

**PROPOSED AMENDMENTS TO THE SUPREME COURT RULES
FOR THE REPORTING OF OPINIONS**

Comments Requested: The Supreme Court of Ohio will accept public comments until May 22, 2012 on the following proposed amendments to the Supreme Court Rules for the Reporting of Opinions.

Comments on the proposed amendments should be submitted in writing to: Sandra Grosko, Reporter of Decisions, 65 South Front Street, 8th Floor, Columbus, Ohio 43215-3431, or sandra.grosko@sc.ohio.gov not later than May 22, 2012. If your comment refers to a specific provision of the proposed amendments, please use the line numbers that appear along the left margin. Please include your full name and mailing address in any comments submitted by e-mail. Please submit comments via regular mail or e-email, not both.

Key to Proposed Amendment:

1. Original language of the rule appears as regular typescript.
2. Language to be deleted appears ~~thus~~.
3. Language to be added appears thus.

**PROPOSED AMENDMENTS TO THE SUPREME COURT RULES
FOR THE REPORTING OF OPINIONS**

Rule 1. Opinions and Syllabus of the Supreme Court; Syllabus of Opinions by Courts Other Than the Supreme Court; Numbering ~~or Lettering~~ of Paragraphs of Text and Footnotes.

(A) All opinions of the Supreme Court shall be ~~reported~~ promptly posted to the Supreme Court website and reported in the advance sheets and bound volumes of the Ohio Official Reports ~~and posted to the Supreme Court website.~~

(B)(1) The law stated in a Supreme Court opinion is shall be contained within in its text, including its syllabus (if one is provided), and ~~its text, including~~ footnotes.

(2) ~~If there is disharmony between the syllabus of an opinion and its text or footnotes, the syllabus controls.~~

(3) ~~A~~ All majority opinions of the Supreme Court opinion may be signed by a justice, with or without a syllabus, or be per curiam, with or without shall have the same authority.

20 whether issued per curiam or as an opinion authored by a justice and whether or not they have a
21 syllabus. “Per curiam” means “by a majority of the Court.”

22
23 (C) ~~A Introductory material other than a syllabus of an opinion, or a summary under~~
24 ~~Rules 6(C) and 10(C) of these rules written by a the court other than the Supreme Court, is shall~~
25 ~~not be~~ the controlling statement of the points of law decided, but is shall merely be a research
26 and indexing aid.

27
28 (D) ~~All opinions text of the Supreme Court opinions shall have numbered paragraphs~~
29 ~~of text and footnotes consecutively numbered or lettered to assist in the “pinpoint” citation of~~
30 ~~specific portions of the opinion in electronic format. Numbering and lettering shall exclude~~
31 ~~paragraphs of the syllabus, footnotes, headings, block quotations, and editorial content from legal~~
32 ~~publishers. In all respects, the format of opinions posted to the Supreme Court website shall~~
33 conform to the conventions adopted by the Supreme Court Reporter of Decisions.

34 35 **Commentary (May 1, 2002)**

- 36
37 a. ~~All Supreme Court opinions shall be reported in bound volumes and~~
38 ~~posted to the Court’s website.~~

39
40 ~~Rationale. It was the Committee’s view that all Supreme Court~~
41 ~~opinions should continue to be posted to the Court’s website because of~~
42 ~~the increasing use of the World Wide Web for legal research and~~
43 ~~retrieving opinions.~~

- 44
45 b. ~~The syllabus and the text state the law in a Supreme Court opinion.~~

46
47 ~~Rationale. It was the Committee’s view, and that of some courts of~~
48 ~~appeals judges, that the Supreme Court’s historic “syllabus rule” may have~~
49 ~~outlived its usefulness. Over the last decade, there appears to have been~~
50 ~~declining use of the “syllabus” by some members of the Court, and one~~
51 ~~frequently finds much “good law” in an opinion – including even footnotes~~
52 ~~– which is never reflected in any syllabus paragraphs. If there is~~
53 ~~“disharmony” between the syllabus and the text, the syllabus would~~
54 ~~control. See State v. Walker (1999), 134 Ohio App. 3d 89 for an example~~
55 ~~of the problem with the syllabus rule.~~

- 56
57 c. ~~The syllabus or any summary of an opinion from any other court is not~~
58 ~~controlling and is only a research tool.~~

- 59
60 d. ~~All Supreme Court opinions shall have the paragraphs of text and~~
61 ~~footnotes numbered or lettered to facilitate citation to specific portions of~~
62 ~~the opinion in electronic format.~~

63
64 **Previous rule:**

- 66 a. ~~All Supreme Court opinions were reported in the Official Reports.~~
67 b. ~~The syllabus of a Supreme Court opinion stated the controlling points of~~
68 ~~law.~~
69 c. ~~The syllabus of a court of appeals or trial court opinion was not controlling,~~
70 ~~and the points of law were contained within the text of the opinion.~~
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73 **Rule 2. Opinions Shall Be Promptly Published and Posted of the Courts of Appeals**
74 **and Court of Claims.**
75

76 ~~Opinions~~ All opinions of the courts of appeals and the Court of Claims shall, upon
77 transmission to the Supreme Court, be published in the Ohio Official Reports and promptly
78 posted to the Supreme Court website as promptly as reasonably possible after their
79 announcement. Posting and publication of opinions shall not be delayed by the filing of motions
80 for reconsideration or by pending appeals. For
81

82 **Commentary (May 1, 2002)**
83

84 ~~Publication and posting of opinions shall not be delayed by the filing of motions~~
85 ~~for reconsideration or by pending appeals.~~
86

87 ~~Rationale. It was the consensus of the committee that there should be no delay~~
88 ~~in publication and posting of opinions to see if a decision will be appealed or to await the~~
89 ~~result of an appeal. This approach also provides prompt publication in the federal~~
90 ~~system.~~
91

92 ~~Previous rule. Opinions of the courts of appeals were not reported in the Ohio~~
93 ~~Official Reports (1) if the case was pending before the Supreme Court or the Supreme~~
94 ~~Court had ruled upon the merits of the case; (2) if a motion to certify the record or a~~
95 ~~motion for leave to appeal was pending before the Court; or (3) until 70 days had~~
96 ~~passed since the court of appeals judgment was journalized.~~
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99 **Rule 3. Opinions of the Courts of Appeals.**
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101 (A) ~~For~~ purposes of these rules, opinions of the courts of appeals do not include
102 orders on procedural matters, orders without opinions, ~~memorandum decisions,~~ and judgment
103 entries under division (E) of Rule 11.1(E) of the Rules of Appellate Procedure.
104

105 (B) ~~All court of appeals opinions shall be posted to the Supreme Court website. A~~
106 ~~representative selection of those opinions meeting the criteria in Rule 5 of these rules shall be~~
107 ~~designated for print publication and printed in the advance sheets and bound volumes of the~~
108 ~~Ohio Official Reports. No opinion (or part thereof) of a court of appeals shall be designated for~~
109 ~~print publication unless both of the following apply:~~
110

111 (1) ~~It is so designated by the Supreme Court Reporter;~~

112 (2) ~~The majority of the court of appeals panel deciding the case agrees.~~

113

114 (C) ~~In lieu of the provisions of division (B) of this rule, a court of appeals may~~
115 ~~determine by local rule that all of its opinions be sent to the Supreme Court Reporter, who will~~
116 ~~determine whether the opinions shall be designated for print publication and printed in the~~
117 ~~advance sheets and bound volumes of the Ohio Official Reports.~~

118

119

Commentary (May 1, 2002)

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121 ~~All opinions of the courts of appeals will be posted on the Supreme Court~~
122 ~~website. Those opinions that meet the criteria in new Rule 5 will be designated for print-~~
123 ~~publication in the advance sheets and the Ohio Official Reports if the Reporter and a~~
124 ~~majority of the court of appeals panel that decided the case agree. Alternatively, a court~~
125 ~~of appeals, by local rule, may choose to have the Reporter determine which of its~~
126 ~~opinions will be designated for print publication.~~

127

128 ~~Previous rule. The new rule is substantively the same as the previous rule: those~~
129 ~~opinions selected by the court of appeals panel had to also be approved by the~~
130 ~~Reporter in order to be published in the Official Reports.~~

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Rule 4 3. “Controlling” and “Persuasive” Designations Based on Form of Publication Abolished; Use of Opinions.

~~(A) Notwithstanding the prior versions of these rules, designations of, and distinctions between, “controlling” and “persuasive” opinions of the courts of appeals based merely upon whether they have been published in the Ohio Official Reports are abolished.~~

~~(B) All court of appeals opinions issued after the effective date of these rules May 1, 2002 may be cited as legal authority and weighted as deemed appropriate by the courts without regard to whether the opinion was published or in what form it was published.~~

~~(C) Unless otherwise ordered by the Supreme Court, court of appeals opinions may always be cited and relied upon for any of the following purposes:~~

~~(1) Seeking certification to the Supreme Court of Ohio of a conflict question within the provisions of sections 2(B)(2)(f) and 3(B)(4) of Article IV of the Ohio Constitution;~~

~~(2) Demonstrating to an appellate court that the decision, or a later decision addressing the same point of law, is of recurring importance or for other reasons warrants further judicial review;~~

~~(3) Establishing *res judicata*, estoppel, double jeopardy, the law of the case, notice, or sanctionable conduct;~~

~~(4) Any other proper purpose between the parties, or those otherwise directly affected by a decision.~~

Commentary (May 1, 2002)

~~a. Designations of, and distinctions between, “controlling” and “persuasive” opinions of the courts of appeals are abolished.~~

~~b. All courts of appeals opinions issued after the effective date of these rules may be cited as legal authority and weighted as considered appropriate by the courts.~~

~~c. Unless otherwise ordered by the Supreme Court, court of appeals opinions may always be cited and relied upon for any of the following reasons:~~

~~(1) To seek certification of a conflict question;~~

~~(2) To demonstrate to an appellate court that the decision, or a later decision addressing the same point of law, is of recurring importance or otherwise warrants further judicial review;~~

~~(3) To establish *res judicata*, estoppel, double jeopardy, the law of the case, notice, or sanctionable conduct;~~

~~(4) For any other purpose as to those directly affected by the decision.~~

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~~Rationale.— It was the Committee’s view that the distinction between opinions that are controlling and those that are only persuasive, based solely on whether the opinions were published in the Ohio Official Reports, should be abolished. The “controlling” nomenclature is primarily the historical result of an inability to physically print all court of appeals opinions, and that distinction is no longer necessary or useful (a) because many appellate judges give equal weight to published and unpublished opinions, and (b) because technology now permits all appellate opinions to be easily and readily obtained electronically.~~

~~Also, nationally there is increasing criticism of maintaining the “published / controlling” versus “unpublished / persuasive” dichotomy. (See *Anastasoff v. United States*, 223 F.3d 898 (2000), dismissed as moot en banc 235 F.3d 1054 (8th Cir. 2000); “Publication Rights,” *The American Lawyer*, October 2000, pg. 15-16; “Legal Shortcuts Run Into Some Dead Ends,” *The New York Times*, Sunday, October 8, 2000, pg. 4; “Justice in the Dark,” *Forbes*, October 30, 2000, pg. 72-74; “Publish or Perish,” *Litigation*, Spring 2001, pg. 59-65.) The Committee recognized the concern that with the designations abolished, and all appellate opinions are “controlling,” there is some burden on the practitioner to sift through the large number of opinions to find those that are the “best” precedent.~~

~~New 4(C) retains the Supreme Court’s discretion to order that a court of appeals opinion not be cited or relied upon in other cases.~~

~~Previous rule:~~

- ~~a. Opinions published in the Official Reports are controlling authority in the district, and unpublished opinions are controlling only as to the parties.~~
- ~~b. An unpublished or unofficially published court of appeals opinion may be cited for any of the following reasons:
 - ~~(1) As controlling authority between the parties;~~
 - ~~(2) As persuasive authority only on a court, including the deciding court, in the district in which it was rendered;~~
 - ~~(3) By the appellate court of another district for purposes of certifying a conflict question to the Supreme Court.~~~~
- ~~c. A majority of the panel that decided the case and the Supreme Court Reporter determine if the opinion is reported and therefore controlling.~~

Rule 5. Criteria for Designation For Print Publication.

~~In designating court of appeals and trial court opinions for print publication, the Supreme Court Reporter and the judiciary shall be guided by the following criteria:~~

268 (A) ~~Court~~ When submitted to the Supreme Court for posting to the Supreme Court
269 ~~website, court of appeals and Court of Claims~~ opinions shall ~~indicate~~ display the number and
270 caption of the case, the character of the proceeding (e.g., mandamus, habeas corpus, criminal
271 appeal from common pleas court, civil appeal from municipal court), the court deciding the case,
272 the counsel for all parties, and the date the judgment was journalized.

273
274 (B) ~~The Supreme Court Reporter may consult with the court that issued an opinion~~
275 ~~designated for print publication about shortening it, or making other editorial changes. Opinions~~
276 ~~posted to the Supreme Court website may also be subject to such editing.~~

277
278 (C) All court of appeals and Court of Claims opinions shall be ~~formatted in~~
279 ~~accordance~~ submitted to the Supreme Court for posting with the paragraphs of the text already
280 numbered as specified in Rule 1(D) of these rules, and ~~be accompanied by a standardized~~
281 ~~information sheet and a succinct summary of~~ opinions shall have incorporated in the document
282 properties the case's name, number, date, and issuing court and key words delineating the legal
283 issues decided for use on the Supreme Court website addressed.

284 285 **Commentary (May 1, 2002)**

- 286
287 a. ~~The Reporter may consult with the court that issued the opinion about~~
288 ~~shortening the opinion or making editorial changes.~~
289 b. ~~All court of appeals opinions shall have the paragraphs and footnotes~~
290 ~~numbered or lettered by the court of appeals to facilitate citation to specific~~
291 ~~portions of the opinion in electronic format.~~

292 293 **Previous rule:**

- 294
295 a. ~~The Reporter could reduce the length of opinions that were greater than~~
296 ~~25 pages, subject to the approval of the judge who wrote the opinion, and~~
297 ~~could edit all court of appeals opinions that were approved for reporting in~~
298 ~~the Ohio Official Reports.~~
299 b. ~~The previous rules did not address opinions that are in electronic format.~~

300 301 302 **Rule 7.5. Form of Citation.**

303
304 (A) ~~Opinions Citations in Supreme Court opinions shall be cited in accordance with~~
305 ~~the Manual of Citations~~ follow the *Writing Manual* adopted by the Supreme Court Reporter.

306
307 (B) ~~A citation to an opinion found only in electronic format shall indicate the status of~~
308 ~~any appeal, or any disposition by a superior court, known after diligent search.~~

309
310 (C) ~~Unless otherwise directed by local rule, those citing an opinion found only in~~
311 ~~electronic format shall attach a legible copy of the opinion to the brief in which it is first cited.~~
312 ~~Briefs referencing an electronic opinion filed subsequently, while the case remains pending~~
313 ~~before the same court, need not attach additional copies of it.~~

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Commentary (May 1, 2002)

- a. ~~A citation to an opinion found only in electronic format shall indicate the status of any appeal or any disposition by a superior court.~~
- b. ~~Citing an opinion found only in electronic format requires that a copy of the opinion be attached to the document.~~

~~Previous rule. The previous rule did not specifically address opinions found in electronic format. The previous rule provided that a party who cited an unpublished opinion must attach a copy and indicate any disposition by a superior appellate court or any appeal therefrom.~~

Rule 8 6. Failure to Print Publish an Opinion in the Ohio Official Reports; Failure to Allow A a Discretionary Appeal.

~~(A) The failure of the Supreme Court Reporter or a court to designate an opinion for print publication shall not be considered a statement as to the merits of the law stated in the opinion.~~

~~(B) The refusal of the Supreme Court to accept any case for review shall not be considered a statement of opinion as to the merits of the law stated by the trial or appellate court.~~

Commentary (May 1, 2002)

- a. ~~The failure of the Reporter or the court of appeals to designate an opinion for print publication shall not be considered a statement as to the merits of the law stated in the opinion.~~
- b. ~~The Supreme Court's refusal to accept a case for review shall not be considered a statement of opinion as to the merits of the law stated by the trial or appellate court.~~

~~Previous rule. The previous rule was substantively identical.~~

Rule 9 7. Posting Trial and of Appellate Court and Court of Claims Opinions on the Supreme Court Website as of July 1, 2012.

~~(A) Beginning May 1, 2002, court of appeals and trial court opinions will be posted on the The Supreme Court hereby designates the Supreme Court website pursuant to a protocol to be developed by the Court. Thereafter, as the Ohio Official Reports for appellate court and Court of Claims opinions posted to the Supreme Court website pursuant to this rule shall be kept permanently on the website for access by the public as of July 1, 2012.~~

360 (B) ~~Effective May 1, 2002, opinions should be cited to both the Supreme Court~~
361 ~~website citation and Official Reports citation where both are available.~~

362 (C) ~~Should the Supreme Court cease publication of the Ohio Appellate Reports and~~
363 ~~the Ohio Miscellaneous Reports in a paper medium (which event shall not occur prior to July 1,~~
364 ~~2006), the Supreme Court website may be designated the Ohio Official Reports for those~~
365 ~~opinions.~~

366
367 **Commentary (May 1, 2002)**
368

- 369 a. ~~Beginning on May 1, 2002, court of appeals and trial court opinions will be~~
370 ~~permanently posted to the Court's website.~~
371 b. ~~Beginning on May 1, 2002, opinions should be cited to both the Supreme~~
372 ~~Court website citation and Official Reports citation where both are~~
373 ~~available.~~
374 c. ~~If the Court ceases publishing the Ohio Appellate Reports and the Ohio~~
375 ~~Miscellaneous Reports in bound volumes, which shall not occur prior to~~
376 ~~July 1, 2006, the Court's website may be designated the Ohio Official~~
377 ~~Reports for those opinions.~~

378
379 ~~Rationale. It was the Committee's view that in light of the increasing use of~~
380 ~~electronic databases and the World Wide Web to locate opinions, all appellate opinions~~
381 ~~should be posted on the Court's website, regardless of whether designated for print-~~
382 ~~publication. The Committee expects that any burden that might result from the~~
383 ~~increased number of cases that will be available to search will be mitigated by the~~
384 ~~continued development of sophisticated search engines that will permit the user to~~
385 ~~selectively search the electronic databases.~~

386
387 ~~It also was the view of the Committee that the increasingly widespread use of~~
388 ~~electronic legal research and the proliferation and decreased cost of legal research~~
389 ~~technology may in the future negate the need for continued publication of the Ohio~~
390 ~~Appellate Reports and the Ohio Miscellaneous Reports in bound volumes. Instead, it is~~
391 ~~conceivable that the Court's website could be designated the Ohio Official Reports for~~
392 ~~those opinions. However, the Committee did not recommend such a rule at this time.~~

393
394 ~~Previous rule. There was no comparable rule, since the previous rules did not~~
395 ~~address posting of opinions on the Court's website.~~

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398 **Rule 10. Opinions of the Trial Courts.**
399

400 (A) ~~The Supreme Court Reporter shall designate for print publication and posting to~~
401 ~~the Supreme Court website opinions of the trial courts, including the Court of Claims, that are~~
402 ~~selected by the author and which, in the Reporter's discretion, meet the criteria in Rule 5 of these~~
403 ~~rules.~~
404

405 (B) Trial courts, including the Court of Claims, should consider designating for print-
406 publication and posting to the Supreme Court website opinions that reflect disposition of matters
407 before them not routinely addressed by higher courts, such as rulings on evidence, pretrial
408 discovery, and administrative appeals.

409
410 (C) Opinions designated for posting or print publication pursuant to this rule shall be
411 formatted in accordance with Rule 1(D) of these rules, and be accompanied by a standardized
412 information sheet and a succinct summary of the legal issues decided in the opinion for use on
413 the Supreme Court website.

414
415 (D) These rules otherwise apply to the opinions of all trial courts except to the extent
416 that these rules would, by their nature, be clearly inapplicable.

417
418 **Commentary (May 1, 2002)**

- 419
420 a. The Reporter shall designate for print publication and posting to the
421 Supreme Court website those trial court opinions selected by the writing
422 judge and determined by the Reporter to meet any of the criteria of
423 proposed Rule 5.
424 b. Another factor that should be considered in determining whether a trial
425 court opinion should be published is whether the opinion is on an issue not
426 routinely addressed by higher courts, such as rulings on evidence, pretrial
427 discovery, and administrative appeals.
428 c. Trial court opinions designated for print publication and posting to the
429 Court website shall have the paragraphs and footnotes numbered or
430 lettered by the trial court to facilitate citation to specific portions of the
431 opinion in electronic format.
432 d. The Ohio Court of Claims is specifically included in this rule.

433
434 Rationale. The Supreme Court Reporter should continue to have discretion in
435 deciding which trial court opinions are published. Also, administrative law, evidentiary
436 and pretrial issues, and issues specific to the Court of Claims are significant areas of
437 law that seldom reach the appellate courts, so publication of more opinions in these
438 areas would be beneficial.

439
440 Previous rule. Trial court opinions certified by the writing judge as meeting one of
441 the previous criteria and approved by the Reporter were officially reported.

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443
444 **Rule 11 8. Accuracy.**

445
446 All opinions reported in the bound volumes of the Ohio Official Reports control as to
447 accuracy over the same opinions as reported in any advance sheets, other printed source or
448 posted to the Supreme Court website or any other electronic database. All publishers of opinions
449 shall conform to paragraph numbering and footnote lettering used by the courts in the actual

450 ~~opinion and shall include editorial revision, if any, by the Supreme Court Reporter as found on~~
451 ~~the Supreme Court website.~~

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453

~~Commentary (May 1, 2002)~~

454

455 a. ~~Opinions reported in the bound volumes of the Ohio Official Reports~~
456 ~~control over any other version of the opinion, including the version on the~~
457 ~~Court's website.~~

458

459 b. ~~All publishers of opinions shall conform to the paragraph and footnote~~
460 ~~numbering or lettering used by the courts in the actual opinion and shall~~
461 ~~include editorial revision, if any, by the Supreme Court Reporter as found~~
462 ~~on the Supreme Court website.~~

463

464 ~~Rationale. It was the Committee's view that with the availability of opinions from~~
465 ~~other sources, such as electronically, the rules should address which version controls in~~
466 ~~the event of a conflict. Also, requiring publishers to use the same numbering and~~
467 ~~lettering will result in uniformity and consistency.~~

468

469 ~~Previous rule. Not addressed in the previous rules.~~

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472 **Rule ~~12 9.~~ Effective Date.**

473

474 ~~These rules shall be effective on and after May 1, 2002 July 1, 2012.~~

475

476

~~Commentary (May 1, 2002)~~

477

478 ~~Previous rule. The previous rules were adopted effective March 1, 1983.~~