Ohio: Akron Bar Association, Cincinnati Bar Association, Cleveland Metropolitan Bar Association, Columbus Bar Association, Dayton Bar Association, and Toledo Bar Association. Each of these bar associations maintains a website providing information about membership as well as the educational and other resources available to its members.

Additionally, many counties or municipalities in Ohio also have established bar associations. Links to the metropolitan bar associations and county bar associations are on the Supreme Court's [website](#).

C. Professional Legal and Affinity Bar Associations

New attorneys also may find value in joining affinity bar associations and organizations. There are many national groups with local chapters in Ohio, such as the Hispanic National Bar Association, National Asian Pacific American Bar Association, John Mercer Langston Bar Association, National Bar Association, and the Native American Bar Association. Other groups exist at the state level, such as the Ohio Women’s Bar Association, and at the local level, such as Women Lawyers of Franklin County.

D. Law-Related Associations

Lists of numerous other law-related associations at both the national and state level may be found on the Supreme Court’s [website](#), including organizations focused on specific practice areas and advocacy issues.

VI. OHIO LAWYERS ASSISTANCE PROGRAM

The [Ohio Lawyers Assistance Program, Inc.](#) (OLAP) is a confidential resource to obtain assistance with substance use and mental health issues. OLAP is a private, nonprofit 501(c)(3) educational organization operating a statewide assistance program dedicated to helping members of Ohio’s legal community — judges, attorneys, and law students — obtain treatment for substance use disorder, chemical dependency, addiction, and mental health issues. Additionally, OLAP educates legal professionals about these issues, provides confidential advice about treatment alternatives, performs interventions, provides support, and monitors recovery.

A. Services Provided to Ohio Attorneys, Judges, and Law Students

If you or a colleague have mental, emotional, or addiction concerns, OLAP is a source of confidential support. OLAP provides the following services:

1. Assessments

Once OLAP has established a relationship with a client, OLAP staff meets with the client individually to make a diagnosis. OLAP conducts a full, confidential substance use and mental health assessment, which usually takes two to three hours.

2. Recommendations

After the assessment, OLAP staff will give recommendations to the client. OLAP will provide both a diagnosis and a treatment plan (for example, drug/alcohol treatment, medical evaluation, psychiatric evaluation, psychological therapy, etc.).

3. Monitoring and Support

OLAP encourages its client to sign a recovery contract between the client and OLAP for a minimum period of two years and up to five years. The contract requires the client to take necessary steps to address the diagnosed condition. For substance use disorders, the requirements of the contract could include inpatient or outpatient treatment and meetings as part of a 12-step recovery program. For mental health concerns, the contract provisions could include evaluation by a psychiatrist, taking prescribed medications, and individual counseling. OLAP also requires telephone contact with the client, often daily calls early on in the process, then reduced to one or two times per week as the client improves. Whatever the requirements of the individual contract, the client is required to document progress by

providing written verification of meeting attendance, regular reports from therapists, etc.

4. Interventions

Where OLAP has corroboration, OLAP may set up and facilitate an intervention. OLAP may also provide information to a caller on how to approach a troubled person.

5. Education

Annually, OLAP staff gives 50 CLE presentations per year, reaching an estimated 5,000 persons. OLAP representatives speak at all the Ohio law schools, providing information at first-year orientation sessions and in professional responsibility classes about substance use disorder/chemical dependency and mental health issues affecting the profession.

B. Confidentiality

In contacting OLAP, your confidentiality and the confidentiality of anyone about whom you express concern is protected.

1. Ohio Rule of Professional Conduct 8.3 provides an exemption from the duty to report knowledge of ethical violations when the knowledge was obtained in the course of OLAP's work.
2. Code of Judicial Conduct Rule 2.14 provides that information obtained by a member or agent of a bar or judicial association shall be privileged.
3. R.C. 2305.28 provides qualified immunity from civil liability for OLAP staff and for anyone who provides information to OLAP.

C. Services Provided to the Judiciary

OLAP partners with the Judicial Advisory Group (JAG) to provide confidential services for judges. JAG is a peer-based confidential assistance group helping judges with personal and professional issues.

JAG assists OLAP by screening referrals regarding judges to ensure they represent genuine concerns and responding to judges who need help in a manner addressing the demands of judges' positions and responsibilities.

OLAP and JAG help judges with a number of issues, including:

1. Concerns about judicial temperament and diligence that, on the surface, do not rise to the level of disciplinary violations;
2. Burnout, stress, and other debilitating conditions;
3. Depression or other mental health issues; and
4. Alcohol and substance abuse.

The types of support that OLAP and JAG provide to judicial officers include:

1. Assessment and diagnosis by qualified professionals;
2. Participation in an OLAP recovery contract;
3. Referrals to appropriate treatment;
4. Referrals to appropriate professional resources, such as counseling or training; and
5. Advice and mentoring from senior colleagues.

IV. THE OHIO JUDICIAL SYSTEM

Ohio's courts are created by the Ohio Constitution, which provides that the "judicial power of the state is vested in a Supreme Court, Courts of Appeals, Courts of Common Pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law." Article IV, Section 1, of the Ohio Constitution. While these courts are established in the Ohio Constitution, the General Assembly may pass laws about the extent and exercise of that jurisdiction.

The General Assembly has the authority to create courts. Courts inferior to the Supreme Court may be established by statute. The General Assembly has established county courts and municipal courts. Although not part of the judicial system, the General Assembly has also authorized Mayor's Courts.

The Ohio Constitution authorizes the General Assembly to confer jurisdiction on courts established by the Constitution; the General Assembly also has authority to determine the jurisdiction of the courts it has established. The General Assembly's power is limited, however, by the Supreme Court's authority to govern court administration. The Supreme Court's authority includes the establishment of rules of practice and procedure in Ohio's courts.

I. THE SUPREME COURT OF OHIO - ARTICLE IV, SECTION 1, OF THE OHIO CONSTITUTION

A. Composition of the Supreme Court

The Supreme Court is comprised of seven justices (Article IV, Section 2, of the Ohio Constitution), including one Chief Justice and six associate justices. Justices are elected to serve six-year terms.

B. Jurisdiction

1. Original Jurisdiction

- a. The Supreme Court of Ohio has original jurisdiction to decide writs (habeas corpus, mandamus, procedendo, prohibition, and quo warranto), appeals from the Board of Tax Appeals, and appeals from the Public Utilities Commission of Ohio.
- b. The Supreme Court of Ohio has original jurisdiction over matters involving admission to the practice of law and attorney discipline.
- c. Pursuant to the Modern Courts Amendment to the Ohio Constitution, the Supreme Court of Ohio has authority to establish rules of practice for the Supreme Court and all other Ohio courts.
- d. The Rules of Superintendence are intended to provide for the fair, impartial, and speedy resolution of cases without unnecessary delay. These rules govern procedures in trial and appellate courts. They also include important provisions covering topics ranging from court records to the use of interpreters.

2. Appellate Jurisdiction

- a. The Supreme Court of Ohio has exclusive direct appellate jurisdiction over cases involving the imposition of the death penalty.
- b. The Supreme Court of Ohio has discretionary appellate jurisdiction over appeals of cases first heard by the Ohio Courts of Appeals.

C. Clerk of Court

1. The Supreme Court appoints a Clerk of Court.
2. The Clerk's Office manages all cases filed with the Supreme Court. It maintains the Court's case files, case dockets, journal, and lower court records. The Clerk also prepares and issues Court orders; schedules oral arguments and the Court's consideration of other case matters; and coordinates inter-agency communication in death penalty cases.

II. COURTS OF APPEALS – ARTICLE IV, SECTION 1, OF THE OHIO CONSTITUTION

A. Composition

1. Ohio's 88 counties are divided into 12 appellate districts. A map of the districts is attached at the end of this outline.
2. Each district has at least four judges.
3. Each district covers one or more counties.
4. Judges are elected to serve six-year terms.
5. Districts hear cases in panels of three, but may sit en banc.

B. Jurisdiction

1. The courts of appeals have original jurisdiction to decide writs (habeas corpus, mandamus, procedendo, prohibition, and quo warranto).
2. The courts of appeals have appellate jurisdiction to hear appeals of final and appealable orders from trial courts within their territorial jurisdiction.
3. The courts of appeals have appellate jurisdiction to hear some appeals from specific administrative agencies.
4. The Tenth District Court of Appeals has exclusive appellate jurisdiction over appeals from specific administrative agencies and from most decisions of the Court of Claims.
5. Each district has adopted local rules supplementing the general rules of appellate procedure. These local rules provide procedures to be followed in each district.

C. Clerk of Courts

1. Each county's common pleas court clerk serves as the clerk of the court of appeals for cases originating in that county.
2. In a district covering multiple counties, the common pleas court clerk for a county serves as the clerk for cases filed in that county.
3. In a multi-county district, filings must be made with the clerk in the county where the case originated. A case filed in another county in the same district is not properly before the court of appeals. *See, e.g., Brown v. Hall*, 123 Ohio St.3d 381, 2009-Ohio-5592, ¶ 1.

III. TRIAL COURTS

A. Composition

1. Ohio is divided into 88 courts of common pleas, one for each county. Article IV, Section 1, of the Ohio Constitution.
2. There are municipal courts with territorial jurisdiction ranging from one or more cities, villages, and townships to an entire county.
3. There are county courts in counties with territory not covered by a municipal court.
4. Judges are elected to serve six-year terms.

B. Jurisdiction

1. Courts of common pleas have jurisdiction over civil cases (with a limited exception involving county courts), and appellate jurisdiction from the decisions of the boards of county commissioners, criminal cases involving felonies, and misdemeanors if indicted with felony offenses. R.C. 2301. If an indictment charges only misdemeanors, the common pleas court may retain jurisdiction or transfer the matter to municipal court. Crim.R. 21.
 - a. Courts of common pleas may have divisions: general, domestic relations, juvenile, and probate.
 - b. In some counties, the divisions are combined to create a family court. The family courts combine resources to address family issues.
2. Municipal courts generally have jurisdiction over civil cases where the amount at issue does not exceed \$15,000, R.C. 1901.17, and in criminal cases involving misdemeanor offenses.
3. County courts have exclusive jurisdiction in civil cases when the amount at issue does not exceed \$500, when there is shared jurisdiction with the common pleas court over civil cases and the amount at issue does not exceed \$15,000, and in criminal cases involving misdemeanor offenses. R.C. 1907.02 and R.C. 1907.03.
4. Municipal and county courts must establish a small claims division. R.C. 1925.01(A). The purpose of the small claims division is to resolve minor disputes (monetary damages under \$6,000) fairly, quickly, and inexpensively.

C. Local Rules

Trial courts are authorized to adopt local rules to supplement the general procedural rules.

D. Specialized dockets

1. Many trial courts have created specialized dockets.
2. Specialized dockets are reviewed and certified by the Supreme Court of Ohio.

IV. COURT OF CLAIMS

The Chief Justice of the Supreme Court of Ohio assigns judges to hear cases for the Court of Claims. Generally only one judge presides over actions in the Court of Claims, but the Chief Justice may assign a panel of three judges to actions presenting novel or complex issues.

The Court of Claims has jurisdiction to hear and determine all civil actions filed against Ohio and its agencies. Civil complaints filed for \$2,500 or less are decided administratively by a clerk of the Court of Claims. Appeals from these administrative determinations are decided by a judge of the Court of Claims.

V. MAYOR'S COURTS (R.C. 1905)

Mayor's courts are not part of the judicial branch of Ohio. A mayor can hear cases; or may appoint a mayor's court magistrate to hear cases. Mayor's courts generally have jurisdiction over the violation of a municipal ordinance, parking violations, and moving traffic violations on a state highway located in the municipal corporation.

VI. SELECTION OF JUDGES

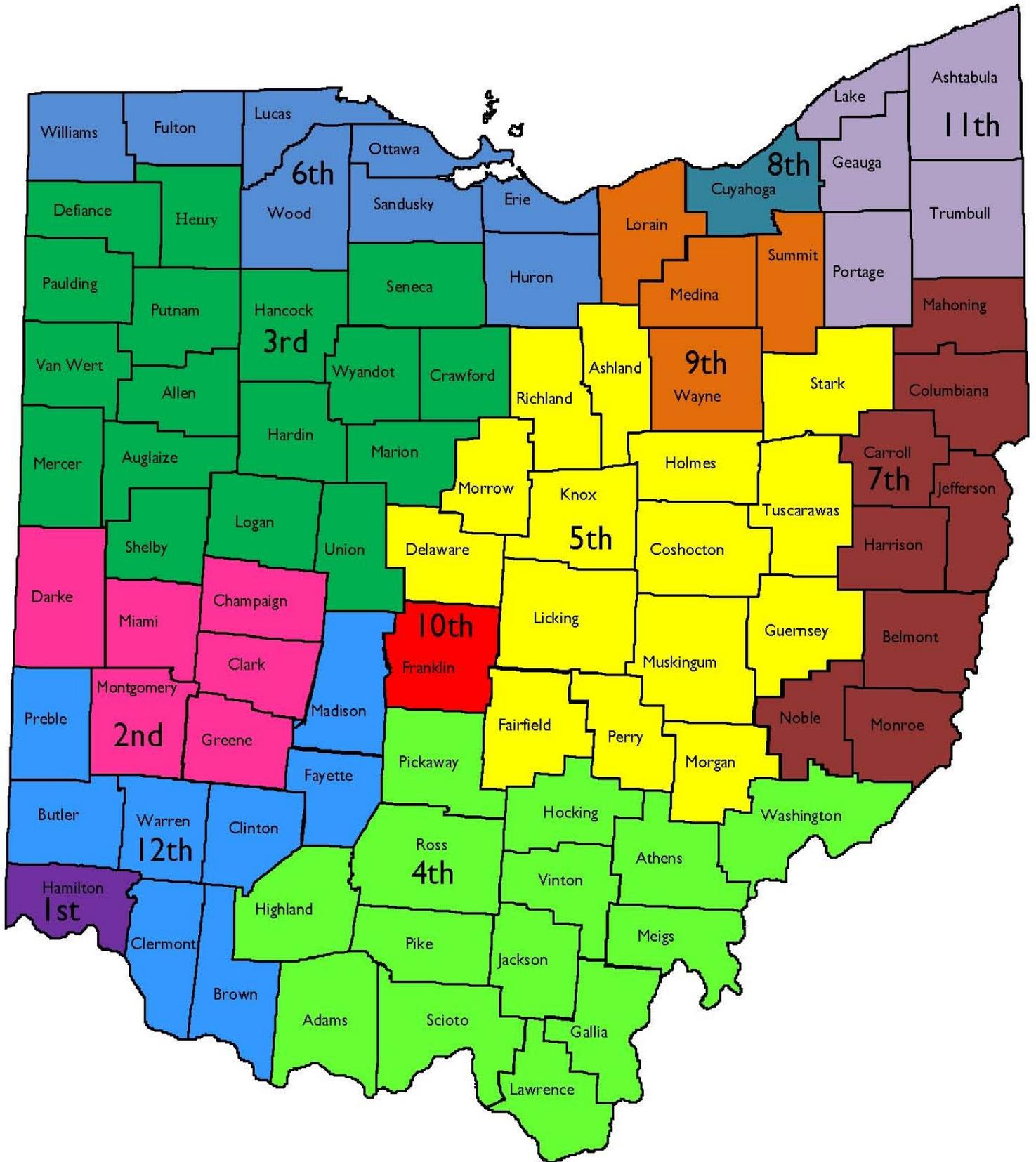
Judges are elected in nonpartisan elections. Judges must be attorneys who have been licensed to practice law for at least six years and may not seek reelection if they would turn 70 years old before the start of the term they seek. The Governor appoints judges to fill vacancies occurring between elections.

VII. MAGISTRATES

Magistrates are not elected, they are appointed by a court or judge and operate under the supervision of that elected judge. Trial and appellate courts may appoint magistrates.

Magistrates must be attorneys who have been licensed to practice law for at least four years. Magistrates are authorized to rule on motions, preside over hearings, and regulate all proceedings as if by the court. The appointing court may refer specific cases to a magistrate or enter a general order of reference. Further rules about magistrates can be found under Rule 19 of the Rules of Superintendence.

OHIO APPELLATE DISTRICTS MAP



V. OHIO LAWS AND RULES

I. SUMMARY

Ohio residents are subject to Ohio state and United States federal laws. Federal laws apply in Ohio as they do across all 50 states. In addition to the United States Constitution, which is the supreme law of the United States, federal laws include statutes codified in the United States Code. Federal laws also include decisions by courts interpreting federal laws. Additionally, federal laws include regulations issued by federal administrative agencies to implement federal laws, which are codified in the Code of Federal Regulations. Two federal district courts in Ohio also issue decisions which may affect Ohio residents. These are the Northern and Southern District Courts of Ohio. The Sixth Circuit Court of Appeals holds the authority to review decisions by federal district courts in Ohio. Sometimes the United States Supreme Court may review a case appealed from the Sixth Circuit or from the Supreme Court of Ohio.

Ohio also has [state laws](#) including the Ohio Constitution, laws passed by the Ohio legislature and codified in the Ohio Revised Code, and decisions by courts interpreting Ohio laws. Additionally, the Ohio Administrative Code contains administrative regulations in multiple areas of law. These laws often are interpreted by the Supreme Court of Ohio and the 12 Ohio District Courts of Appeals.

Finally, Ohio attorneys are subject to multiple [sets of rules](#) governing the practice of law in Ohio as well as practice and procedure with Ohio courts. Most of these rules are issued by the Supreme Court of Ohio, which has exclusive jurisdiction to regulate the practice of law in Ohio.

This outline is intended to provide a brief, high-level overview of the various sources of law in Ohio as well as the sets of rules with which attorneys should be familiar.

II. UNITED STATES CONSTITUTION

The Constitution of the United States is the supreme law of the United States of America and defines the framework of the federal government. The Constitution's first three articles embody the doctrine of the separation of powers, in which the federal government is divided into three branches: the legislative branch, consisting of the bicameral Congress (Article I); the executive branch, consisting of the president (Article II); and the judicial branch, consisting of the Supreme Court and other federal courts (Article III). Articles IV, V, and VI express concepts of federalism, describing the rights and responsibilities of state governments, the states in relationship to the federal government, and the amendment process. Article VII establishes the procedure subsequently used by the 13 states to ratify it. The Constitution is regarded as the oldest written and codified national constitution remaining in force.

Since the Constitution was ratified in 1789, it has been amended 27 times, including one amendment repealing a previous one. In general, the first 10 amendments, known collectively as the Bill of Rights, offer specific protections of individual liberty and justice, and place restrictions on the powers of government. The majority of the following 17 amendments expand individual civil rights protections. Others address issues related to federal authority, or modify government processes and procedures.

III. UNITED STATES CODE

The United States Code is the codification by subject matter of the general and permanent laws of the United States. It is divided by broad subjects into 53 titles, including Copyrights (Title 17), Crimes and Criminal Procedure (Title 18), Internal Revenue Code (Title 26), Judiciary and Judicial Procedure (Title 28), Labor (Title 29), and The Public Health and Welfare (Title 42).

IV. CODE OF FEDERAL REGULATIONS

Regulations promulgated by executive branch agencies through the rule-making process set out in the federal Administrative Procedure Act are published chronologically in the Federal Register and then codified in the Code of Federal Regulations.

V. OHIO CONSTITUTION

Ohio has had three constitutions since obtaining statehood in 1803. While the current version of the Ohio Constitution dates from 1851, it was substantially modified through a series of amendments approved by voters following a constitutional convention in 1912. The revisions increased the power of the people and distributed authority more evenly among the branches of government. Although numerous later amendments have been made, the 1851 Constitution remains the basic law of the state. The Constitution contains 18 articles, including a Bill of Rights (Article I) and articles concerning the legislative (Article II), executive (Article III), and judicial (Article IV) branches of state government.

The Ohio Constitution permits amendments by ballot initiative under Article II. Additionally, Article XVI allows the Ohio General Assembly to put an amendment on a ballot if 60 percent of each chamber of the legislature votes in its favor. A final path to amending the Constitution involves a constitutional convention. A proposal for a constitutional convention will appear on a ballot upon the approval of two-thirds of each chamber of the legislature, and automatically at intervals of 20 years.

VI. OHIO REVISED CODE

The Ohio Revised Code contains the general laws of Ohio enacted by the Ohio General Assembly. The Revised Code contains and is organized into 31 general titles broken into chapters dealing with individual topics of law, including:

- A. State Government (Title 1);
- B. Commercial Transactions – Ohio Uniform Commercial Code (Title 13);
- C. Courts – Municipal – Mayor’s – County (Title 19);
- D. Courts – Probate – Juvenile (Title 21);
- E. Courts – Common Pleas (Title 23);
- F. Courts – Appellate (Title 25);
- G. Crimes – Procedure (Title 29);
- H. Domestic Relations – Children (Title 31);
- I. Real Property (Title 53);

- J. Taxation (Title 57); and
- K. Trusts (Title 58).

The chapters are further divided into sections containing the text of individual statutes.

VII. OHIO ADMINISTRATIVE CODE

The state agencies within Ohio adopt rules to carry out policies and the intent of laws passed by the General Assembly. The agencies promulgate rules and regulations published in the Register of Ohio, which in turn are codified in the Ohio Administrative Code. The Ohio Administrative Code is a collection of rules adopted by state agencies, including the Ohio Ethics Commission, Attorney General, Secretary of State, Treasurer of State, Auditor of State, Division of Securities, Oil and Gas Commission, Ohio Elections Commission, Department of Health, and Ohio Environmental Protection Agency.

VIII. OHIO RULES OF COURT

A. Rules of Practice and Procedure in Ohio Courts

1. Supreme Court of Ohio Rules of Practice

The Rules of Practice of the Supreme Court of Ohio apply to practice and procedure in cases before the Supreme Court of Ohio. Appendices following the rules include prescribed forms and samples of the types of documents most commonly filed in the Supreme Court. The samples are included to illustrate to attorneys and litigants the proper form to be used for documents filed in the Supreme Court.

2. Ohio Rules of Appellate Procedure

The Ohio Rules of Appellate Procedure govern procedure in appeals to courts of appeals from the trial courts of record in Ohio, including the timing and method of filing such appeals and requirements for appellate briefs and motions.

3. Ohio Rules of Civil Procedure

The Ohio Rules of Civil Procedure prescribe the procedure to be followed in all Ohio courts that exercise civil jurisdiction at law or in equity.

4. Ohio Rules of Criminal Procedure

The Ohio Rules of Criminal Procedure prescribe the procedure to be followed in all Ohio courts that exercise criminal jurisdiction.

5. Ohio Rules of Evidence

The Ohio Rules of Evidence govern the proof of facts in criminal and civil proceedings. These rules determine what evidence must or must not be considered by the trier of fact in resolving the legal issues before the court.

6. Ohio Rules of Juvenile Procedure

The Ohio Rules of Juvenile Procedure prescribe the procedures to be followed in all juvenile courts of the state in all proceedings coming within the jurisdiction of such courts.

7. Ohio Traffic Rules

The Ohio Traffic Rules prescribe the procedure to be followed in all Ohio courts in traffic cases.

B. Rules of Superintendence for the Courts of Ohio

The Rules of Superintendence for the Courts of Ohio are promulgated by the Supreme Court pursuant to its rule-making authority under Article IV, Section 5(A)(1) of the Ohio Constitution. The Rules of Superintendence primarily govern the internal operation of the courts of Ohio, including courts of appeal, courts of common pleas, municipal courts, and county courts. These rules not only apply to the general court operations, but also provide guidance on statistical reporting, assignment of visiting judges, and rules for municipal and county courts. The rules are designed to ensure prompt disposition of all causes, at all times, in all courts of Ohio. The Rules of Superintendence are administrative directives only, and not intended to function as rules of procedure. Among other things, the Rules of Superintendence address the following matters particularly relevant for new attorneys.

1. Local Rules of Court (Sup.R. 5)

Sup.R. 5 permits courts, or divisions of courts, to adopt local rules of practice facilitating the expeditious resolution of cases and set forth requirements for adoption of local rules. Sup.R. 5 also requires courts to adopt case management plans and jury management plans.

2. Attorney or Pro Hac Vice Registration Number (Sup.R. 6)

Sup.R. 6 provides that “[e]ach court shall require an attorney to include their attorney or pro hac vice registration number issued by the Supreme Court on all documents filed with the court.”

3. Court Appointments (Sup. R. 8)

Sup.R. 8 requires each court or division of a court to adopt local rules governing appointment of counsel, and mandates that the local rule include certain provisions concerning the management of a court-appointed list.

4. Criminal and Civil Protection Orders (Sup.R. 10-10.05)

These rules mandate the forms to be used by courts in civil or criminal protection order cases, including a standard civil protection order form, standard domestic violence criminal temporary protection order, standard notice concerning possession or purchase of firearms, and standard civil protection order form for juvenile courts.

5. Mediation (Sup.R. 16.2-16.26)

Sup.R.16.20-26 apply when a court elects to use mediation. These rules set forth requirements concerning adoption of a local mediation rule, responsibilities of a mediator, responsibilities of courts utilizing mediation, and access to public records concerning mediation.

6. Court Records – Public Access (Sup.R. 45-47)

Ohio courts are not subject to R.C. 149.43, the statute that generally governs public records in the state. Rather, public records requests to Ohio courts are governed by Sup.R. 45-47.

Court records are presumed open to public access. The rule requires a court or clerk of court to make court records available by direct access in the same medium in which the record is kept. Courts are required to “mail, transmit, [or] deliver copies within a reasonable time and charge its actual costs.”

Upon its own order, a court may restrict public access to certain case documents or an entire document. The court must find “by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest.” The court must use the least restrictive means available in restricting public access. Methods available to a court to limit public access where circumstances warrant include redacting information, restricting public access for a specific period of time, using a generic title or description, or using initials for the proper names contained in a document.

7. Guardians ad Litem (Sup.R. 48)

This rule applies in all domestic relations and juvenile cases where a court appoints a guardian ad litem to protect and act in the best interest of a child. The rule sets forth the process of appointing a guardian, the guardian’s responsibilities and reporting requirements, and the responsibilities of the court. Additionally, the rule establishes training requirements for guardians, including a six-hour pre-service educational requirement to qualify for appointment and an annual three-hour continuing education course to qualify for continued appointment.

8. Probate Division of the Court of Common Pleas (Sup.R. 50-78)

Specific rules address the courts’ management of estates, guardianships, and other probate proceedings, including the responsibilities of guardians and compensation awarded to guardians and trustees. Additionally, the rules address standard probate forms, which are numbered 1.0 through 45(D) and can be found as attachments to the Rules of Superintendence.

9. Appointment of a Foreign Language or Sign Language Interpreter (Sup.R. 88)

A court must appoint a foreign language interpreter in a case or court function when a party or witness who does not speak English or has limited English proficiency requests a foreign language interpreter and the court determines that such services are needed for the party to participate meaningfully in the proceedings; or even without a request for a foreign language interpreter, the court determines that such services are needed for the party or witness to participate meaningfully in the proceedings.

Similarly, a court must appoint a sign language interpreter when a party, witness or juror who is deaf, hard of hearing, or deaf and blind requests a sign language interpreter; or even without a request for a sign language interpreter, the court determines that such services are needed for the party, witness, or juror to participate meaningfully in the proceedings.

IX. RULES FOR OHIO JUDGES AND ATTORNEYS

- A. **Supreme Court Rules for the Government of the Judiciary of Ohio**
The Rules for the Government of the Judiciary specify that the Ohio Rules of Professional Conduct and Code of Judicial Conduct are binding upon judges and mandate disciplinary consequences for the willful breach of those standards. Additionally, these rules establish the disciplinary procedure for judges and judicial candidates; address circumstances concerning disability, retirement, removal, or suspension of judges; set forth mandatory continuing legal education for the judiciary, and address the role of the Judicial College.
- B. **Ohio Code of Judicial Conduct**
The Ohio Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. The code is intended to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies. The Ohio Code of Judicial Conduct consists of four canons, numbered rules under each canon, and comments that generally follow and explain each rule. Scope and terminology sections provide additional guidance in interpreting and applying the code. An application section establishes when the various rules apply to a judge or judicial candidate.
- C. **Supreme Court Rules for the Government of the Bar of Ohio**
The Rules for the Government of the Bar govern all aspects of the Court's regulation of attorneys in Ohio, including admission to the practice of law (Rule I), disciplinary procedure (Rule V), registration requirements (Rule VI), continuing legal education (Rule X), pro hac vice admission (Rule XII), and certification of attorneys as specialists (Rule XIV).
- D. **Ohio Rules of Professional Conduct**
The Ohio Rules of Professional Conduct establish standards of ethical conduct for all persons admitted to the practice of law in Ohio.
- E. **Rules for Appointment of Counsel in Capital Cases**
The Rules for Appointment of Counsel in Capital Cases were promulgated to promote the effective administration of justice in the appointment of attorneys as counsel for indigent defendants in capital cases. The Rules govern the certification, training, appointment, and monitoring of counsel in capital cases involving indigent defendants.

X. MISCELLANEOUS RULES

A. Mayor's Court Education and Procedure

A mayor of a municipal corporation in Ohio may conduct a mayor's court. The Mayor's Court Education and Procedure provides for annual registration of a mayor's court with the Supreme Court, sets forth additional reporting requirements and procedural requirements for operation of mayor's court, and includes suggested forms.

B. Supreme Court Rules for the Reporting of Opinions

The Supreme Court Rules for the Reporting of Opinions apply to the reporting of opinions of the Supreme Court, the courts of appeals, and the Court of Claims. These rules are designed to establish consistent standards in the reporting of opinions of the Supreme Court, the courts of appeals, and the Court of Claims.

C. Rules for the Court of Claims of Ohio

These rules govern proceedings in the Ohio Court of Claims, which was created to hear claims against the state for money damages and to hear appeals from Attorney General decisions regarding claims filed under the Victims of Crime Compensation Program.

D. Local Rules for the Court of Claims of Ohio

These rules are established by the Ohio Court of Claims and govern the details of practice and procedure before that court.

E. Local Rules

Most courts in Ohio also have adopted local rules, a particular set of rules for practice and procedure in each court. Local rules reflect the courts' traditional authority to manage their own affairs so to achieve the orderly and expeditious disposition of cases. Local court rules are posted on the Supreme Court's website and often are available on the website of the individual court. Additionally, in courts with multiple judges, individual judges may post their judicial preferences on the management of their docket and courtroom on issues such as voir dire, discovery disputes, continuances, and settlement conferences.

VI. BUSINESS ASSOCIATIONS

The statutes governing corporations and limited liability companies in Ohio are codified in Title 17 of the Ohio Revised Code. R.C. 1701 et. seq. contains Ohio's General Corporation Laws and R.C. 1705 et. seq. contains Ohio's Limited Liability Companies Law. This outline highlights some, but not all, of Ohio laws regarding corporations and limited liability companies that may differ from other states' laws and requirements. This outline does not purport to cover all aspects of Ohio law with regard to the subject matters.

I. CORPORATIONS

A. Creation and Organization of the Corporation

1. Articles of Incorporation. Any person(s) may form a corporation in Ohio, whether or not the person is resident or domiciled in Ohio, by signing and filing with the Ohio Secretary of State the Articles of Incorporation (the "Articles") of the corporation. The Articles must contain the following, pursuant to R.C. 1701.04:
 - a. The name of the corporation, which must meet the following requirements:
 - i. The name must include the words "company," "co.," "corporation," "corp.," "incorporated," or "inc.," R.C. 1701.05(A)(1);
 - ii. The name must be distinguishable from the names of any other entity authorized to do business in Ohio or any registered trade name, R.C. 1701.05(A)(2); and
 - iii. The name must not contain any language that indicates or implies that the corporation is connected to a government agency, R.C. 1701.05(A)(3).
 - b. The place in the state where the principal office of the corporation is located;
 - c. The authorized number and par value of shares with par value, and the authorized shares without par value; the express terms of the shares; and if there are classes of shares, the authorized number of each class and the express terms of each class; and
 - d. If the corporation has an initial stated capital, the amount of the stated capital.
2. Statutory Agent
Every corporation must maintain a "statutory agent," upon whom any process, notice, or demand required or permitted to be served may be served, and the written appointment of the statutory agent must be filed with the Articles. The statutory agent must be one of the following, pursuant to R.C. 1701.07:
 - a. A natural person who is resident of Ohio; or
 - b. A domestic or foreign entity that has a business address in Ohio.
3. Purpose
A corporation may be formed in Ohio for any lawful purpose or combination of purposes including, carrying on the practice of any profession. R.C. 1701.03.

4. The corporation may adopt, amend, or repeal a set of regulations for the purpose of governing the corporation, the conduct of its business, and the management of its property. R.C. 1701.11. In Ohio, the regulations are known as the “Code of Regulations,” and in other jurisdictions may be referred to as the Bylaws. The Code of Regulations (the “Code”) may be adopted, amended, or repealed in the following ways:
 - a. Within 90 days after the corporation is formed, by the directors of the corporation;
 - b. By the shareholders of the corporation at a meeting held for that purpose, by the affirmative vote of the majority voting power;
 - c. Without a meeting, by the written consent of the shareholder having two-thirds of the voting power of the corporation; or
 - d. As otherwise provided by statute.

The Code is not filed with the Ohio Secretary of State, but is maintained in the corporation’s record books.

B. The Financial Structure of the Corporation

The types of shares of stock of a corporation, common and preferred, are the same in Ohio as in other states. After the Articles have been filed, the incorporators may receive subscriptions for shares.

C. Management and Control of the Corporation

1. Shareholders

a. Annual Meeting

An Ohio corporation’s shareholders must meet annually for the election of the directors and consideration of reports. The annual meeting of shareholders is held on the date and in the manner provided in the articles or the code of the corporation. If neither the articles nor the code specify a date for the annual meeting, it must be held on the first Monday of the fourth month following the close of the fiscal year of the corporation. R.C. 1701.39.

b. Notice

Written notice stating the time, place, and purpose of a meeting of the shareholders and the means by which a shareholder can be present and vote at the meeting must be given either by personal delivery, overnight delivery, or by mail, not less than seven and not more than 60 days before the date of the meeting, unless the articles or the code specify a longer period. R.C. 1701.41. The notice of time, place, and purpose may be waived in writing or by the attendance of the shareholder at the meeting without protesting the lack of proper notice prior to the start of the meeting. R.C. 1701.42.

c. Quorum

Unless the articles or code provide otherwise, the shareholders present, in person, by proxy, or by other communications equipment at a meeting constitute a quorum, but no action may be taken or authorized by the shareholders by a lesser proportion than is required by law, the articles or the code. R.C. 1701.51.

- d. Cumulative Voting
Unless the articles or code do not permit cumulative voting by a shareholder, each shareholder has the right to vote cumulatively if written notice is given by any shareholder to the president, a vice-president, or the secretary of the corporation not less than 48 hours before the time fixed for the meeting of the shareholders for the purpose of electing directors, if notice of the meeting is given at least 10 days before the meeting. If notice has not been given at least 10 days before the meeting, than notice of the intent to vote cumulatively must be given not less than 24 hours before the meeting. R.C. 1701.55(C).

2. Directors

a. Number and Qualification

The articles or code may state the number of directors of the corporation, but in no event may it be less than one. The qualifications of the directors may be contained in the articles or code, but the directors have to be a natural person of at least 18 years of age. The directors do not have to be shareholders. R.C. 1701.56.

b. Term and Removal

Unless otherwise provided in the articles or code, each director holds office until the next annual shareholder meeting. The articles or code may provide a different term (but it cannot exceed three years from the date of the election). R.C. 1701.57. Unless the articles or code otherwise provide, all the directors or any director may be removed, without assigning cause, by a majority vote of the shareholders. R.C. 1701.58.

D. Fiduciary Duties

1. Duties

A director must perform their duties:

- a. In good faith;
- b. In a manner they reasonably believe to be in or not opposed to the best interests of the corporation; and
- c. With the care that an ordinarily prudent person in a like position would use under a similar circumstance. R.C. 1701.59.

2. Performance of Duties/Reliance

In performing his or her duties a director may rely on information, opinions, reports, or statements, including financial statements and financial data, prepared or given by:

- a. One or more directors, officers, or employees of the corporation whom the director reasonably believes are reliable and competent in the matter;
- b. Counsel, public accountants, or other persons whom the director reasonably believes the matter is within such person's professional or expert competence; and
- c. A committee of the directors upon which the director does not serve, as to matters within such committee's authority, and which the director reasonably believes merits confidence. R.C. 1701.59(C).

3. Director Liability Standard

A director will be liable for any action or omission to act if it is proven by clear and convincing evidence in a court of competent jurisdiction that the director's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the corporation, or undertaken with reckless disregard for the best interests of the corporation. R.C. 1701.59(E).

4. Determination of Reasonable Belief

In determining what the director reasonably believes to be in the best interests of the corporation, the director must consider the interests of the corporation's shareholders and, in the director's discretion, may consider any of the following:

- a. The interest of the employees, suppliers, creditors, and customers of the corporation;
- b. The economy of the nation;
- c. Community considerations; and
- d. Long-term and short-term interests of the corporation and its shareholders. R.C. 1701.59(F).

E. Close Corporations

Ohio permits a corporation to be governed as a close corporation.

1. Agreement

The close corporation agreement must have the following:

- a. Every shareholder of the corporation, whether or not entitled to vote, must have given written assent to the agreement;
- b. The agreement must be contained in the articles, the code, or another written document; and
- c. The agreement must include a statement that it is governed by R.C. 1701.591.

2. Close Corporation Agreement Provisions.

A close corporation agreement may contain provisions governing the corporation or the relationship between the shareholders, including the following:

- a. Regulation of the management of the corporation;
- b. The right of one or more shareholders to dissolve the corporation;
- c. The obligation to vote the shares of a person as specified;
- d. The designation of the persons who are the directors or officers of the corporation;
- e. The authority of any individual who holds more than one office to execute, acknowledge, or certify an instrument in more than one capacity;
- f. The terms of employment of an officer or employee;
- g. The declaration and payment of dividends or distributions;
- h. Elimination of the board of directors or restrictions on board authority;

- i. Prohibition or limitation on the issuance or sale of the corporation's shares;
- j. Arbitration of issues of deadlock; and
- k. Not holding an annual shareholder meeting. R.C. 1701.591(C).

II. LIMITED LIABILITY COMPANIES

A. Creation and Organization of the Company

1. Articles of Organization

Any person(s) may form a limited liability company in Ohio, whether or not the person is resident or domiciled in Ohio or the state of organization, by signing and filing with the Ohio Secretary of State the articles of organization of the limited liability company. The articles of organization will contain the following R.C. 1705.04:

- a. The name of the company. The name must include the limited liability company, LLC, L.L.C., limited, ltd., or ltd;
- b. The period of duration of the company, which may be perpetual in term. If the Articles of Organization or operating agreement do not specify the duration, the default will be a perpetual term; and
- c. Any other provisions from the operating agreement or that are not inconsistent with law.

2. Statutory Agent

Every limited liability company must maintain a "statutory agent," upon whom process may be served, and the written appointment, and written acceptance of the appointment, of the statutory agent must be filed with the Articles of Organization. The statutory agent must be one of the following, pursuant to R.C. 1705.06:

- a. A natural person who is resident of Ohio; or
- b. A domestic or foreign entity that has a business address in Ohio.

3. Purpose

A limited liability company may be formed in Ohio for any lawful purpose, including any profit or nonprofit purpose, except if Ohio law has provisions for a designated type of corporation. R.C. 1705.02.

4. Operating Agreement

Holders of an interest in a limited liability company are known as members. The company's operating agreement governs the relationship among the members of the company, and between the members, any managers, and the company. A company is bound by the terms of the operating agreement whether or not it executes the agreement. R.C. 1705.081.

An operating agreement may not:

- a. Vary the rights and duties set forth in the Articles of Organization;
- b. Unreasonably restrict access to books and records;
- c. Eliminate the duty of loyalty (but it may specify activities that do not

violate the duty of loyalty, and all or a designated portion of members as set forth in the operating agreement may authorize or ratify, after full disclosure of material facts, a specific act that violates the duty);

- d. Eliminate the duty of care;
- e. Eliminate the obligation of good faith and fair dealing;
- f. Eliminate the duties of a manager;
- g. Eliminate the duties of an officer;
- h. Vary the requirements to wind up the company's business; and
- i. Restrict the rights of third parties under Chapter 1705 of the Revised Code. R.C. 1705.081(B).

The operating agreement is not filed with the Ohio Secretary of State, but is maintained in the company's record books.

B. Management and Control of the Company

Unless otherwise provided in the operating agreement, the management of the company is vested in its members in proportion to their capital contributions to the company. R.C. 1705.24. If the management of the company is not reserved to its members, then the company may designate a manager or managers. R.C. 1705.25.

C. Fiduciary Duties

1. Member Duties

A member owes the company and the other members the duty of loyalty and the duty of care. R.C. 1705.281.

a. Duty of Loyalty

A member's duty of loyalty is limited to:

- i. Account to the company and hold as trustee for the company any property, profit, or benefit derived by the member in the conduct and winding up of the company's business or from the member's use of company property; and
- ii. To satisfy certain statutory requirements or to refrain from dealing with company in the winding up of the company's business as or on behalf of a party having an adverse interest to the company. R.C. 1705.281(B).

b. Duty of Care

A member's duty of care to the company in the winding up of the company's business is limited to refraining from grossly negligent or reckless conduct, intentional conduct, or knowing violation of law. R.C. 1705.281(C).

2. Manager Duties

A manager of the company who also is a member owes the company and the other members only the member duties. R.C. 1705.282(B). If a manager is not also a member, the manager owes the company the duty of good faith, in a manner the manager reasonably believes to be in or not opposed to the best interests of the company, and with the care that an ordinarily prudent person in a similar circumstance would use. R.C. 1705.29.

- a. **Manager Liability Standard**
A manager will not be found to have violated the manager's duties unless it is proved by clear and convincing evidence. R.C. 1705.29(C).
- b. **Manager Reliance**
A manager will not be considered to be acting in good faith if the manager has knowledge concerning a matter that would cause reliance by the manager on information, opinions, reports, or statements presented by others to be not warranted. R.C. 1705.29(C).



VII. CIVIL PROCEDURE

The Ohio Rules of Civil Procedure were adopted in 1970 and were patterned after the Federal Rules of Civil Procedure. However, there are significant differences between the Ohio rules and the federal rules. This outline will identify the Ohio rules that are significantly different from the federal rules.

I. COMMENCEMENT OF ACTION, VENUE, SUMMONS AND SERVICE OF PROCESS, AND TIME

A. Rule 3 – Commencement of Action

1. Civ.R. 3(A) provides that a civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant.
2. The Ohio Rules permit a limited appearance by an attorney. Civ.R. 3(B).

B. Rule 3 – Venue

Ohio's venue provisions are set forth in Civ.R. 3(C-I).

C. Rule 4 – Summons and Service of Process

1. In Ohio, the clerk of courts generally serves the summons and complaint. In federal court, the plaintiff is generally responsible for serving the summons and complaint.
2. In Ohio, if service of the summons and complaint is not made upon a defendant within six months after the filing of the complaint, and the party cannot show good cause why service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to the party or upon motion. The federal rules require service to be made within 90 days, or the plaintiff risks dismissal.
3. Pursuant to Civ.R. 4(D), Ohio permits service of summons to be waived but, unlike the federal rules, Ohio does not penalize a defendant for failing to waive service.

D. Rule 6 – Time

In Ohio, responses to a written motion, other than a motion for summary judgment, may be served within 14 days after service. Responses to motions for summary judgment may be filed within 28 days after service of the motion. A reply to a response to a written motion may be filed within seven days after service. Civ.R. 6(C).

II. PLEADINGS AND MOTIONS

A. Rule 7 – Corporate Disclosure Statement

Ohio does not have a counterpart to Fed.R.Civ.P. 7.1, which requires a party to file a corporate disclosure statement.

B. Rule 8 – General Rules of Pleading

In Ohio, pursuant to Civ.R. 8(A), if a party seeks an amount greater than \$25,000, the party shall state that fact in its complaint, counterclaim, cross claim or third-party claim, but shall not specify in the demand the amount sought, unless the

claim is based upon an instrument (such as a written contract) required to be attached pursuant to Civ.R. 10. At any time after the pleading is filed, the opposing party may request that the party seeking recovery provide a written statement of the amount of recovery being sought.

Ohio specifically identifies discharge in bankruptcy and want of consideration for a negotiable instrument as affirmative defenses. Civ.R. 8(C).

C. Rule 10 – Form of Pleadings

Ohio requires that when any claim or defense is based upon an account or other written instrument, a copy of the account or written instrument must be attached to the pleading. If the account or written instrument is not attached, the reason for the omission must be stated in the pleading. Civ.R. 10(D)(1).

Ohio also requires that an “affidavit of merit” accompany any complaint that contains a medical, dental, optometric or chiropractic claim. Civ.R. 10(D)(2).

D. Rule 11 – Signing of Pleadings, Motions or Other Documents

1. Civil Rule 11 states that an attorney’s signature constitutes “a certificate” by the attorney that the attorney has read the document and that to the best of the attorney’s knowledge, information, and belief there is good ground to support it. Fed.R.Civ.P. 11 contains significantly different language.

2. In addition to Civ.R. 11, R.C. 2323.51 provides that a party adversely affected by “frivolous conduct” may seek an award of court costs, reasonable attorney’s fees and other reasonable expenses that have been incurred in connection with a civil action or appeal.

3. Ohio Civil Rule 11 does not provide the “safe harbor” set forth in Fed.R.Civ.P. 11(c)(2).

E. Rule 12 – Defenses and Objections

1. Civ.R. 12(A) requires that an answer to a complaint be filed within 28 days after service.

2. While Ohio permits a waiver of service of summons, no additional time to respond to the complaint is provided if a defendant agrees to waive service.

F. Rule 16 – Pretrial Procedure

1. Unlike the Federal Rules, Ohio does not require the court to issue a scheduling order.

2. Ohio does not specifically require trial counsel to attend a final pretrial.

3. Civ.R. 16 does not contain a provision regarding sanctions.

III. PARTIES

A. Rule 19 – Joinder

In addition to the joinder provisions set forth in Civ.R. 19, Civ.R. 19.1 sets forth provisions pertaining to compulsory joinder.

IV. DISCOVERY

A. Rule 26 – General Provisions Regarding Discovery

1. Ohio does not require the parties to submit initial disclosures.
2. Civ.R. 26 does not contain the “proportionality” limitation on discovery set forth in Fed.R.Civ.P. 26(b)(1).
3. Unlike Fed.R.Civ.P. 26(d), Ohio does not require a party to wait until the initial planning conference before serving discovery.
4. Unlike Fed.R.Civ.P. 26(f), Ohio does not require the parties to participate in a planning conference.

B. Rule 26 – Depositions Upon Oral Examination

Unlike the federal rules, the Ohio rules do not limit the number or length of depositions and the Ohio rules permit a party to take a deposition at any time after the commencement of an action.

C. Rule 32 – Using Depositions in Court Proceedings

Civ.R. 32(A)(3)(b) allows a party to use a deposition of a witness who is beyond the subpoena power of the court in which the case is pending or resides outside of the county in which the case is pending, unless the absence was procured by the party offering the deposition. The federal rules permit the use of the deposition of a witness who is more than 100 miles from the place of hearing or trial.

Civ.R. 32(A)(3)(d) allows a party to use a deposition of a physician or a medical expert even if the physician or medical expert resides in the county in which the case is pending. The federal rules have no similar provision.

D. Rule 33 – Interrogatories to Parties

In Ohio, a party, without leave of court, may serve up to 40 interrogatories. The federal rules permit 25 interrogatories without leave of court or stipulation by the parties.

In Ohio, the party upon whom the interrogatories have been served is generally required to respond to the interrogatories within 28 days. The federal rules require the responding party to serve its answers and objections within 30 days.

E. Rule 34 – Producing Documents

Civ.R. 34(B)(1) requires a party to serve a written response within 28 days after service of the request. The federal rules require that a party to whom the request is directed respond within 30 days after being served.

Civ.R. 34(D) sets forth a procedure to allow a person who claims to have a potential cause of action to obtain discovery by filing a petition for discovery. There is no similar provision in the federal rules.

F. Rule 36 – Requests for Admission

Civ.R. 36 provides that a request for admission is deemed admitted unless the party to whom the request is directed serves a written answer or objection within 28 days after service of the request. Fed.R.Civ.P. 36 provides that the request is deemed admitted unless a written answer or objection is served within 30 days after service of the request.

G. Rule 37 – Sanctions

Civ.R. 37(F), pertaining to sanctions against a party that fails to provide electronically stored information, is significantly different from its federal counterpart.

V. TRIALS

A. Rule 40 – Pre-Recorded Testimony

Civ.R. 40 specifically permits all of the testimony at trial to be by video recording. There is no similar provision in the federal rules.

B. Rule 41 – Dismissal of Actions

In Ohio, pursuant to Civ.R. 41(A)(1), a plaintiff may voluntarily dismiss all claims asserted by that plaintiff against a defendant by filing a notice of dismissal at any time before the commencement of trial unless a counterclaim related to plaintiff's claims remains pending. The Supreme Court of Ohio has construed the language "all claims" literally, and held that Civ.R. 41(A)(1) does not allow for the dismissal of a portion of the claims against a defendant. *Pattison v. W.W. Grainger, Inc.*, 120 Ohio St.3d. 142 (2008). The federal rules do not permit a plaintiff to unilaterally dismiss an action after the opposing party has filed an answer or a motion for summary judgment.

C. Rule 42 – Consolidation; Separate Trials

Civ.R. 42 contains a provision regarding asbestos, silicosis, or mixed-dust disease claims. There is no similar provision in the federal rules.

D. Rule 45 – Subpoena

In Ohio, a non-party witness can be compelled to attend and to give testimony at a trial or hearing at any place within the state, and can be compelled to attend a deposition in the county where the deponent resides or is employed or transacts business in person, or at any other convenient place that is ordered by the court. Fed.R.Civ.P. 45 is significantly different.

E. Rule 47 – Jurors

Civ.R. 47 explicitly permits the court to allow jurors to take notes during trial and/or propose questions for the court to ask of the witnesses. There is no similar provision in the federal rules.

F. Rule 48 – Juries - Majority Verdicts, Stipulation of Number of Jurors

In Ohio, the concurrence of no less than three-fourths of the jurors is required in order for a jury to render a verdict. The federal rules require that a verdict be unanimous.

Civ.R. 48 permits the parties to stipulate to the number of jurors, provided that the jury consist of no more than eight jurors, except in appropriations cases. The federal rules require that a jury consist of at least six and no more than 12 jurors.

G. Rule 50 – Motion for a Directed Verdict, for Judgment, or for Judgment Notwithstanding the Verdict or in Lieu of Verdict

Civ.R. 50 identifies the motion as a "Motion for Directed Verdict." The federal rules identify the motion as a "Judgment as a Matter of Law."

Civ.R. 50(B) specifically states that a party does not have to make a motion for directed verdict in order to file a motion for judgment notwithstanding the verdict. Fed.R.Civ.P. 50 states that a motion for judgment as a matter of law can be “renewed” following a trial, which implies that a motion for judgment as a matter of law must have been initially made before the verdict was rendered.

H. Rule 52 – Findings by the Court

If a case is tried without a jury, Civ.R. 52 requires the court to issue findings of fact and conclusions of law only upon request of a party. Fed.R.Civ.P. 52 requires a court to issue findings of fact and conclusions of law even if the parties have not made a request for findings of fact and conclusions of law.

I. Rule 53 – Magistrates

Civ.R. 53, which pertains to magistrates, is significantly different from Fed.R.Civ.P. 53, which pertains to masters.

VI. JUDGMENT

A. Rule 54 – Judgments; Costs

Unlike Fed.R.Civ.P. 54(d), Civ.R. 54(D) does not permit the clerk of court to tax costs.

B. Rule 55 – Default

Civ.R. 55(A) provides that a party seeking default judgment must move the court in writing or orally for such judgment. The federal rules require a party to first request the clerk of court to enter default.

C. Rule 56 – Summary Judgment

Civ.R. 56(A) provides that, if a case was set for pretrial or trial, a motion for summary judgment may be made only with leave of court. Fed.R.Civ.P. 56 provides that, unless a different time is set by local rule or court order, a party may file a motion for summary judgment at any time until 30 days after the close of discovery.

D. Rule 62 – Stay of Proceedings to Enforce a Judgment

Unlike Fed.R.Civ.P. 62, Civ.R. 62 does not provide for an automatic stay of execution on a judgment for 30 days after entry of the judgment.

E. Rule 65.1 – Civil Protection Orders

Civ.R. 65.1 pertains to civil protection orders. There is no similar provision in the federal rules.

F. Rule 68 – Offers of Judgment

Civ.R. 68 is significantly different from Fed.R.Civ.P. 68, as it does not provide for the recovery of costs if a party refuses to accept an offer of judgment.

VII. PROBATE, JUVENILE AND DOMESTIC RELATIONS PROCEEDINGS

A. Rules 73-75 – Probate and Domestic Relations Proceedings

Civ.R. 73-75 pertain to probate and domestic relations proceedings. There are no similar provisions in the federal rules.

VIII. COMMERCIAL TRANSACTIONS

Most of the material statutes governing commercial transactions in Ohio are codified in Title 13 of the Ohio Revised Code. Ohio's version of the Uniform Commercial Code (UCC) is codified at Ohio Rev. Code Chapters 1301 through 1310. The section numbering system used in R.C. 1301 (General Provisions) and R.C. 1309 (Secured Transactions) generally follows the numbering system used in Articles 1 and 9 of the UCC. For example, the definitions that appear at Section 1-201 of the UCC are codified at R.C. 1301.201, and the requirements for perfecting a security interest set forth in Section 9-312 of the UCC are found in R.C. 1309.312. All other chapters of Ohio's version of the UCC do not follow the UCC section numbering system. This is not because Ohio has made material modifications to those chapters, but is due to mostly stylistic changes made to the UCC by the Ohio legislature when enacting the UCC.

Title 13 of the Ohio Revised Code also contains various commercial transaction statutes other than the UCC, e.g. statutes governing mechanics liens, assignments for the benefit of creditors, fraudulent transfers, and certain consumer protection statutes. Set forth below are several topics that are unique to Ohio law.

I. MOTOR VEHICLES

A. Evidence of Ownership

R.C. 4505.04(A) governs the ownership of motor vehicles. It provides, in part: "No person acquiring a motor vehicle from its owner, whether the owner is a manufacturer, importer, dealer, or any other person, shall acquire any right, title, claim, or interest in or to the motor vehicle until there is issued to the person a certificate of title to the motor vehicle, or delivered to the person a manufacturer's or importer's certificate for it..."

R.C. 4505.04(A) controls provisions of the Uniform Commercial Code regarding competing claims of ownership of a motor vehicle. Title does not pass without the issuance or delivery of the certificate of title, regardless of whether one of the parties would qualify as a bona fide purchaser for value without notice. *Saturn of Kings Automall, Inc. v. Mike Albert Leasing, Inc.*, 92 Ohio St. 3d 513, 520 (2001).

B. Security Interests

The perfection, duration, and renewal of a security interest in a motor vehicle is governed by R.C. 4505.13. Other issues respecting a security interest, e.g. creation, validity, and assignment, are governed by R.C. Chapter 1309. Under R.C. 4505.13, there are three ways to perfect a security interest in a motor vehicle:

1. A notation of the security interest by the clerk of the court of common pleas on the face of the certificate evidencing ownership of the vehicle. R.C. 4505.13(B).
2. If a physical certificate of title has not been issued, by the entry of a notation of the security interest by the clerk in an automated title processing system. R.C. 4505.13(B).
3. If the motor vehicle is held as inventory for sale by a dealer, by filing of a financing statement in accordance with R.C. 1309. R.C. 4505.13(A)(2).

II. WATERCRAFT

A. Evidence of Ownership

R.C. 1548.04 governs the ownership of watercraft. It provides, in part, “No person acquiring a watercraft or outboard motor from the owner thereof, whether such owner is a manufacturer, importer, dealer, or otherwise, shall acquire any right, title, claim, or interest in or to such watercraft or outboard motor until such person has had issued to him a certificate of title to such watercraft or outboard motor, or delivered to him a manufacturer’s or importer’s certificate for it.”

No court in any case at law or in equity shall recognize the right, title, claim, or interest of any person in or to any watercraft sold or disposed of, mortgaged, or encumbered, unless evidenced by a certificate of title or a manufacturer’s or importer’s certificate or by admission in the pleadings or stipulation of the parties.

B. Security Interests

Under R.C. 1548.20, a security interest in watercraft is perfected by:

1. Possession of the manufacturer’s or importer’s certificate by the secured party.
2. If a certificate of title was issued, by notation of the security interest by the clerk of court of common pleas upon the face of the physical certificate of title that was issued.
3. If a physical certificate has not been issued, by notation of the security agreement by the clerk into the automated title processing system.
4. The sale of any watercraft by its owner, with the knowledge or with the knowledge and consent of the holder of any security interest, lien, mortgage, or encumbrance on the watercraft, shall not render the security interest lien, mortgage, or encumbrance ineffective as against the creditors of the owner or against holders of subsequent security interests, liens, mortgages, or encumbrances upon the watercraft or outboard motor. R.C. 1548.20.

III. INTEREST AND USURY

A. The parties to an instrument in writing for the forbearance or payment of money at any future time may not agree therein for the payment of interest at a rate exceeding 8 percent per annum payable annually, except for the following situations (R.C. 1343.01(A)):

1. If the original principal amount exceeds \$100,000. R.C. 1343.01(B)(1);
2. If the debt is a debit balance payable on demand owing by a customer to a registered broker dealer and secured by securities. R.C. 1343.01(B)(2);
3. If the loan is secured by a mortgage on real estate and the loan was approved or guaranteed by certain agencies of the federal government. R.C. 1343.01(B)(3);
4. If the loan is secured by a mortgage or real estate which does not qualify under R.C. 1343.01(B)(3), except that such rate shall not exceed 8 percent in excess of the federal reserve discount rate on a 90-day commercial paper at the time the mortgage is executed. R.C. 1343.01(B)(4);
5. If the loan is payable on demand or in one installment and is not secured by household furnishings or other personal, family, or household goods. R.C. 1343.01(B)(5); or

6. If the loan is a business loan to a business association or partnership, a sole proprietor, limited partnership, persons operating a business as joint venturers, joint tenants, or tenants in common. R.C. 1343.01(B)(6).
- B. In cases when money becomes due on an instrument in writing, on account, upon a settlement, upon a verbal contract in which the parties have not stipulated to a rate of interest, and upon all judgments, the creditor is entitled to interest at the federal short term rate, as defined annually by the tax commissioner plus 3 percent. R.C. 1343.03.
 - C. All payments of money or property made by way of usurious interest in excess of the rate allowed by law shall be deemed applied to the principal of the debt. R.C. 1343.04.

IV. LOAN AGREEMENTS

- A. Attorneys' Fees
 1. A commitment to pay attorneys' fees included in a contract of indebtedness is enforceable only if the indebtedness at the time the contract was entered into exceeds \$100,000, and it obligates the payment of a reasonable amount. R.C. 1319.02(D).
 2. The following are deemed reasonable attorneys' fees unless a court determines otherwise:
 - a. Attorneys' fees in an amount equal to a percentage of principal interest and other charges, as specified in the contract. R.C. 1319.02(D)(1).
 - b. An amount equal to the attorneys' fees customarily charged by the attorney rendering the services. R.C. 1319.02(D)(2).

- B. Statute of Frauds

No party to a loan agreement between a financial institution and a borrower may bring an action on a loan agreement unless the agreement is in writing and signed by the party to be charged, unless the loan agreement is in the form of a promissory note or other document that was intended by the parties to be signed only by the borrower, and was signed by the borrower and accepted by the financial institution. R.C. 1335.02(B).

The terms of a loan agreement between a financial institution and a borrower are determined solely from the written loan agreement, and shall not be varied by any oral agreement that are made or discussions that occur before or contemporaneously with the execution of the loan agreement. R.C. 1335.02(C).

The statute of frauds found in R.C. 1335.02 does not apply when the proceeds of the loan agreement are used primarily for personal, household, or family purposes and those proceeds are less than \$40,000.

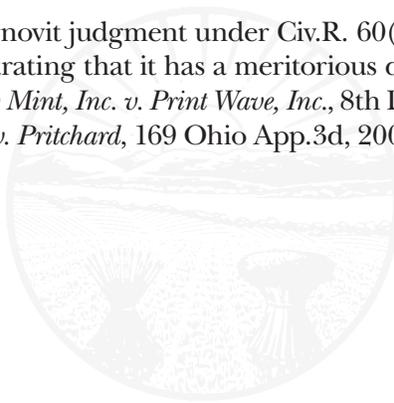
V. COGNOVIT PROMISSORY NOTES

A cognovit promissory note evidencing a non-consumer loan, whereby the borrower waives the right to receive notice and a hearing, allows the creditor to appoint an attorney to confess judgment against the borrower, and waives most defenses, counter-claims and rights to appeal, is enforceable if all statutory requisites are satisfied. R.C. 2323.13.

The court shall not enter judgment on a cognovit note unless:

- A. A copy of the note is attached to the complaint and the original is produced to the court. R.C. 2323.13(A).
- B. The complaint states the last known address of the defendant. R.C. 2323.13(B).
- C. At least one maker resides in the jurisdiction or executed the note in the jurisdiction. R.C. 2323.13(A).
- D. The note includes the statutorily required warning language immediately above or below the maker's signature. R.C. 2323.13(D).
- E. The default is a payment default. R.C. 2323.13(D).

A court may vacate a cognovit judgment under Civ.R. 60(B) if the judgment debtor files a timely motion demonstrating that it has a meritorious defense or claim to assert if the judgment is vacated. *Kelly Mint, Inc. v. Print Wave, Inc.*, 8th Dist. Cuyahoga No. 95371, 2011-Ohio-940; *Lykins Oil Co. v. Pritchard*, 169 Ohio App.3d, 2006-Ohio-5262 (1st Dist.).



IX. CONSTITUTIONAL LAW

Ohio interprets the United States Constitution as interpreted by the United States Supreme Court and other federal courts. Ohio constitutional law distinctions are those situations in which Ohio courts will apply the Ohio Constitution, rather than the United States Constitution.

I. REGULATION OF OHIO STATE GOVERNMENT.

The Ohio Constitution establishes the three branches of state government, as well as many other subdivisions of state government and non-government entities (elections, education, political subdivisions, corporations, livestock, etc.). Much litigation under the Ohio Constitution involves whether regulated entities have complied with their constitutional obligations or exceeded the scope of their constitutional authority.

A. Broad Grants of Authority

One significant distinction between the United States and Ohio Constitutions is that the authority of a federal governmental body must be expressly granted by the U.S. Constitution. The Ohio Constitution grants broad authority to the government, so the litigated questions often focus on whether that authority was expressly limited by the statutes or ordinances enacted under the constitution's broad grant of authority. See *State ex rel. Fulton Foundry & Mach. Mach. Co. Morse*, 101 Ohio App. 258, 262 (10th Dist.1956). For example:

1. Jurisdiction of Courts

In addition to the provisions in the Ohio Constitution, the subject matter jurisdiction of specific types of courts (common pleas, general and specific divisions; municipal; appellate; etc.) is limited to the authority set forth in the Ohio Revised Code. See, e.g., R.C. 1901.18; R.C. 2305.06.

2. Home Rule

The home rule provisions of the Ohio Constitution give municipalities the broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a state-wide nature or interest. Ohio Constitution, Article XVIII, Section 3. Ordinances enacted under a municipality's home rule authority often are challenged as to whether they conflict with other provisions of the Ohio Constitution and/or the Ohio Revised Code. See, e.g., *Ohioans for Concealed Carry v. City of Columbus*, 10th Dist. Franklin No. 18AP-605, 2019-Ohio-310, appeal accepted on other grounds, *11/26/2019 Case Announcements*, 2019-Ohio-4840.

II. BILL OF RIGHTS - ARTICLE 1 OF THE OHIO CONSTITUTION

A. Equal or Greater Protection of Rights

In some situations the Ohio Constitution may provide greater protection of individual liberties than the United States Constitution. "As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups." *Humphrey v. Lane*, 89 Ohio St.3d 62, 68 (2000).

B. Comparing the Two Constitutions

To determine whether the Ohio Constitution controls, a comparison of the two constitutions involves more than “a mere word count” but must amount to a “qualitative difference.” *Humphrey*, 89 Ohio St.3d at 68. A few examples of rights that are afforded greater protection under the Ohio Constitution are listed below.

1. Free Exercise of Religion

Because the Ohio Constitution protects the free exercise of religion and also prohibits “any interference with the rights of conscience” it provides broader protection of religious freedom than the United States Constitution. *Humphrey*, 89 Ohio St.3d at 68. To justify the state’s infringement on one’s sincerely held religious beliefs, the state must demonstrate that the restriction promotes a compelling state interest and is the least-restrictive means of furthering that interest. *Id.*

2. Unreasonable Searches and Seizures

“Section 14, Article I of the Ohio Constitution provides greater protection than the Fourth Amendment to the United States Constitution against warrantless arrests for minor misdemeanors.” *State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, syllabus. It was unreasonable to arrest a defendant for a minor misdemeanor when none of the statutory exceptions applied and, as a result, evidence seized incident to that unlawful arrest must be suppressed. *Id.* at ¶ 25. Similarly, a traffic stop for a minor misdemeanor made outside a police officer’s statutory jurisdiction also violates this provision of the Ohio Constitution. *State v. Brown*, 143 Ohio St.3d 444, 2015-Ohio-2438, ¶ 26.

3. Self-Incrimination

Article I, Section 10, of the Ohio Constitution provides greater protection to criminal defendants than the Fifth Amendment to the United States Constitution. *State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, ¶ 48. The protection under the Ohio Constitution extends to physical evidence seized as a result of pre-Miranda Statements. *Id.* at ¶ 49.

4. Property Rights

The Ohio Constitution provides protections from government appropriation of private property in certain circumstances when such takings are expressly permitted under federal law. *Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, ¶ 1 of the syllabus and ¶ 5, 76–80.

5. Rights for Juveniles

The Ohio Constitution provides a juvenile a broader right to counsel than that afforded by the due process clause of the Fourteenth Amendment to the United States Constitution. *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, ¶ 23–24. Under the Ohio Constitution, juveniles receive double-jeopardy protections that go beyond those provided by the United States Constitution. *In re A.G.*, 148 Ohio St.3d 118, 2016-Ohio-3306, ¶ 12–13.

X. CONTRACTS

Generally, Ohio case law in the area of contracts follows the prevailing common law pertaining to express and implied contracts, quasi-contracts, and contracts implied in law. Some common law distinctions are noted below. Ohio's statutory regulation of certain businesses also affects contract law in those areas. This outline includes some examples of Ohio statutory law that may affect contracts within the realm of those regulated businesses.

I. COMMON LAW

A. Recovery of Nonpecuniary Damages

Emotional distress may be recoverable by a buyer in an action on a seller's breach of contract if the buyer suffers bodily harm or the breach was likely to cause severe emotional distress. *Kishmarton v. William Bailey Construction, Inc.*, 93 Ohio St.3d 226 (2001). The *Kishmarton* decision was expressly based on Section I, Article 16 of the Ohio Constitution, which provides that every person shall have a remedy in the due course of the law for an injury done to him.

B. Covenant Not to Compete

To enforce a covenant not to compete, an employer must prove that the balance tips in favor of enforcement (weighing the need to protect the employer, burden on the employee, and public interest). *Lake Land Emp. Group of Akron, L.L.C. v. Columber*, 101 Ohio St.3d 242, 2004-Ohio-786.

II. STATUTORY LAW

A. Sales of Goods

1. Commercial Sales

Ohio applies Article II of the Uniform Commercial Code to contracts involving the sale of goods as set forth in R.C. Chapters 1301-1305 and 1307-1310. If a contract involves both goods and services, the predominant purpose controls. *Cincinnati Gas & Elec. Co. v. General Elec. Co.*, 656 F.Supp. 49 (S.D. Ohio 1986).

2. Consumer Sales

The Consumer Sales Practices Act protects the buyers in certain consumer transactions, such as home solicitation sales, from unfair, deceptive, or unconscionable by the seller. R.C. Chapter 1335. The Act potentially provides more remedies to the buyer (attorney fees, treble damages) than a breach of contract action.

B. Statutory Regulation in Other Business Areas

The Ohio Revised Code regulates the authority and responsibilities of entities in several specific business areas, including banking, insurance, corporations, employment, boards of education, and public utilities. The statutes regulating these businesses affect the enforceability of contracts in those areas, as well the remedies available to the nonbreaching party. Ohio statutory law may affect the contract law in these areas. A few examples are identified here.

1. Bank Loans

R.C. 1109.20 limits the rate of interest a bank may charge on a loan to 25 percent. R.C. 1109.23 provides the circumstances under which a state bank may legally enter a loan contract with one of its officers, directors, or shareholders.

2. Insurance Policies

R.C. Chapter 3915 regulates life-insurance policies, including some terms of the policies required for enforceable contracts.

R.C. Chapter 3923 regulates sickness and accident insurance, including form policies, which must be approved by the superintendent of insurance.

R.C. Chapter 3937 regulates casualty and motor vehicle insurance, including some terms that must be provided or offered to the insured and the reasons and procedures required for an insurer to cancel or refuse to renew a policy.

3. Board of Education Contracts

R.C. Chapter 3313 sets forth several specific details about the authority and responsibilities of boards of education. For example, R.C. 3313.95 sets forth the requirements for a board of education contracting with police for drug abuse programs.

The validity of contracts executed by a board of education may also depend on whether the board complied with other statutory requirements, such as open meetings. See, e.g., R.C. 3313.14 – 33.13.16.

C. Statute of Frauds

Ohio's statute of frauds is explicitly set forth in R.C. 1335.05. The statute incorporates prior common law in this area. A contract or modification of a contract for the purchase or sale of securities, however, is not subject to the statute of frauds. R.C. 1308.07.

D. Limitations Periods for Filing an Action on a Contract

1. Statutes of Limitations

Contract actions generally must be filed within the applicable statute of limitations. Examples are as follows:

a. Written Contract

Generally, an action on a written contract must be filed within eight years after the cause of action accrued. R.C. 2305.06. This statute was amended in 2012 to replace the prior limitations period of 15 years.

b. Sales Contracts

An action for breach must be filed within four years after the breach occurred. R.C. 1302.98.

c. Action on a Note

R.C. 1303.16 sets forth several different statutes of limitations, depending on the circumstances and type of action on the note.

d. Contract with the State

A claim that the state breached a contract must be filed within two years of the breach. R.C. 2743.16(A).

2. As Otherwise Provided in Contract

Contracting parties may agree to a different limitations period, however, which generally will be binding on the parties. For example, insurance contracts typically provide a much shorter period within which the injured party must file a claim under the contract.



XI. CRIMINAL LAW AND PROCEDURE

Unlike many other jurisdictions, Ohio does not recognize common-law crimes. All Ohio crimes are defined by statute, primarily within Title 29 of the Ohio Revised Code. R.C. 2901.03(A) explicitly provides that conduct is not criminal unless “it is defined as an offense in the Revised Code.” Traffic crimes are set forth in R.C. Chapter 4511.

Ohio Criminal Procedure primarily follows the law set forth by the United States Supreme Court and other federal courts applying the United States Constitution. Significant exceptions are noted in the outline.

I. HOMICIDE

A. Intentional Killings

1. Aggravated Murder

R.C. 2903.01 prohibits aggravated murder, which includes purposeful killings: with prior calculation and design; killing a child under 13 years old; or killing a law enforcement officer, first responder, or military person under certain circumstances. It also includes felony murder (while attempting, committing, or fleeing after attempting or committing one of certain enumerated serious felonies).

2. Murder

R.C. 2903.02 prohibits the purposeful killing of another that does not satisfy the requirements for aggravated murder. It also includes other violent felony murders not set forth in R.C. 2903.01.

3. Voluntary Manslaughter

R.C. 2903.03(A) prohibits a knowing killing committed while “under the influence of sudden passion or in a sudden fit of rage.”

B. Unintended Killings

1. Involuntary Manslaughter

R.C. 2903.04 prohibits causing the death of another while committing or attempting to commit a misdemeanor or felony not specified in R.C. 2903.01.

2. Reckless and Negligent Homicide

R.C. 2903.05 and 2903.06 are lesser offenses that prohibit the reckless or negligent killing of another.

3. Vehicular Homicide

R.C. 2903.06 prohibits causing another’s death by means of a motor vehicle (which is defined to include snowmobiles, watercraft, etc.) while violating certain traffic laws or ordinances or while acting recklessly or negligently in a construction zone.

II. OTHER CRIMES

A. Theft

The common law crimes of larceny, embezzlement, and false pretenses fall within the broad category of theft in Ohio. R.C. 2901.32(A) prohibits knowingly obtaining or exerting control over the property or services of another, with

purpose to deprive the owner, in one of the following ways: without consent or beyond the scope of consent, or by deception, threat, or intimidation. The severity of the offense will vary based on the value and/or dangerous nature of the property and the vulnerability of the victim.

B. Robbery

R.C. 2911.02(A) prohibits any person “attempting or committing a theft offense or in fleeing immediately after the attempt or offense” to have a deadly weapon on his person or under his control; inflict, attempt, or threaten to inflict physical harm; or to use or threaten the immediate use of force. Note that the offender needs only have a deadly weapon on his person or in his control; the weapon need not be brandished.

C. Burglary

R.C. 2911.12(A) prohibits the unlawful entry (criminal trespass), by force, stealth, or deception, into an occupied structure for the purpose of committing a criminal offense. An occupied structure is defined broadly to include structures that were intended to serve as a temporary or permanent dwelling, even if no person is present during the offense. Burglaries committed when someone is or is likely to be present in the “occupied structure” are more serious offenses.

The most serious burglary, aggravated burglary, requires the use of a deadly weapon or resulting harm or attempted physical harm to the victim. R.C. 2911.11. The lesser offense of breaking and entering, set forth in R.C. 2911.13, is a criminal trespass into an unoccupied structure for the purpose of committing a crime.

D. Assault and Battery

Ohio merges the offenses of assault and battery into assault crimes. Ohio’s assault crimes, set forth in R.C. 2903.13-2903.16, are akin to common law battery, as they require actual contact with and harm to the victim. The degree of the offense and corresponding punishment depends on the offender’s state of mind, the severity of the injury sustained, and certain special relationships between the offender and the victim (such as parents or caretakers of children or disabled victims).

The menacing and stalking crimes set forth in R.C. 2903.21-2923.22 are similar to common law assault crimes because they do not require physical contact or physical injury. Each crime involves causing the apprehension of harm and range in severity depending on the circumstances.

E. Rape

1. Gender Neutral

Any “person” can be the victim and/or the perpetrator of a rape. R.C. 2907.02.

2. Spouse as Victim

A spouse can be the victim of a rape if the victim spouse lived separate from the offender spouse or if the offender spouse engaged in sexual conduct with the victim spouse by the use of force. R.C. 2907.02(A)(1)-(2).

3. Statutory Rape

R.C. 2907.02(A)(1)(b) applies to any victim under the age of 13, whether the offender knew the victim’s age.

F. Kidnapping

R.C. 2905.01(A) prohibits the use of force, threat, or deception to move (however slight) or restrain another for any one of several specified purposes, including to hold for ransom; to aid in committing another serious crime or escape thereafter; or to terrorize and/or inflict serious harm on the victim or another. R.C. 2905.01(B) includes the use of force, threat, or deception to move or restrain another under circumstances that create a substantial risk of serious physical harm to the victim. In the case of a child under the age of 13 or an incompetent adult, no force is required and causing any physical harm to a child is sufficient to establish the offense.

The offenses of abduction and unlawful restraint involve lesser degrees of culpability by the offender and/or risk of harm to the victim. R.C. 2905.02; R.C. 2905.03.

G. Arson

Arson crimes are set forth in R.C. 2909.02 and 2902.03. Ohio arson crimes are more broad than common law arson, because they merely require that one, by means of fire or explosion, knowingly causes or creates a substantial risk of harm to any property, including one's own property, if done for fraudulent reasons.

III. INCHOATE CRIMES

A. Attempt

1. Legal Impossibility

Unlike many other jurisdictions, legal impossibility is not a defense to the Ohio crime of attempt. R.C. 2923.02(B).

2. Abandonment

Ohio does, however, recognize the defense of abandonment if the defendant fully abandoned the attempt to commit the crime or prevented its commission "under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose." R.C. 2903.02(D).

B. Conspiracy

The crime of conspiracy under R.C. 2923.01 prohibits conspiracy to commit certain enumerated offenses (such as murder, kidnapping, arson, and other serious offenses). Conspiracies to commit other offenses not set for in this statute are chargeable under the complicity statute. *See* R.C. 2903.03(A)(3). A conviction of conspiracy merges into the completed crime. R.C. 2923.01(G).

C. Complicity

Ohio's crime of complicity prohibits actions by one who solicits, procures, or conspires with another to commit an offense, aids or abets its commission, or causes an innocent or irresponsible person to commit the offense. Unlike some other jurisdictions, an accomplice to a crime must be involved in the planning and commission of the crime. R.C. 2923.03.

Ohio does not recognize a complicity crime for persons helping after the completion of the crime (accessory after the fact). Instead, one who assists after the completion of a crime by concealing or otherwise preventing the detection, prosecution, or punishment of the criminal may be guilty of obstruction of justice under R.C. 2921.32(A).

IV. GENERAL PRINCIPLES

A. Acts and Omissions

Liability is based on conduct which includes either a voluntary act, or an omission to perform an act or duty which the person can perform. R.C. 2901.21.

B. State of Mind

1. Required Mental State

The Ohio Revised Code requires a culpable mental state in addition to a physical act for criminal liability. R.C. 2923.21(A). The culpable mental states are purpose, knowledge, recklessness, and negligence.

2. Strict Liability

In Ohio, where a statute is silent as to mens rea, strict liability may not be assumed. The statute must plainly indicate the General Assembly's intent to impose strict criminal liability. Where a portion of a statute fails to prescribe a mens rea for an element of the offense, strict liability will only be found when the statute plainly indicates a purpose to impose strict liability.

C. Responsibility

1. Mental Disorder

A person is not guilty by reason of insanity only if the person proves that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts. R.C. 2901.01(A)(14). Proof that a person's reason, at the time of the commission of an offense, was so impaired that the person did not have the ability to refrain from doing the does not constitute a defense. R.C. 2945.391.

2. Intoxication

Voluntary intoxication does not affect a mental state that is an element of a criminal offense. R.C. 2901.21(C). It also does not relieve a person of a duty to act if an omission is the basis of criminal liability. However, voluntary intoxication may be admitted to show that the defendant was physically incapable of performing the act charged.

D. Justification and Excuse

In Ohio, the common law defenses of self-defense, defense of others, and defense of home have been replaced by statutory reforms. Ohio has enacted the "castle doctrine" that shifted the burden of proof and restrictions on use of deadly force in cases where the defendant acted inside the defendant's home or vehicle.

The General Assembly also changed the burden of proof for self-defense. Whenever there is evidence presented that tends to support that the accused used force in self-defense, defense of another, or defense of that person's residence, the state has the burden to prove beyond a reasonable doubt that the defendant did not use the force in self-defense, defense of another, or defense of that person's residence.

E. Jurisdiction

In Ohio, the accused is guaranteed a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed. Ohio Constitution, Article I, Section 10.

Criminal law jurisdiction in Ohio is expanded beyond the common law concept. Territorial jurisdiction is liberally construed, within constitutional limitations, to allow Ohio the broadest possible jurisdiction over offenses and persons committing offenses in, or affecting, Ohio. R.C. 2901.11.

The general venue provision vests power to hear a case in any court having subject matter jurisdiction located in the county where the offense or any element thereof was committed. R.C. 2901.12(A).

Venue is not an element of a criminal offense. The elements of the offense are only those acts that are set forth in the Revised Code. Venue is the place where the acts occurred and where the defendant may be tried for committing such acts. Nevertheless, the state must prove venue beyond a reasonable doubt unless the defendant waives it.

Where any element of an offense was committed in an aircraft, motor vehicle, train, watercraft, or other vehicle of transit, and where it is uncertain in which jurisdiction the offense was committed, the accused may be tried in any county through which the vehicle passed. R.C. 2901.12(B).

V. CONSTITUTIONAL PROTECTION OF ACCUSED PERSONS

A. Arrest, Search and Seizure

Common law principles regarding arrest have been incorporated in the Ohio Revised Code.

In Ohio, a person does not have a privilege to resist an unlawful arrest. In the absence of excessive or unnecessary force by an arresting officer, a private citizen may not use force to resist arrest by one they know or have good reason to believe is an authorized police officer engaged in the performance of their duties, whether the arrest is illegal under the circumstances.

Ohio law provides that any person may be arrested for a felony, without a warrant, upon reasonable cause to believe that a felony was committed and reasonable cause to believe that the person arrested is guilty of the offense.

Warrantless misdemeanor arrests may be made only by a police officer, acting within the officer's jurisdiction, and if the misdemeanor is committed in the officer's presence. R.C. 2935.03. The "in the officer's presence" requirement does not apply to traffic citations or domestic violence offenses.

In Ohio, an officer cannot arrest for a minor misdemeanor, even if the act is committed in the officer's presence. R.C. 2935.26. The Supreme Court of Ohio recognized that the Ohio Constitution, Article I, Section 14, provides greater protection than the Fourth Amendment to the United States Constitution against warrantless arrests for minor misdemeanors.

B. Lineups and other Forms of Identification

The Ohio Revised Code includes minimum standards for conducting lineups and photo identification. The failure to meet the minimum standards may be considered by a trial court during a hearing on a motion to suppress eyewitness identification.

C. Right to Counsel

The right to counsel is governed by the Ohio Constitution, the Ohio Revised Code, the Ohio Rules of Criminal Procedure, and case law.

Ohio generally follows the standards announced by the United States Supreme Court. However, in Ohio, a defendant has an automatic right to counsel in all serious offense cases (offenses carrying a penalty of more than six months in jail) even if imprisonment will not be imposed. Crim.R. 44.

D. Fair Trial and Guilty Pleas

1. Pretrial

In Ohio, indictments are returned by a grand jury. A grand jury consists of nine members: seven of the nine must vote in favor of an indictment. Crim.R. 6. Deliberations of the grand jury and the vote of any grand juror shall not be disclosed. Crim.R. 6.

There are four pleas in Ohio: guilty, not guilty by reason of insanity, no contest, and not guilty. Crim.R. 11. When accepting a guilty plea, the trial court must substantially comply with notifying a defendant of non-constitutional rights and strictly comply with notifying a defendant about constitutional rights. Ohio does not require that there be a factual basis for a guilty plea.

Discovery may be initiated by the defendant. Crim.R. 16. The discovery rule includes specific time requirements for requesting discovery. Waiver of a jury trial in serious offense cases must be in writing. The waiver must substantially comply with R.C. 2945.05.

2. Trial and Jurors

During trial, jurors may take notes and ask questions of witnesses, if the court permits it. Crim.R. 24.

Jury instructions must be reduced to writing. Crim.R. 30. A copy of the jury instructions must be provided to the jury for deliberations. *Id.*

3. Appeal and Postconviction Remedies

Every convicted defendant in Ohio is entitled to one appeal as of right. In capital cases, the defendant has a direct appeal to the Supreme Court of Ohio. In all other cases, the appeal of right is to the court of appeals, and a defendant may also seek discretionary review in the Supreme Court of Ohio.

A defendant may petition the trial court to vacate the sentence because of a violation of the defendant's constitutional rights. R.C. 2953.21. The evidence in support of the claim must not appear in the trial court record; if it does, the claim must be raised on direct appeal. A defendant may move the trial court to seal or expunge the defendant's record. R.C. 2953.31, et seq.

A trial court may grant a certificate of qualification for employment for convicted defendants. R.C. 2953.25

VI. VICTIMS OF CRIME

Ohio's voters passed Marsy's Law as an amendment to the Ohio Constitution, Article I, Section 10(a). This amendment gives Ohio crime victims specific constitutional rights during criminal proceedings.



XII. EVIDENCE

The Ohio Rules of Evidence became effective in July 1980. They are patterned after the Federal Rules of Evidence, but there with significant differences.

The Ohio Rules of Evidence were not intended to replace Ohio's common law. The Rules of Evidence must be construed to state the principles of the common law unless a particular rule clearly states a change is intended. The Ohio Rules of Evidence do not supersede substantive statutory provisions because the Supreme Court of Ohio's rulemaking authority under Article IV, Section 5(B), of the Ohio Constitution only authorizes the Court to adopt procedural rules. Statutory provisions regarding privileges, for example, still control related rules. The Ohio Rules of Evidence generally do not codify constitutional principles, so the confrontation clause might require a different result than a hearsay exception.

The Ohio Rules of Evidence do not apply in a number of contexts, including grand jury proceedings, miscellaneous criminal proceedings, contempt proceedings, and small claims court. Evid.R. 101(C)(1)-(8).

The outline follows the general format of the Multistate Bar Exam Evidence Outline, but focuses on distinctions in Ohio law.

I. PRESENTATION OF EVIDENCE

A. Introduction of Evidence

1. Objections and Offers of Proof

Under the Ohio rules, an offer of proof is not required if the evidence is excluded during cross-examination. Evid.R. 103(A)(2). Once the court rules definitely on the record, either before or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal. Evid.R. 103(A)(2).

2. Competency of Witnesses

a. Unlike Fed.R.Evid. 601, which states that every person who possesses personal knowledge of a matter and who will testify truthfully is competent to be a witness, Evid.R. 601 specifically identifies that the following persons are incompetent to testify:

- i. A person of unsound mind, or child under the age of 10, who appears incapable of accurately perceiving or truthfully relating the facts;
- ii. A spouse testifying against the other spouse charged with a crime, unless the spouse elects to testify or the crime is against the testifying spouse or the child of either spouse;
- iii. An officer on duty for the main or exclusive purpose of enforcing traffic laws who arrested or assisted in the arrest of a person charged with a misdemeanor traffic offense if the officer was not in a marked vehicle or if the officer was not wearing a uniform; and
- iv. An expert witness testifying on the issue of liability in a civil case against a physician or hospital unless the expert is licensed to practice medicine; devotes at least 50 percent of his professional time to active clinical practice or instruction at an accredited school; and practices in the same or substantially similar specialty as the defendant.

b. Evid.R. 606(B) allows a juror to testify whether the jury received extraneous or prejudicial information and whether an improper outside influence may have affected the jury. The rule also requires that outside evidence of the act or event be presented before the juror testifies, unless the juror's testimony concerns a threat, bribe, or impropriety of an officer of the court.

3. Judicial Notice

A court may take judicial notice at any stage of the proceedings, but this is not an exception to the rule that evidence must be timely offered in a judicial proceeding. Evid.R. 201(F); *State ex rel. Richard v. Chambers-Smith*, 157 Ohio St.3d 16, 2019-Ohio-1962, ¶ 12.

4. Roles of Judge and Jury

If a witness is called or examined by the court, the court must interrogate the witness in an impartial manner. Evid.R. 614(B).

B. Mode and Order

1. Scope of Examination

Evid.R. 611(B) does not limit the scope of cross-examination to matters elicited on direct examination or those affecting the witness's credibility. Instead, cross-examination is permitted on all relevant matters and matters affecting credibility.

2. Exclusion of Witnesses

Evid.R. 615 does not authorize the exclusion from the courtroom of a victim of a crime if the victim's presence is statutorily authorized. A victim is statutorily authorized to be present at any stage of a proceeding that is conducted on the record (other than a grand jury proceeding) when the defendant is present, unless the court determines that the exclusion of the victim is necessary to a fair trial. R.C. 2930.09.

An order to separate witnesses, without further limitation, is effective only to exclude witnesses from the courtroom during the testimony of other witnesses. Evid.R. 615.

C. Impeachment, Contradiction, and Rehabilitation

1. Inconsistent Statements and Conduct

A party may not impeach the party's own witness with a prior inconsistent statement unless the party can show surprise and damage resulting from the witness's testimony. Evid.R. 607. A showing of surprise and damage is not required if the prior statement was made under oath at a prior trial or hearing, is an admission, or otherwise qualifies as an exception to the hearsay rule where the availability of the declarant is immaterial.

A witness must be provided with the opportunity to explain or deny a prior inconsistent statement before extrinsic evidence of the statement can be introduced. Evid.R. 613.

A witness's prior inconsistent conduct is admissible to impeach the witness if the witness is first given the opportunity to explain or deny the conduct. Evid.R. 613(C).

2. Bias, interest bias, prejudice, interest, or motive to misrepresent may be proven by examination of the witness or through extrinsic evidence. Evid.R. 616(A). The party attempting to prove bias does not have to lay a foundation before introducing extrinsic evidence of the bias. *State v. Mack*, 73 Ohio St.3d 502, 517, 1995-Ohio-273.

3. Conviction of Crime

An Ohio trial court has discretion to exclude impeachment evidence of crimes involving dishonesty or false statement if the probative value of the evidence is substantially outweighed by undue delay or needless presentation of cumulative evidence. Evid.R. 609(A)(3).

A conviction is inadmissible if more than ten years have elapsed since the date of conviction or the date of release from the confinement, probation, or parole imposed for the conviction, whichever is the later date. Evid.R. 609(B).

D. Proceedings to Which Evidence Rules Apply

The Ohio Rules of Evidence do not apply in a variety of situations noted in Evid.R. 101(C), including grand jury proceedings, miscellaneous criminal proceedings, summary contempt proceedings, and small claims cases.

II. RELEVANCY AND REASONS FOR EXCLUDING RELEVANT EVIDENCE

A. Probative Value

1. Exclusion for Unfair Prejudice, Confusion, or Waste of Time

A trial court must exclude relevant evidence if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The trial judge may exclude such evidence if its probative value is substantially outweighed by undue delay or needless presentation of cumulative evidence. Evid.R. 403.

2. Exclusion for Public Policy Reasons

In medical malpractice cases, Ohio bars the admission of any statements or conduct expressing apology, sympathy, etc., made by a health care provider or its employee to the plaintiff, the plaintiff's relative, or the plaintiff's representative, relating to the injury or death of the plaintiff as the result of the unanticipated outcome of medical care. R.C. 2317.43; *Stewart v. Vivian*, 151 Ohio St.3d 574, 2017-Ohio-7526, ¶ 2.

Evidence of subsequent remedial measures is admissible in products liability cases based on strict liability. Evid.R. 407; *McFarland v. Bruno Machinery Corp.*, 68 Ohio St.3d 305 (1994), syllabus.

B. Character and Related Concepts

R.C. 2045.59 is the statutory codification of the character evidence rules set forth in Evid.R. 404.

1. Admissibility of Character

The prosecution may rebut the defendant's bad character evidence of the victim only with evidence of the victim's good character for the same trait; the prosecution may not rebut with evidence of the defendant's bad character for the same trait. Evid.R. 404.

2. Methods of Proving Character

Evid.R. 404(B) requires both the prosecution and the accused to provide notice to the other regarding specific acts evidence, and it requires that the proponent always provide such notice, even if the other party does not request it. Under the Federal Rules of Evidence, the defendant does not have the obligation to provide notice.

C. Expert Testimony

1. Bases of Testimony

The Ohio Rules of Evidence do not permit an expert's opinion to be based on facts or data not in evidence but of a type reasonably relied upon by experts. An expert's opinion must be based on facts or data: (a) derived from the expert's personal observation, or (b) admitted at trial. Furthermore, the Ohio Rules require the expert to disclose the basis of his opinion before testifying on direct examination. Evid.R. 705.

2. Ultimate Issue Rule

Ohio has not adopted Fed.R.Evid. 704(b); an expert in Ohio may give an opinion as to whether the defendant did or did not have the mental state in issue.

III. PRIVILEGES AND OTHER POLICY EXCLUSIONS

A. Spousal Immunity and Marital Communications

A spouse is presumed incompetent to testify against the other spouse in a criminal case. However, a spouse will be treated as competent to testify against the other spouse if the spouse elects to testify. Evid.R. 601(B). If the witness-spouse is competent on that basis, the witness-spouse is competent to testify as to other charges against the defendant-spouse that arose from the same course of conduct.

The marital communications privilege, R.C. 2945.42, only applies to a spouse's testimony about a communication with the spouse. Thus, a recording of a defendant's conversation with the spouse are not privileged. See *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, ¶ 120.

B. Attorney-Client and Work Product Privilege

A decedent's attorney-client privilege can be waived by the decedent's surviving spouse, or the executor or administrator of the decedent's estate. R.C. 2317.02.

C. Physician/Psychotherapist-Patient Privilege

The physician-patient privilege may be waived by any party to a will contest provided that the patient is deceased and the party shows that the party would be an heir (if the patient died intestate), a beneficiary of the contested will, or a beneficiary of some other testamentary document allegedly executed by the patient; and the testimony is necessary to establish the party's rights. R.C. 2317.02.

D. Other Privileges

In addition to the privileges covered on the multi-state exam, Ohio recognizes additional privileges: dentist-patient; advanced practice registered nurse-patient; pharmacist-patient (to the extent the communication is made in furtherance of the physician-patient relationship); psychologist-patient; professional counselor-patient; social worker-patient; and school guidance counselor-student. R.C. 2317.02, 4732.19.

IV. HEARSAY AND CIRCUMSTANCES OF ITS ADMISSIBILITY

A. Definition of Hearsay

Evid.R. 804(B)(6) is consistent with the Federal Rule in that they both allow the statements of an unavailable declarant against a party who engaged in wrongdoing for the purpose of preventing the declarant from attending or testifying and that in fact resulted in the declarant's unavailability. The Federal Rules of Evidence also include those who acquiesce in wrongdoing, but the Ohio Rules omit this provision.

The statement of a deceased or mentally incompetent person is admissible if the estate or personal representative of the deceased or the guardian of the incompetent person is a party; the statement was made before the declarant's death or incompetency; and the statement is offered to rebut testimony by an adverse party on a matter within the knowledge of the deceased or incompetent person. Evid.R. 804(B)(5).

Ohio recognizes a special hearsay exception for statements of abuse or attempted abuse (including sexual abuse) made by a child who is under 12 years of age at the time of trial. Evid.R. 807.

B. Prior Statements by Witness

Evid.R. 801(D)(1)(a) adds an additional requirement: a witness' prior inconsistent statement is inadmissible as substantive evidence unless it was also subject to cross-examination at the time it was made by the party against whom it is offered. This means that grand jury testimony may not be admitted non-hearsay but it may be used to impeach.

The Ohio Rules of Evidence include additional requirements when admitting prior statements of identification: the prior identification must be made soon after perceiving the person, and the surrounding circumstances must demonstrate the reliability of the identification. Evid.R. 801(D)(1)(c).

C. Present-Sense Impressions and Excited Utterances

A present-sense impression is inadmissible if circumstances indicate a lack of trustworthiness. Evid.R. 803(1). The Federal Rules of Evidence do not include this additional requirement.

D. Business Records

Business records are not self-authenticating in Ohio. Evid.R. 902. Unlike the federal rules, the business records exception in the Ohio rules does not provide that opinions or diagnoses are admissible. Evid.R. 803(6).

E. Learned Treatises

The learned treatise exception to the hearsay rule only applies to statements contained in published treatises, periodicals, or pamphlets regarding history, medicine, science, or art. Evid.R. 803(18).

F. Statements Against Interest

The existence of a conspiracy must be established by independent proof. Evid.R. 801(D)(2)(e). A co-conspirators' vicarious admissions may not be used in determining whether a conspiracy existed.

G. Other Exceptions to the Hearsay Rule

The Ohio ancient documents exception applies to documents that are least 20 years old. Evid.R. 803(16). The Ohio Rules of Evidence do not contain a catch-all exception.



XIII. PROPERTY, REAL AND PERSONAL

The laws governing real property, in most common law jurisdictions, tend to be uniform. Ohio generally follows the common law applied in other jurisdictions, but does not follow the prevailing view in certain areas. Some areas of real property law are unique to Ohio due to decisional and statutory law. The statutory provisions governing real property are principally set forth in Revised Code Titles 19 and 53.

OUTLINE OF UNIQUE DECISIONAL AND STATUTORY LAW

I. THE RULE AGAINST PERPETUITIES

With few exceptions, under Ohio law, “no interest in real or personal property shall be good unless it must vest, if at all, not later than twenty-one years after a life or lives in being at the creation of the interest.” R.C. 2131.08(A).

Ohio has adopted a “wait and see” approach to determine whether an interest is valid under the Rule Against Perpetuities. Ohio has also modified the common law rule by adopting the cy pres doctrine to reform future interest. See R.C. 2131.08(C). See, also, *Rice v. Stanley*, 42 Ohio St.2d 209 (1975).

II. CONCURRENT ESTATES

A. Joint Tenancy

Ohio does not recognize the common law survivorship estates of joint tenancy or tenancy by the entirety. Instead, Ohio has a statutory survivorship tenancy. Under the statute, if any interest in real property is conveyed or devised to two or more persons for their joint lives and then to the survivor or survivors of them, those persons hold title as survivorship tenants. Any deed or will containing language that shows a clear intent to create a survivorship tenancy shall be liberally construed to do so. R.C. 5302.20.

In Ohio, one survivorship tenant may not unilaterally destroy the survivorship interest by conveying his interest. Regardless of how many survivorship tenants there are, conveyance to a third party by fewer than all does not sever the tenancy, but rather grants title subject to the conveying tenant’s right of survivorship. *Spitz v. Rapport*, 78 Ohio App.3d 330 (8th Dist.1992); R.C. 5302.20(C)(2). Thus, the third party takes only the interest the conveying tenant had. If the conveying tenant dies, the third party may lose all rights to the property.

B. Tenancy by the Entireties

In Ohio, tenancy by the entireties was established by statute from 1972 to April 4, 1985. R.C. 5302.17. Although estates of tenancy by the entireties can no longer be created in Ohio, those interests established when the statute was in effect are still valid. R.C. 5302.21. In Ohio, tenancy by the entireties was replaced by statutory joint tenancy with right of survivorship. R.C. 5302.20. This legislation became effective April 4, 1985 and also grandfathered tenancies by the entireties that were in effect prior to the effective date. See R.C. 5302.21 and R.C. 5302.20, which set forth the requirements to create a survivorship tenancy, provides that a deed or will creating a survivorship tenancy must include language evidencing a clear intent to create this type of tenancy. R.C. 5302.17 sets out a form of “survivorship deed,” which contains the following example of language sufficient to create a

survivorship tenancy: “for their joint lives, remainder to the survivor of them.” In the absence of words of survivorship, property owned by two or more persons is held as a tenancy in common. R.C. 5302.19.

III. LANDLORD-TENANT

Ohio’s Landlord-Tenant Act is set forth in R.C. 5321.01 through R.C. 5321.19. The act does not apply to all lodging. By way of example and not limitation, the act does not apply to hotels, prisons (or other places of incarceration), hospitals, tourists homes, emergency shelters, or orphanages. R.C. 5321.01.

A. Retaliatory Action by Landlord

A landlord may not take any retaliatory action (increase rent, decrease services that are due a tenant, or bring/threaten to bring an eviction) against a tenant because the tenant has complained to the appropriate governmental agency about the condition of the leased premises; the tenant has complained to the landlord about an violation of R.C. 5321.04; or the tenant joins with other tenants for the purpose of collectively addressing terms and conditions of a rental agreement. R.C. 5321.02.

B. College and University Student Tenants

A college or university may terminate a rental agreement with a student tenant prior to the expiration of the term of the agreement and require that the student vacate the dwelling unit, only when the termination follows a hearing in which it was determined by the college or university that the student violated a term of the rental agreement or violated the college’s or university’s code of conduct or other policies and procedures. The hearing must be preceded by a written notice to the student, must include a right to be heard, and must otherwise comply with the college’s or university’s procedures for disciplinary hearings. The written rental agreement must specify the conditions under which the rental agreement may be terminated and specify the college’s or university’s notice and hearing procedures that will be followed in making a determination under this section. R.C. 5321.031.

C. Duties of Landlord

R.C. 5321.04 provides numerous obligations on a landlord who is a party to a rental agreement. The listed obligations are mandatory. When the landlord fails to fulfill any one or more of his obligations, the tenant may deposit his rent money with the municipal clerk of court in lieu of paying the landlord. R.C. 5321.07 and R.C. 5321.08.

D. Duties of Tenant

R.C. 5321.05 provides numerous obligations on a tenant who is a party to a rental agreement. The listed obligations are mandatory.

E. Sex or Child Victim Offender

R.C. 5321.051 provides that a landlord may terminate a rental agreement of any tenant of any residential premises located within 1,000 feet of any school premises or preschool or child day-care center premises where the tenant allows a sex or child victim offender to occupy the premises.

F. Terms Prohibited in Residential Rental Agreement

R.C. 5321.13 prohibits certain terms in a residential rental agreement:

1. No terms prohibited in R.C. 5321.13 may be modified or waived by any oral or written agreement except as provided in division (F) of this section;
2. No warrant of attorney to confess judgment shall be recognized in any rental agreement or in any other agreement between a landlord and tenant for the recovery of rent or damages to the residential premises;
3. No agreement to pay the landlord's or tenant's attorney's fees shall be recognized in any rental agreement for residential premises or in any other agreement between a landlord and tenant;
4. No agreement by a tenant to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or its related costs shall be recognized in any rental agreement or in any other agreement between a landlord and tenant;
5. A rental agreement, or the assignment, conveyance, trust deed, or security instrument of the landlord's interest in the rental agreement may not permit the receipt of rent free of the obligation to comply with R.C. 5321.04; and
6. The landlord may agree to assume responsibility for fulfilling any duty or obligation imposed on a tenant by R.C. 5321.05, other than the obligation specified in division (A)(9) of that section.

IV. ADVERSE POSSESSION

A. Statutory Time Period and Tacking

To acquire title to real property by adverse possession under Ohio law, a party must prove, by clear and convincing evidence, exclusive possession and open, notorious, continuous, and adverse use for a period of twenty-one years." *Grace v. Koch*, 81 Ohio.St.3d 577 (1998), syllabus; R.C. 2305.04. In order to establish the necessary 21 year period, a party may add to their own term of adverse use any period of adverse use by prior succeeding owners in privity with one another. *Zipf v. Dalgarn*, 114 Ohio.St. 291 (1926), syllabus. "[T]he doctrine of tacking permits adverse possession by successive owners, who are in privity, to be added together to make up the twenty-one years required for title to vest in the current possessor." *Ballard v. Tibboles*, 6th Dist. Ottawa No. 91-OT-013 (Nov. 8, 1991), citing *Zipf v. Dalgarn*, 114 Ohio St. 291_ (1926). Clear and convincing evidence is that proof which establishes in the minds of the trier of fact a firm conviction as to the allegations sought to be proved. *Cross v. Ledford*, 161 Ohio St. 469, 477 (1954).

B. Disability

While an action to recover the title to or possession of real property must be brought within 21 years after the cause of action accrues, Ohio recognizes an exception for certain disabilities. When a person's disability (e.g., minority or being of unsound mind) prevents him or her from bringing an appropriate action during the 21-year time period, they have 10 years after the disability is removed and subsequent to the accrual of 21 years, to bring an appropriate action for the recovery of title to, or possession of, the real property. R.C. 2305.04.

CONVEYANCING

A. Land Sale Contracts

1. Time for Performance

Ohio distinguishes between cases at law and cases in equity in determining whether a land sale contract must be performed within a specified time. The traditional rule of law in Ohio provides that time is of the essence even in the absence of an express provision. In equity, however, time is not of the essence unless it is stipulated by express terms in the contract. *Sanford v. Breidenbach*, 111 Ohio App. 474 (9th Dist.1960).

2. Risk of Loss

Under Ohio law, generally a purchaser of real property bears the risk of any casualty loss to the property during the pendency of an executory contract. *Sanford v. Breidenbach*, 111 Ohio App. 474 (9th Dist.1960); *Gilbert v. Port*, 28 Ohio St. 276, 292-293 (1876). Equitable title transfers to the purchaser when the contract is executed. It is a well-established principle, that if, during this time period, a loss occurs as the result of the vendor's negligence, then the vendor is liable for the cost of repair. See *Rappaport v. Sawitz*, 208 Pa.Super. 175, 220 A.2d 401 (1966); 7 Williston, Contracts (3 Ed.1963) 912-913, Section 936; and 959, Section 942; Note, the vendor's liability for waste, 48 Harv.L.Rev. 821, 824-825 (1935). See *Sposit* at 495. However, where a contract term requires the property to be transferred in its "present condition," this shifts the risk of loss to the seller during the pendency of the executory contract.

B. Covenants in General Warranty Deed

Ohio does not recognize the covenants of further assurances and quiet enjoyment. The grantor covenants with the grantee only that the grantor is lawfully seized in fee simple of the granted premises, that they are free from all encumbrances, that they have good right to sell and convey the same, and that they do warrant and will defend the same to the grantee against unlawful claims and demands. R.C. 5302.06.

C. Recording-Notice Statutes

R.C. 5301.25 provides that unless a deed or land sale contract executed for the conveyance or encumbrance of land is recorded in the office of the county recorder where the property is situated, it is not valid against a subsequent bona fide purchaser having no knowledge of it at the time of the purchase.

D. Statutory Forms of Land Conveyance – Deeds

R.C. 5302.01 provides that the forms set forth in R.C. 5302.05, 5302.07, 5302.09, 5302.11, 5302.12, 5302.14, 5302.17, and 5302.31 may be used and shall be sufficient for purposes of conveying real estate. These forms are referred to as "Statutory Forms."

E. Marketable Title

The Ohio Marketable title Act is set forth in R.C. 5301.47 through R.C. 5301.56. R.C. 5301.47(A) defines "marketable record title" to mean "a title of record, as indicated in section 5301.48 of the Revised Code, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in section 5301.50 of the Revised Code." The Marketable Title Act

generally allows a landowner who has an unbroken chain of title to land for a 40-year period to transfer title free of any interests that existed prior to that 40-year period. However, the Marketable Title Act also provides that an interest created before the 40-year unbroken chain of title may be preserved if subsequent conveyances contain a specific reference to the instrument creating the interest, or alternatively, a general reference is made, which includes a specific reference to a recorded title transaction identifying the interest. *Blackstone v. Moore*, 155 Ohio St.3d 448 (2018).

V. SECURITY INTEREST IN REAL ESTATE

A. Transfers of Mortgage Without Note

Ohio law provides that a transfer of the mortgage without the accompanying note is *void*. *Kernohan v. Manss*, 53 Ohio St. 118 (1895).

B. Possession Before Foreclosure – Theories of Title

Although Ohio's property code references a "mortgage lien," Ohio follows a modified intermediate theory of mortgages. Mortgages are considered security for the debt, and title to the mortgaged property remains in the mortgagor until default. However, Ohio differs from other intermediate theory jurisdictions in that title transfers to the mortgagee on default only as between the mortgagor and mortgagee. To third parties, title effectively remains with the mortgagor until the mortgagee sues or forecloses. Also, the mortgagor in possession can remain in possession after default until foreclosure unless the mortgagee takes some action to eject. *Hausman v. Dayton*, 73 Ohio St. 3d 671 (1995).

VI. RIGHTS INCIDENTAL TO OWNERSHIP

A. Water Rights – Riparian

Ohio follows the reasonable use theory in evaluating the use of watercourses by landowners. *McNamara v. Rittman*, 107 Ohio St.3d 243 (2005).

B. Groundwater

1. Ohio follows the reasonable use doctrine, allowing the owner of land to make reasonable use of groundwater. Thus, a landowner's withdrawal of water must not

- a. Unreasonably harm her neighbor by lowering the water table;
- b. Exceed his or her reasonable share; or
- c. Have a direct and substantial effect on a lake or watercourse.

Cline v. American Aggregates Corp., 15 Ohio St.3d 384 (1984).

C. Surface Water

In resolving surface water disputes in Ohio, the court will apply a reasonable use rule under which each possessor is legally privileged to make a reasonable use of his land, even though the flow of surface water is altered thereby and causes some harm to others, and under which a possessor incurs liability only when his interference with the flow of surface water is unreasonable. *McGlashan v. Spade Rockledge Terrace Condo Development Corp.*, 62 Ohio St.2d 55 (1980).

VII. NUISANCE DAMAGES

To recover damages for annoyance and discomfort in a nuisance action, the plaintiff must show an appreciable, substantial, tangible harm that results in actual, material physical discomfort. Conditions affecting sight, smell, hearing, or touch may cause a physical discomfort. *Banford v. Aldrich Chemical Co.*, 126 Ohio St.3d 210 (2010).



XIV. TORTS

Although not specifically covered in this outline, practitioners must be aware that tort actions are barred if not filed within the appropriate statute of limitations (as set forth in the Revised Code) and that the limitations periods vary significantly between types of torts.

Ohio tort law generally follows the common law applied in other jurisdictions, as set forth primarily in the Restatement of the Law 2d, Torts, and adopted by Ohio courts. Some of Ohio's tort law is set forth in the Ohio Revised Code, as interpreted by Ohio courts. This Ohio distinction outline highlights significant Ohio distinctions using the context of the UBE outline.

I. INTENTIONAL TORTS

Ohio recognizes these common law intentional torts: harms to the person, such as assault, battery, false imprisonment, and infliction of mental distress; and harms to property interests, such as trespass to land and chattels, and conversion. Although Ohio has merged assault and battery as offenses within the criminal context, it continues to recognize these individual common law intentional torts.

Parents are liable for the willful, wanton torts of their minor children, up to \$10,000 (R.C. 3109.09) or \$15,000, if the torts involve "vandalism, desecration, or ethnic intimidation." R.C. 2307.70.

Ohio is among a minority of jurisdictions that recognizes spoliation of evidence as a tort. Recovery requires proof of "(1) pending or probable litigation involving the plaintiff, (2) knowledge on the part of defendant that litigation exists or is probable, (3) willful destruction of evidence by defendant designed to disrupt the plaintiff's case, (4) disruption of the plaintiff's case, and (5) damages proximately caused by the defendant's acts." *Smith v. Howard Johnson Co., Inc.*, 67 Ohio St.3d 28, 29 (1993).

A. Defenses to Claims for Physical Harms

Privileges and immunities include protection of self and others, protection of property interests, parental discipline, protection of public interests, necessity, and incomplete privilege.

Self-defense to an intentional tort is the same defense applied within the criminal context. Ohio continues to require that the defender have no fault in creating the situation, reasonably believe that they are in imminent danger of great bodily harm, and believe that the only means of escape is the use of force. There still is a duty to retreat to defend oneself or another, if feasible, except if within one's home. See R.C. 2901.09; *State v. Thomas*, 77 Ohio St.3d 323 (1997).

In addition to the above requirements, Ohio law requires that when one intervenes to defend another, the person being defended have no fault in creating the altercation. *Ellis v. State*, 64 Ohio St.3d 391 (1992).

Ohio allows a private citizen the privilege to make a warrantless arrest when a felony was committed or the person reasonably believes that a felony was committed. R.C. 2935.04.

II. NEGLIGENCE

A. The Standard of Care

1. Reasonably prudent person includes children, physically and mentally impaired individuals, professional people, and other special classes.

Children under the age of seven cannot be held liable for negligence or intentional torts. *DeLuca v. Bowden*, 42 Ohio St.2d. 392 (1975), ¶ 1 and 2 of the syllabus.

Ohio has always recognized that the tort duty owed to a child “of tender years” is greater than that owed to an adult, as young children cannot “foresee and avoid the perils that they may encounter[.]” *Di Gildo v. Caponi*, 18 Ohio St.2d 125, 127 (1969). Although Ohio did not recognize a heightened duty of landowners to trespassing children for many years, the Supreme Court of Ohio adopted the Attractive Nuisance Doctrine, as set forth in the Restatement of the Law 2d, Torts, Section 339 (1965), in *Bennett v. Stanley*, 92 Ohio St.3d 35 (2001), syllabus.

2. Rules of Conduct Derived from Statutes and Custom

Recreational users of non-residential, privately-owned property are owed a limited duty by the landowner or occupier of the land. R.C. 1533.181. The duty does not depend upon the common law status of the entrant (trespasser, invitee, etc.) but the duty depends on whether the person using the property qualifies as a recreational user. *Combs v. Ohio Dept. of Nat. Resources, Div. of Parks & Recreation*, 146 Ohio St.3d 271, 2016-Ohio-1565, ¶ 14.

A good Samaritan, who is not on the job, but voluntarily administers care at the scene of an emergency is protected from negligence liability. R.C. 2305.23.

B. Limitations on Liability and Special Rules of Liability

1. Claims Against Owners and Occupiers of Land

As in most jurisdictions, premises liability depends on the classification of the entrant. Ohio has basically merged the classifications of licensee and trespasser but recognizes a fourth classification of a social guest. A social guest is owed a higher duty of care than a licensee, but a lesser duty than a business invitee. *See, e.g., Reddick v. Said*, 11th Dist. Lake No. 2011-L-067, 2012-Ohio-1885, ¶ 41.

2. Claims for Pure Economic Loss

Non-economic tort damages are capped to the limits set forth in R.C. 2315.18, but they will not be capped if the injured party suffered certain permanent physical injuries. Although the constitutionality of damage caps was repeatedly litigated and struck down in the past, the current damage cap statute was upheld in *Johnson v. Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948. Punitive damages also are capped in a similar manner. R.C. 2315.21(D).

C. Defenses

1. Contributory Fault, Including Common Law Contributory Negligence and Last Clear Chance, and the Various Forms of Comparative Negligence

Ohio has adopted partial comparative negligence, allowing recovery by

an injured party whose injuries were partially caused by his or her own negligence, only if the injured party's contributing fault was no greater than the negligence of the defendant. The injured party's damages will be reduced, however, based on the proportion of fault that the factfinder attributes to the injured party. R.C. 2315.33; R.C. 2315.34.

2. Assumption of Risk

Except in some products liability claims (see R.C. 2307.111), the defenses of express and implied assumption of risk have merged with contributory fault into the comparative negligence statute. R.C. 2307.011(B).

3. Sovereign Immunity

Political subdivisions and their employees, while acting in that capacity, are generally immune from tort liability for governmental functions, as defined in R.C. 2744.03. The scope of immunity, and exceptions to it, are set forth in the statute. Because R.C. 2744.03 cuts off liability to injured individuals, it is the subject of frequent litigation.

4. Ohio's workers compensation system, as set forth in R.C. Chapter 4123, has generally displaced the direct negligence liability of employers to their employees. R.C. 2745.01 provides for tort liability for employer intentional torts (if the employer's acts or omissions are "substantially certain" to cause injury to an employee). Note that the statutory and case law in this area is the subject of frequent litigation and the liability standard has changed over time.

III. STRICT LIABILITY AND PRODUCTS LIABILITY: COMMON LAW STRICT LIABILITY, INCLUDING CLAIMS ARISING FROM ABNORMALLY DANGEROUS ACTIVITIES, AND DEFENSES TO SUCH CLAIMS; CLAIMS AGAINST MANUFACTURERS AND OTHER DEFENDANTS ARISING OUT OF THE MANUFACTURE AND DISTRIBUTION OF PRODUCTS, AND DEFENSES TO SUCH CLAIMS

Ohio applies common law to general abnormally dangerous activities and requires that a risk/benefit analysis be conducted (weighing the potential harm of the activity against its value) and considers the appropriateness of the activity to its location. *Davis v. Widman*, 184 Ohio App.3d 705, 2009-Ohio-5430 (3d Dist.).

Products liability is primarily governed by statute under R.C. Chapter 2307. The codification is not explicitly distinct from the common law, but it includes clear definitions and requirements.

Dog owners are strictly liable for damages caused by their dog unless the injured party was trespassing, teasing, or tormenting the dog. R.C. 955.28. An injured party may also pursue a common law negligence claim against a dog owner. *Beckett v. Warren*, 124 Ohio St.3d 256, 2010-Ohio-4, ¶ 22.

IV. OTHER TORTS

A. Claims Based on Defamation and Invasion of Privacy, Defenses, and Constitutional Limitations

All defamation claims require a showing of at least negligence on the part of the publisher of the statement. See *Anderson v. WBNS-TV, Inc.*, ___ Ohio St.3d ___, 2019-Ohio-5196.

XV. WILLS AND INTESTATE SUCCESSION UNDER OHIO LAW

The law governing wills and intestate succession are generally similar in most jurisdictions, however, each state has specific statutory provisions that may differ from other jurisdictions. The Ohio statutes governing wills and intestate succession are found in Ohio Revised Code Title 21. This outline identifies specific provisions of Ohio law in Title 21 involving wills and intestate succession for the benefit of applicants for admission to the practice of law in Ohio.

Ohio has also adopted statutes in 2007 known as the Ohio Trust Code which statutes are found in Ohio Revised Code Title 58. The Ohio Trust Code statutes were derived from the Uniform Trust Code. An excellent resource analyzing the Ohio Trust Code is updated on a regular basis and is available from the Ohio State Bar Association.

I. INTESTACY

- A. Intestacy statutes establish the order in which persons succeed to the property of an intestate decedent. The Ohio statutory provisions with regard to intestacy are set forth below.
 1. Surviving Spouse and No Child or Descendant
If an intestate decedent is survived by a spouse, but no children or their lineal descendants, the estate passes entirely to the surviving spouse. R.C. 2105.06(E).
 2. Surviving Spouse and One Child or Descendants
 - a. If Spouse is Parent of Child
If an intestate decedent is survived by a spouse and one child of the decedent or the child's lineal descendants, or if the spouse is the natural or adoptive parent of the child, the entire estate will pass to the spouse. R.C. 2105.06(B).
 - b. If Spouse is Not the Parent of Child
If the surviving spouse is not the natural or adoptive parent of the child, the spouse will take the first \$20,000 of the intestate's estate, plus one-half of the balance of the intestate's estate. The remainder of the estate will pass to the child or to the child's lineal descendants.
 3. Surviving Spouse and More Than One Child or Descendants
 - a. If Spouse is Parent of All Children
If the intestate decedent is survived by a spouse and more than one child of the decedent or the children's lineal descendants, and if the spouse is the natural or adoptive parent of all of the children, then the entire estate will pass to the spouse. R.C. 2105.06(B).
 - b. If the Spouse is the Parent of One But Not All Children
If the intestate decedent is survived by a spouse and more than one child or their lineal descendants, and if the spouse is the natural or adoptive parent of one but not all of the children, the spouse will take the first \$60,000 of the estate, plus one-third of the balance. The remainder of the estate passes to all of the decedent's children equally, or to the lineal descendants of any deceased child. R.C. 2105.06(D).

c. If Spouse is Not the Parent of Any of the Children

If the intestate decedent is survived by a spouse and more than one child or their lineal descendants, and the spouse is not the natural or adoptive parent of any of the children, the spouse will take the first \$20,000 of the estate, plus one third of the balance. The remainder of the estate passes to the children equally, or to their lineal descendants. R.C. 2105.06(D).

B. Children and Other Descendants

Any portion of an intestate decedent's estate that does not pass to the surviving spouse will pass to the children of the decedent or the descendants of any deceased children of the decedent.

1. Ohio Rules

If there is no surviving spouse, the children of the intestate inherit equally, or their lineal descendants take per capita with representation. R.C. 2105.06(A). If some of the children of the intestate are living and others are dead, the estate will pass to the children who are living and to the lineal descendants of the dead children. Each living child will receive the share to which they would have been entitled if all the children of the intestate were alive and the lineal descendants share the deceased child's share. R.C. 2105.13.

2. Adopted Children

a. Intestate Succession With Regard to Adoptive Family

Ohio treats an adopted child the same as a birth child of the adoptive parents for purposes of intestate succession. R.C. 2105.06.

b. Intestate Succession With Regard to Birth Parents

An adopted child generally has no rights to intestate succession of the property of his or her birth parents and the birth parents have no rights to intestate succession of the property of a child who was adopted by others. R.C. 3107.15(A)(1).

C. If No Spouse or Issue

If no surviving spouse or issue exists to succeed to the decedent's estate, the property may be distributed to the decedent's ancestors and more remote collateral relatives.

1. Parents

If an intestate decedent has no surviving spouse and no children or their lineal descendants, the decedent's estate will pass to his or her parents equally, or if there is only one surviving parent, to the surviving parent, who takes the entire estate. R.C. 2105.06(F).

2. Siblings

If the intestate decedent has no surviving spouse, children or their lineal descendants, or parent, the estate will pass to the decedent's brothers and sisters, whether half or whole blood, or their lineal descendants, per stirpes. R.C. 2105.06(G).

If the intestate decedent has no surviving spouse, children or their lineal descendants, parent, or siblings or their lineal descendants, one-half of the estate will pass to the paternal grandparents of the intestate equally, or to the survivor

of them, and one half of the estate will pass to the maternal grandparents of the intestate equally, or to the survivor of them. R.C. 2105.06(H).

3. Next of Kin

If the intestate decedent has no surviving spouse, children or their lineal descendants, parent, siblings or their lineal descendants, or grandparents or their lineal descendants, the estate passes to the intestate's next of kin. The next of kin would be the intestate's closest living blood relatives or if none, to stepchildren. R.C. 2105.06(I). If there are no stepchildren or their lineal descendants, the estate will escheat to the state. R.C. 2105.06(K).

D. Survival Requirements Under Ohio Law

Many states have created laws dealing with the time an individual must survive the decedent in order to inherit. If an heir of a decedent fails to meet the survival requirement, the heir is considered to have predeceased the decedent and does not take under the laws of intestacy. The same rules apply to establish rights as a beneficiary under a will.

1. Ohio Rule – 120 Hours (R.C. 2105.32)

By statute, Ohio requires that an heir or beneficiary must survive the decedent by 120 hours in order to take by intestacy or under the decedent's will, unless the decedent has provided otherwise by will. R.C. 2105.32. For example, a testator could require a survival period of more or less than 120 hours in their will which will govern.

a. Application

In general, the statutory 120 hour period applies whenever the title to real or personal property or the devise of real or personal property depends upon a person's survivorship of the death of another person (e.g, under the intestacy rules, under a will, through a joint tenancy with the right of survivorship, or under a life insurance contract).

b. Exception

The 120-hour rule does not apply if its application would result in escheat to the state. R.C. 2105.32(B).

E. Advancements Under Ohio Law

An advancement is a gift that is made by an intestate during their life to a relative with the intent that it be applied against any share in the intestate's estate to which the relative may later be entitled.

1. R.C. 2105.051 provides that property given during lifetime to an heir will be treated as an advancement against the heir's share of the estate only if declared in a contemporaneous writing by the decedent, or acknowledged in writing by the heir to be an advancement.

An advancement will not be taken into account in computing the intestate share to be received by the heir's lineal descendants, unless either the declaration or acknowledgment provides otherwise.

2. Valuation

The value of property that was advanced is determined as of the time the heir came into possession or enjoyment of the property. R.C. 2105.051.

II. EXECUTION OF WILLS UNDER OHIO LAW

A. Formalities

For a will to be admissible to probate, the testator must meet the formal execution, requirements set forth by Ohio statute. Ohio does have a harmless error rule which could result in minor deficiencies being excused in the execution formalities of a will. If the primary statutory requirements for execution are not satisfied, the instrument will be void and inadmissible to probate. The intestacy statute will then apply to determine the distribution of the decedent's property.

Ohio also will admit a will to probate if it appears the will was attested to and executed according to the laws of the state where it was executed, where the testator was domiciled at the time of their death, or where the testator died. R.C. 2107.18.

1. Testamentary Capacity

In Ohio, any person over the age of 18 who is of sound mind and memory, and not under restraint, may make a will. R.C. 2107.02.

2. In Writing

The entire will must be in writing. Writing includes printing or handwriting. The will can incorporate by reference any writing that is in existence at the time the will is executed. An oral will is permissible under certain limited circumstances.

3. Signature at the End of the Will

a. The will must be signed at the end by the testator or by some other person in the testator's conscious presence and at the testator's express direction. R.C. 2107.03. While some states allow the signature on any part of the will, Ohio requires the signature to be at the end of the will.

b. Form of Signature

The testator's complete formal name is not required, as long as the signature indicates his or her desire to sign. The will also may be signed by another on behalf of the testator, provided that the other person signs the testator's name, at the express direction of the testator who must be in their presence. R.C. 2107.03.

4. Witnesses

a. The will must be attested and signed in the conscious presence of the testator by two or more competent witnesses, who saw the testator sign, or heard the testator acknowledge the testator's signature. R.C. 2107.03. To be competent, witnesses must be at least 18 years old. Witnesses need not sign in each other's presence. The attesting and subscribing witnesses are not required to sign in the presence of each other.

b. Acknowledgment

It is not necessary that the witnesses see the testator sign the will. The testator is permitted to acknowledge the signature to the witnesses. Acknowledgment need not be by express words and can be inferred from conduct or circumstances.

- c. **Witness Cannot Be Beneficiary**
A witness generally must not be a beneficiary under the will. An exception applies if the witness would have been entitled to a share of the testator's estate if the will was not admitted to probate. In that situation, the witness may only take the lesser of the bequest/devise under the will or their intestate share. R.C. 2107.15.
- d. **Executor or Attorney Who Drafted Will**
An executor under a will is a competent witness to the will and would not be disqualified from acting as executor. An attorney who drafted the will is a competent witness.
- e. **Testamentary Intent**
The testator must execute the will with present testamentary intent in order for the instrument to be sustained as a will. When the testator signs the instrument, they must understand that they are executing a will. Testamentary intent is a question of fact to be determined by an examination of the will.

B. Holographic Wills

Ohio does not recognize holographic wills or codicils (no witnesses) executed in Ohio, but will recognize holographic wills and codicils if validly executed in other states.

C. Oral Wills

Ohio permits oral wills to be used to distribute a testator's personal property if made during the testator's last sickness and, within 10 days after being spoken by the testator, the testamentary words are reduced to writing and subscribed by two competent and disinterested witnesses. An oral will is not valid to transfer real property. The witnesses must prove that the testator was of sound mind and memory, not under restraint, and that the testator called upon them to bear testimony to such disposition as the testator's will. An oral will must be offered for probate within three months after the death of the testator. R.C. 2107.60.

An oral will cannot be used to revoke or modify inconsistent provisions of a prior written will.

D. Choice of Law

1. Real Property

The disposition of real property under a will is governed by the law of the state in which the real property is located.

2. Personal Property

The disposition of personal property under a will is governed by the law of the domicile of the testator at the time of their death.

3. Foreign Wills

Ohio will admit a will created in a foreign state to probate if it appears that the will was attested to and executed according to the laws of the state where it was executed, where the testator was domiciled at the time of their death, or where the testator died. R.C. 2107.18.

E. Codicils

A codicil is a supplement to an existing will that alters, amends, or modifies the will, rather than replacing it. A codicil must be executed with the same testamentary formalities as a will. A validly executed codicil republishes the will as of the date of the codicil, and may even validate a prior invalid will if the codicil refers to the will with sufficient certainty to identify and incorporate it by reference.

F. Non-Probate Assets

Distribution of non-probate assets does not involve a court proceeding. Distributions of non-probate assets are done in accordance with the terms of a contract, trust, deed or affidavit.

1. Revocable Trusts

When a trustee holds legal title and a beneficiary holds equitable title, there is no need for title to be transferred upon the death through probate court, and thus inter vivos trust property is non-probate property. A trust that is silent as to its revocability is deemed revocable.

2. Joint Bank Accounts With Right of Survivorship

Amounts on deposit in a bank account may be transferred at death by means of a joint account designation or any other multiple party account designation.

3. Payable on Death Account

By statute, Ohio permits a decedent to have a contract with a bank or other financial institution to distribute the property held under the contract at the decedent's death to a named beneficiary. The beneficiary of a payable on death account has no right to the proceeds until the owner's death. During the beneficiary's lifetime, the owner may change the beneficiary or terminate the account without the consent of the beneficiary. R.C. 2131.10.

4. Life Insurance

A beneficiary of a life insurance policy takes by virtue of the insurance contract. The proceeds are not part of the decedent's estate, unless they are payable to the estate as a beneficiary. Divorce revokes a former spouse's designation as beneficiary. If a contingent beneficiary was not named in the instrument, proceeds will be paid to the decedent's estate. R.C. 5815.33.

5. Transfer on Death Deed or Affidavit

In Ohio, a transfer on death deed is a valid instrument to convey real property if created before July 1, 2009. R.C. 5302.17. However, a transfer on death designation created after July 1, 2009, must be in the form of a transfer on death designation affidavit. R.C. 5302.22. Such instruments can be revoked or amended at any time prior to death and beneficiaries have no interest in the real property until the owner's death.

III. REVOCATION OF WILLS

A. A testator retains the ability to revoke a will at any time prior to death, even if the testator has executed a valid contract not to revoke the will. In such a case, the revoked will must be denied probate, but the interested parties may bring an action for breach of contract against the estate of the decedent. A testator's revocation of a will is valid only if the testator, at the time of the revocation, has the same capacity as the law requires for the execution of a will. A will may be revoked wholly or partially by subsequent writings, physical destruction of the will, or operation of law.

B. Subsequent Instrument Meeting Will Formalities

A testator can expressly revoke a will or any part of a will by subsequent writing or by later will or codicil, so long as the testator has a present intent to revoke and the subsequent instrument is executed with the same formalities as are required for the execution of a will under Ohio law. R.C. 2107.33(A).

The revocation can be express or can be implied by the terms of the subsequent instrument. A subsequent will does not revoke a former will unless the second will contains express words of revocation of the former will.

C. Destruction with Intent to Revoke

By statute, Ohio also allows a will to be revoked by canceling, tearing, obliterating, or destroying a material portion of the will with the intent to revoke it. The physical act may be done by the testator, by some person in the testator's presence, or by someone at the testator's express written direction. R.C. 2107.33(A).

1. Physical Act

Obliteration or canceling requires material defacement of the language of the will. Merely writing words of cancellation on the back or in the margin of the will is not effective revocation.

2. Presumption Against Revocation for Lost or Destroyed Will

In Ohio, if an original will is lost or destroyed, the probate court may admit a copy of the will to probate if the proponent of the will establishes by clear and convincing evidence both the contents of the will and that the will was executed with the formalities required at the time of execution by the jurisdiction in which it was executed.

A person opposing the admission of a copy of the will to probate may rebut this presumption by establishing by a preponderance of the evidence that the testator had revoked the will. R.C. 2107.26.

3. Revocation by a Third Party

A third party can revoke a will on behalf of the testator under R.C.2107.33(A) as long as the revocation is either at the testator's direction and in the presence of the testator, or at the express written direction of the testator.

D. Revocation of Provisions by Operation of Law

1. Subsequent Marriage

Ohio law provides that a will executed by an unmarried person is not revoked by a subsequent marriage. R.C. 2107.37. The new spouse is seen as protected by various statutes establishing a statutory spousal share of the estate.

2. Divorce, Annulment, and Final Separation

In Ohio, if a testator who previously executed a will is divorced, obtains an annulment or final dissolution of marriage, or enters into a final separation agreement, any provision in the will providing for a disposition of property to the former spouse or any provision nominating the former spouse as executor, trustee, or guardian will be automatically revoked, unless the will expressly provides otherwise. R.C. 2107.33(D). The property passing to the former spouse passes as though the former spouse had predeceased the decedent. The rest of the existing will remains in effect.

IV. CONSTRUCTION OF TERMS IN A WILL

A. Classification System – Classes of Legacies, Devises, and Bequests

1. Specific

A specific legacy, devise, or bequest is a gift real or personal of property that can be distinguished with reasonable accuracy from other property that is part of the testator's estate.

2. General

A general legacy is a gift of personal property that the testator intends to be satisfied from the general assets of the estate.

3. Demonstrative

A testator intends that a demonstrative legacy be paid from a particular source, but if that source is insufficient, they direct that the legacy be satisfied out of the general assets of the estate.

4. Residuary

A residuary legacy is a legacy of the estate remaining when all claims against the estate and all specific, general, and demonstrative legacies have been satisfied.

B. Incorporation by Reference

By statute in Ohio, a will may incorporate by reference another writing not executed with testamentary formalities, provided the other writing existed at the time the will was executed. R.C. 2107.05. Ohio courts have required that the will must describe the other writing as being in existence, identify the writing with sufficient detail to identify it, the writing must fit the description, and the will must show the testator's intent to incorporate it.

C. Lapse and Anti-Lapse Statute

1. General Rule

If a beneficiary dies before the testator, or within 120 hours of the testator, or, before the end of a different period of time by which they were required under the will to survive the testator, the gift fails and goes to the residue, unless the will provides for an alternate disposition. This is known as lapsing. Absent a residuary clause, a lapsed gift passes through intestacy.

2. Anti-Lapse Statute

a. Ohio Rule

Ohio, like most states, has enacted an anti-lapse statute providing for alternate disposition of lapsed bequests and devises. Under the statute, unless a contrary intention is manifested in the will, if a devise or bequest is made to a blood relative of a testator who was dead at the time the will was executed, or who dies after that time, leaving lineal descendants surviving the testator, the blood relative's descendants take by representation the property that would have gone to the blood relative had they survived the testator. R.C. 2107.52; See also, R.C. 5808.19 for similar anti-lapse provisions under a trust.

b. Class Gift Rule

Where a gift is to an entire class and one member of the class dies, only the surviving class members still take, absent a contrary provision in the will or the application of the anti-lapse statute. If the anti-lapse statute applies, the surviving descendants of the deceased class member will take the deceased member's share.

D. Abatement

1. Order

Gifts by will are reduced or abated when the assets of the estate are insufficient to pay all debts and legacies. The testator may indicate the intended order of abatement in the will, but if a testator fails to do so, then the law prescribes an order. A residuary beneficiary will abate before a general beneficiary and a general beneficiary will abate before a specific beneficiary.

2. Right of Contribution

If a beneficiary has their bequest taken to satisfy a creditor of the decedent, Ohio provides a statutory right of contribution from the other beneficiaries who are required to share in the debt or pay it before the beneficiary who lost the bequest. R.C. 2107.54-.58. Other beneficiaries must contribute their proportionate share of the loss to the beneficiary who had the bequest taken so that all beneficiaries of the same class share the loss equally.

E. Ademption

1. Ademption by Extinction

The doctrine of ademption applies only to specific devises and bequests. If the subject matter of a specific devise or bequest is missing or destroyed, the beneficiary takes nothing.

a. Substantial Change

A substantial change in the nature of the subject matter of a bequest will operate as an ademption, but a merely nominal or formal change will not.

b. Beneficiary Entitlement

Pursuant to R.C. 2107.501, when property is partially adeemed, a beneficiary will be entitled to whatever is left of the specifically devised or bequeathed property and any balance on the purchase price, together with any security interest owing from a purchaser to the testator at death, by reason of the sale of the property; or any proceeds unpaid at the testator's death from fire or casualty insurance on the property.

2. Ademption by Satisfaction

A general legacy may be satisfied in whole or in part by an inter vivos transfer to the beneficiary after the execution of the will, if it was the testator's intent to satisfy the legacy by the transfer.

The testator's intent to adeem must exist before the legacy or bequest is rendered inoperative. The intent of the legatee in receiving the gift does not control whether the legacy is to be regarded as adeemed.

F. Exoneration of Liens

If specifically devised property is subject to a lien that secures a debt on which the testator was personally liable, the beneficiary of the property under the will may be entitled to demand payment of the debt out of the residuary of the will, unless the will specifically provided otherwise.

The law is different on a lien on specifically devised real property which will not be exonerated unless the will directs such action. R.C. 2113.52.

V. RIGHTS OF SURVIVING SPOUSE

A. Elective Share

Ohio has an elective share statute designed to ensure that a surviving spouse is not disinherited by a will. The elective share gives the surviving spouse a share of the decedent's estate if the surviving spouse elects to take the elective share rather than the share in the will. The elective share applies to all probate property of the decedent, regardless of when it was acquired.

1. Amount of Share

The amount of the share depends on the number of lineal descendants who survive the decedent.

If the decedent is not survived by children, or by one child or that child's lineal descendants, an electing surviving spouse's share will not exceed one-half of the net estate.

If the decedent is survived by two or more children, or their lineal descendants, an electing surviving spouse's share will not exceed one-third of the net estate. R.C. 2106.01(C).

2. Time and Procedure for Election

The election of a surviving spouse may be made at any time after the death of the decedent, but must occur no later than five months from the date of the initial appointment of an administrator or executor of the estate. The election must be made in person before the probate court by the surviving spouse.

If no action is taken by the surviving spouse before the expiration of the five-month period, it is conclusively presumed that the surviving spouse elects to take under the will. R.C. 2106.01(E).

3. When Spouse Succeeds to Entire Estate

If the surviving spouse succeeds to the entire estate of the testator, it is presumed that the spouse elects to take under the will of the testator, unless they manifest a contrary intention. R.C. 2106.01(F).

4. Death of Surviving Spouse Before Probate or Making Election

If the surviving spouse dies before probate of the will or before making an election, the surviving spouse will be conclusively presumed to have elected to take under the will.

B. Spousal Support

Ohio has other statutory provisions that apply in an attempt to ensure that a surviving spouse has adequate support while the decedent's estate is in probate.

1. Support Allowance (Spouse and Children)

Ohio provides for a support allowance of \$40,000, available to a surviving spouse, a spouse and minor children, or, if there is no spouse, to the decedent's minor children under R.C. 2106.13. The surviving spouse will receive all of the allowance, unless there are minor children who are not the surviving spouse's children.

2. Mansion House (Family Home)

A surviving spouse may remain in the family home (or "mansion house") free of charge for one year.

3. Automobiles

A surviving spouse is entitled to an unlimited number of automobiles (including cars, motorcycles, and trucks) that are not otherwise transferred to the surviving spouse due to joint ownership or otherwise specifically disposed of in the will may be selected by the surviving spouse and will pass to the spouse by statute. The total value of the automobiles cannot exceed \$65,000. R.C. 2106.18.

4. Watercraft or Outboard Motor

The decedent's interest in one watercraft, one outboard motor, or one of each, that are not specifically devised of in the will may be selected by the surviving spouse and will pass to the spouse by statute. R.C. 2106.19.

VI. EXCEPTIONS TO INHERITANCE

A. Slayer Statute

Ohio statutes prohibit any person to inherit from the decedent's estate if the person is convicted of or pleads guilty to the felonious and intentional killing of the decedent or for complicity in the crimes of murder or voluntary manslaughter. R.C. 2105.19. Any property of the decedent that is payable or distributable as a result of the decedent's death will pass or be paid or distributed as if the person who caused the decedent's death had predeceased the decedent.

1. Slayer Statute Bars Other Forms of Transfer to Killer

Ohio bars the killer from taking over the decedent's will under intestate succession, or from receiving the proceeds of the decedent's life insurance policy, any rights of survivorship with regard to a joint tenancy, transfer on death rights, or joint bank accounts. R.C. 2105.19(A).

B. Disclaimer

Because acceptance of a testamentary gift or a share of an intestate's estate is presumed, a party must actively disclaim it if they wish not to accept it. The disclaiming party is treated as if they had predeceased the decedent, and the

property is distributed to the next eligible taker under the will or the intestacy statute. R.C. 5815.36.

1. Ohio Requirements

a. What May Be Disclaimed

Ohio allows disclaimer of testamentary and non-testamentary succession to all forms of property, real and personal, tangible and intangible. R.C. 5815.36. Thus, a person may disclaim property distributed by will, an intestate share, life insurance proceeds, and joint tenancy property.

b. Procedure

i. Contents

The disclaimer must be in writing, signed and acknowledged by the person disclaiming, describe the property or power being disclaimed, reference the donative instrument, and contain a declaration of the disclaimer and its extent. R.C. 5815.36(B).

ii. Delivery and Filing

A copy of the disclaimer must be personally delivered or sent by certified mail to the person who has legal title of the property being disclaimed. A copy must also be filed in the probate court where the decedent's estate is being administered. If the interest being disclaimed is an interest in real property, an executed copy of the disclaimer instrument must be recorded in the office of the recorder of the county in which the real estate is located. R.C. 5815.36(F).

iii. Timing

In Ohio, the disclaimer must be delivered, filed, or recorded prior to accepting any benefits of the disclaimed interest. R.C. 5815.36(D).

VII. WILL CONTESTS

A. Testamentary Capacity

In Ohio, in order to execute or revoke a will, the testator must be at least 18 years old and possess a sound mind at the time of execution or revocation. R.C. 2107.02.

1. General Testamentary Capacity

The testator lacks the requisite mental capacity if he, at the time of execution, did not have the ability to:

- a. Understand the nature of the business in which the testator is engaged;
- b. Comprehend generally the nature and extent of his property;
- c. Hold in his mind the names and identities of those who have natural claims upon his bounty; and
- d. Be able to appreciate his relationship to the members of his family.

2. Natural Claims on Testator's Bounty

Typically, the natural objects of the testator's bounty include those persons related to the testator by consanguinity, but also may include a testator's spouse or others who are close to him.

3. Burden of Proof on Party Alleging Incapacity

The burden of proof is on the party alleging testamentary incapacity. Only those parties that would financially benefit, if successful, have standing to contest a will due to alleged incapacity. The issue of testamentary capacity must be applied as of the date the will was executed or revoked.

B. Undue Influence

Undue influence is mental or physical coercion exerted by a third party on the testator with the intent to influence the testator such that they lose control of their own judgment. The test of undue influence is the substitution of another's will for that of the testator. Once a will is determined to have been the product of undue influence, it may be invalidated in whole or in part, as long as the overall testamentary scheme is not altered thereby.

1. Elements of Undue Influence

- a. A "susceptible" testator;
- b. Another's opportunity to exert undue influence;
- c. The fact of improper influence exerted; and
- d. The result showing the effect of such influence.

2. Existence of Factors Not Determinative

Mere advice, persuasion, kindness, or other similar factors will not alone constitute undue influence. Must be actually exerted on the mind of the testator with respect to the execution of the will in question.

3. Time of Influence

Undue influence must have been exerted at the time of execution (or revocation) of the will, resulting in dispositions which the testator would not otherwise have made.

4. Presumption of Influence

a. Confidential Relationship

A presumption of undue influence arises when a beneficiary under the will had a confidential relationship with the testator at the time the will was executed. A "confidential relationship" exists, for purposes of a claim of undue influence, when trust and confidence are placed in the integrity and fidelity of another.

b. Burden of Proof Shifts

Upon a finding of a confidential relationship, a presumption of undue influence arises and the burden shifts to the beneficiary to show by a preponderance of the evidence that such influence was not exercised.

c. Treatment of Beneficiary

A beneficiary who is shown to have exerted undue influence is treated as having predeceased the testator to the extent that the gift to them exceeds their intestate share of the testator's estate.

d. When Testator's Attorney is Beneficiary

A gift to the testator's attorney is especially susceptible to a claim of undue influence because of the confidential and fiduciary relationship between an attorney and its client. A rebuttable presumption of undue influence generally exists unless the attorney is related by blood or marriage to the testator.

XVI. OHIO RULES OF PROFESSIONAL CONDUCT

The Ohio Rules of Professional Conduct are based on the American Bar Association Model Rules of Professional Conduct (Model Rules). The Ohio Rules, however, differ from the Model Rules in some respects. Although the Comments included under the Ohio Rules also differ in some respects, those differences are not included within the scope of this outline, but are not detailed within this outline.

Attorneys practicing law in Ohio are required to comply with the Ohio Rules. This outline highlights many significant distinctions between the Ohio Rules and the Model Rules, but it is not a comprehensive list of all distinctions between the two.

I. PREAMBLE - A LAWYER'S RESPONSIBILITIES - SCOPE

A. Prof.Con.R. 1.0 – Terminology

Some terms used in the Ohio Rules are defined differently from the terminology of the Model Rules.

1. The definition of “firm” and “law firm” includes legal aid and public defender offices, but not government agencies because there are significant differences between a government agency and a group of lawyers associated to serve nongovernmental clients.
2. The definition of “fraud” or “fraudulent” is amended to include the elements of fraud that have been established by Ohio law. *See, e.g., Domo v. Stouffer*, 64 Ohio App.3d 43, 51 (6th Dist.1989) and Ohio Jury Instructions, Sec. 307.03.
3. Ohio adds a definition of “illegal” to the rules referring to “illegal or fraudulent conduct,” including Rules 1.2(d), 1.6(b)(3), 1.16(b)(2), 4.1(b), and 8.4(c), which apply to statutory and regulatory prohibitions that are not classified as crimes.
4. The Ohio Rules define “substantial” to incorporate a definition from Ohio case law. *See State v. Self*, 112 Ohio App.3d 688, 693 (12th Dist.1996).

II. CLIENT-LAWYER RELATIONSHIP

A. Prof.Con.R. 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer

1. Ohio Rule 1.2(a) adds the following language: “A lawyer does not violate this rule by acceding to requests of opposing counsel that do not prejudice the rights of the client, being punctual in fulfilling all professional commitments, avoiding offensive tactics, and treating with courtesy and consideration all persons involved in the legal process.”
2. Model Rule 1.2(b) was moved to Comment [5] of Ohio Rule 1.2 because the provision is more appropriately addressed in a comment.
3. Rule 1.2(c) differs from Model Rule 1.2(c) in that it requires only that a limitation in a lawyer’s scope of representation be communicated to the client, preferably in writing. It does not require written informed consent.
4. As noted in the terminology section, Rule 1.2(d)(1) incorporates a change throughout the Ohio Rules that replaces “criminal” with “illegal.” Rule 1.2(d)(2) does not exist in the Model Rules (permitting counseling client about medical marijuana).

5. Rule 1.2(e) does not exist in the Model Rules (generally prohibits threatening criminal or professional misconduct action to gain an advantage in a civil matter).
- B. Prof.Con.R. 1.4 – Communication
1. Ohio Rule 1.4(a)(4) is changed from the Model Rule to require compliance with client requests “as soon as practicable” rather than “promptly.”
 2. Rule 1.4(c) does not have a counterpart in the Model Rules. It mirrors DR 1-104, adopted effective July 1, 2001, which provides the public with additional information and protection from attorneys who do not carry malpractice insurance. Ohio is one of only a few states that have adopted a similar provision, and this requirement is retained in the rules.
- C. Prof.Con.R. 1.5 – Fees and Expenses
- Several changes were made to the Model Rule to reflect existing Ohio case law, including:
1. Model Rule 1.5(a) provides that a lawyer shall not charge “unreasonable” fees or expenses, but Ohio retains the terminology of DR 2-106 (A) prohibiting “illegal or clearly excessive” fees, which is more encompassing and better suited to use in Ohio.
 2. The Ohio Model Rule adds division (d)(3), which prohibits fees denominated as “earned upon receipt,” “nonrefundable,” or other similar terms unless the client also is advised in writing that the client may be entitled to a refund of all or part of the fee based upon the value of the representation. This provision was added because of the high number of disciplinary cases involving retainers.
- D. Prof.Con.R. 1.6 – Confidentiality of Information
- Ohio Rule 1.6(a) clarifies that “information relating to the representation” includes information protected by the attorney-client privilege. Ohio Rule 1.6(b) adds two circumstantial exceptions to the obligation to protect a client’s confidentiality:
1. To prevent the commission of a crime by the client or other person.
 2. To mitigate substantial injury to the financial interests or property of another that has resulted from the client’s commission of an illegal or fraudulent act (not necessarily criminal), in furtherance of which the client has used the lawyer’s services.
- E. Prof.Con.R. 1.8 – Conflict of Interest – Current Clients, Specific Rules
1. Rule 1.8(c) is revised to conform to DR 5-101(A)(2). Rule 1.8(f)(4) references specific obligations of insurance defense counsel. Rule 1.8(h) conforms the rule, on the circumstances in which a lawyer may enter into an agreement with a client settling a claim against the lawyer, with Ohio law as stated in *Disciplinary Counsel v. Clavner*, 77 Ohio St.3d 431 (1997).
 2. Division (f)(4) requires the client be provided with a written statement of insured client’s rights if the lawyer is compensated by an insurer to represent the client.
- F. Prof.Con.R. 1.10 – Imputation of Conflicts of Interest - General Rule
- Ohio Rule 1.10 adds divisions (c) and (d), addressing the issues of imputation and removing imputation to lawyers in a new firm when a lawyer changes law firms and no longer represents a former client. Rule 1.10(d) permits the use of

law firm screens to remove imputation, consistent with *Kala v. Aluminum Smelting & Refining Co., Inc.*, 81 Ohio St.3d 1 (1998), except in the circumstances stated in Rule 1.10(c), where a lawyer who is changing firms had a substantial role in the same matter in which the lawyer's new firm represents or proposes to represent a client with adverse interests.

G. Prof.Con.R. Rule 1.11 – Special Conflicts of Interest for Former and Current Government

1. Officers and Employees

The rule clarifies that a lawyer subject to these special rules shall comply with all the conditions set forth in Rule 1.11(a), (b), and (d), as well as all applicable laws and Rule 1.9(c) regarding conflicts of interest. This includes provisions of the Ohio Ethics Law contained in R.C. Chapters 102 and 2921, as well as the regulations of the Ohio Ethics Commission. These statutes and regulations include specific definitions of a prohibited conflict of interest and language forbidding the same for present and former government employees.

H. Prof.Con.R. Rule 1.13 – Organization as Client

1. Ohio Rule 1.13 does not include a provision of Model Rule that imposes a “whistle-blowing” requirement upon lawyers for organizations.
2. The Ohio Rule has rule been edited for greater simplicity and clarity. Among the changes are reconciliation of the apparent contradiction in Model Rule 1.13(b) between the direction to “proceed as reasonably necessary,” which leaves the approach to the lawyer’s discretion, and the mandatory direction to report to higher authority.
3. The “reporting out” requirement of Model Rule 1.13(c) was stricken. Instead, a lawyer for an organization has the same “reporting out” discretion or duty as other lawyers have under Rule 1.6(b) and (c). For this reason, subsections (d) and (e) also are deleted.

I. Prof.Con.R. 1.15 – Safekeeping Funds and Property

Rule 1.15 is altered from the Model Rule to clarify the lawyer’s fiduciary responsibility. The primary divergence from the Model Rule is the adoption of the specific record-keeping requirements in Rule 1.15(a)(1) to (5).

J. Prof.Con.R. 1.16 – Declining or Terminating Representation

The Ohio Rule includes additional circumstances under which a lawyer may decline or withdraw from representation. For example, as used throughout the Ohio Rules, the Model Rule’s use of the term “criminal” is changed to “illegal.” This allows the lawyer to withdraw when the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is a violation of a statute or administrative regulation for which there are no criminal penalties.

K. Prof.Con.R. 1.17 – Sale of Law Practice

Although there is little textual similarity between Rule 1.17 and the Model Rule, most of the substantive provisions of the Model Rule are incorporated into the Ohio Rule, with the major exceptions being that Rule 1.17 does not permit the sale of only a portion of a law practice, and allows a missing client to be provided notice of the proposed sale by publication. The comments are modified to track the rule and Ohio law.

III. COUNSELOR

- A. Prof.Con.R. 2.4 – Lawyer Serving as Arbitrator, Mediator, or Third-Party Neutral
The only substantive legal distinction between the Ohio Rules and the Model Rules is that a lawyer serving as a third-party neutral is subject to statutes as well as court rules and other laws including the Code of Ethics for Arbitration in Commercial Disputes or the Model Standards of Conduct for Mediators.

IV. ADVOCATE

- A. Prof.Con.R. 3.2 – Expediting Litigation
Model Rule 3.2 was not adopted in Ohio because the substance of the rule is addressed by other provisions of the Ohio Rules of Professional Conduct, including Rules 1.3 (Diligence), 3.1 (Meritorious Claims and Contentions), and 4.4(a) (Respect for Rights of Third Persons).
- B. Prof.Con.R. 3.3 – Candor Toward the Tribunal
Unlike the Model Rule, the duties stated in divisions (a)(1), (a)(3), and (b) of the Ohio Rule continue after the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6. The duty to remedy or disclose false statements, false evidence, or criminal or fraudulent conduct are so integral to the integrity of proceedings that they should not expire at the conclusion of a proceeding.
- C. Prof.Con.R. 3.4 – Fairness to Opposing Party and Counsel
In addition to prohibitions in subsections (a) through (f), a lawyer shall not advise or cause a person to hide or to leave the jurisdiction of a tribunal for the purpose of becoming unavailable as a witness.
- D. Prof.Con.R. 3.5 – Impartiality and Decorum of the Tribunal
In addition to a prohibition against seeking to influence a member of the tribunal (judicial officer, juror, prospective juror, or other official), a lawyer shall not lend anything of value or give anything of more than *de minimus* value to a member of the tribunal, or communicate ex parte with a tribunal member about the merits of the case. A lawyer must also promptly reveal to the tribunal any improper conduct by a juror, prospective juror, or family member of a juror or prospective juror, of which the lawyer has knowledge.
- E. Prof.Con.R. 3.6 – Trial Publicity
The Ohio Rule also includes regulations imposed by Rule 1.6 (duty of confidentiality).
- F. Prof.Con.R. 3.7 – Lawyer as Witness
The Ohio Rule does not allow a firm to continue representation when an attorney is disqualified, therefore preserving the appearance of objectivity in the legal proceeding.
- G. Prof.Con.R. 3.8 – Special Responsibilities of a Prosecutor
The Ohio Rule deletes the portion of the Model Rule that holds a prosecutor responsible for the extrajudicial statements of law enforcement personnel and other nonlawyers involved in the prosecutorial function.

V. TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

- A. Prof.Con.R. 4.1 – Truthfulness in Statements to Others
The Ohio Rule includes two distinctions from the Model Rule that are intended to track Ohio law. First, division (b) prohibits lawyers from assisting “illegal” and fraudulent acts of clients consistent with proposed Rule 1.2(d) and DR 7-102(A) (7). Second, the “unless” clause at the end of division (b) which conditions the lawyer’s duty to disclose on exceptions in Rule 1.6, is deleted.
- B. Prof.Con.R. 4.4 – Respect for Rights of Third Persons
The Ohio Rule also prohibits actions that have no substantial purpose other than to “harass” a third person.

VI. LAW FIRMS AND ASSOCIATIONS

- A. Prof.Con.R. 5.1 – Responsibilities of Partners, Managers, and Supervisory Lawyers
Although most states have adopted the Model Rule, Ohio adopted only the third section, which specifies the circumstances under which a lawyer is responsible for another lawyer’s violation of professional conduct rules. The Ohio Rule applies to partners and managers not only in a law firm but also in a government agency.
- B. Prof.Con.R. 5.6 – Restrictions on Right to Practice
The Ohio Rule forbids agreements that restrict a lawyer’s right to practice as part of the settlement of “a claim or controversy,” whereas the Model Rule prohibits restrictions in a settlement of “a client controversy.”
- C. Prof.Con.R. 5.7 – Responsibilities Regarding Law-Related Services
The Ohio Rule includes two additional paragraphs prohibiting a lawyer who owns a law-related business from requiring law clients to use the non-legal services of the business, and vice versa.

VII. PUBLIC SERVICE

- A. Prof.Con.R. 6.2 – Accepting Appointments
The Ohio Rule omits the third paragraph of the Model Rule, which permits a lawyer to decline an appointment that is especially repugnant to the lawyer. Ohio’s rules on advertising and solicitation do not depart from the Model Rules as much as the rules of most other states, but there are differences, nonetheless.

VIII. INFORMATION ABOUT LEGAL SERVICES

- A. Prof.Con.R. 7.2 – Advertising
Subject to certain exceptions, the Ohio Rule prohibits a lawyer from advertising solely to obtain business for referral to other lawyers, without the intent to participate actively in the representation. Ohio omitted [Model Rule 7.2\(b\)\(4\)](#) on reciprocal referral arrangements.
- B. Prof.Con.R. 7.3 – Solicitation of Clients
The Ohio Rule also requires disclosure of how the lawyer came to know of the client’s identity and legal need, and prohibits lawyers from giving a predetermined evaluation of the merits of the case. If the prospective client is named as a

defendant in a civil action, the lawyer must not send any communication without first verifying via court records that the defendant was served. The Ohio Rule also requires that if a lawyer communicates with disaster victims or their relatives within 30 days of the incident, the communication must include a notice, “Understanding Your Rights,” with the specific details set forth in the rule.

- C. Prof.Con.R. 7.4 – Communication of Fields of Practice and Specialization
The Ohio Rule allows statements that a lawyer’s practice is limited to, or concentrated in, certain fields of law.
- D. Prof.Con.R. 7.5 – Firm Names and Letterheads
The Ohio Rule prohibits the use of trade names.

IX. MAINTAINING THE INTEGRITY OF THE PROFESSION

- A. Prof.Con.R. 8.1 – Bar Admission and Disciplinary Matters
The Ohio Rule covers only lawyers, not also bar applicants as in the Model Rule.
- B. Prof.Con.R. 8.2 – Judicial Officials
The Ohio Rule’s subsection (a) applies only to statements about judges, not to statements about public legal officers.
- C. Prof.Con.R. 8.3 – Reporting Professional Misconduct
The reporting requirements of the Ohio Rule are triggered when a lawyer possesses “unprivileged” knowledge of certain professional misconduct.
- D. Prof.Con.R. 8.4 – Misconduct
The Ohio Rule prohibits “illegal” acts that reflect adversely on the lawyer’s honesty or trustworthiness, rather than “criminal” acts. It also includes a paragraph prohibiting lawyers from engaging in discriminatory conduct in a professional capacity.