

## **Supreme Court Rules for the Reporting of Opinions**

In the spring of 2000, Chief Justice Thomas J. Moyer appointed the Supreme Court Committee to Review Reporting of Opinions. The purpose of the Committee was to make recommendations to the Court concerning the reporting of court of appeals and trial court opinions in the Ohio Official Reports, including the appropriate number of those opinions that should be reported, and the process by which those opinions are selected.

On September 10, 2001, proposed rules submitted by the Committee were published for 60 days of public comment. The Committee and the Court considered comments that were received and made minor revisions to the proposed rules. On February 5, 2002, the Court adopted the new rules, effective May 1, 2002.

Significant features of the new rules are:

1. Designations of, and distinctions between, “controlling” and “persuasive” opinions of the courts of appeals are abolished.
2. Publication and posting of opinions will not be delayed by the filing of motions for reconsideration or by pending appeals.
3. The “syllabus” rule for Supreme Court opinions will be eliminated in favor of recognition that a syllabus or the text of the opinion may both state the law.
4. All Supreme Court opinions, the Ohio Appellate Reports, and the Ohio Miscellaneous Reports will be posted permanently on the Court website.
5. Beginning May 1, 2002, all court of appeals opinions, whether or not designated for print-publication, and those trial court opinions designated for print-publication in the Ohio Miscellaneous Reports, will be posted permanently on the Court website.
6. Beginning May 1, 2002, opinions should be cited to both the Supreme Court website citation and Official Reports citation where both are available.

The Commentary that follows each rule was prepared by the Supreme Court Committee to Review Reporting of Opinions. The Commentary was not adopted by the Court and is not part of the rule, but is published here to assist in the understanding of an rationale for each rule.

**SUPREME COURT RULES  
FOR THE REPORTING OF OPINIONS**

**As Amended Effective May 1, 2002.**

**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 of footnotes](#)
- 2 [Opinions shall be promptly published and posted](#)
- 3 [Opinions of the courts of appeals](#)
- 4 [“Controlling” and “persuasive” designations based on form of publication abolished; use of opinions](#)
- 5 [Criteria for designation for print-publication](#)
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**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 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 contained within 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 Supreme Court opinion may be signed by a justice, with or without a syllabus, or be *per curiam*, with or without a syllabus. “*Per curiam*” means “by a majority of the Court.”

(C) A syllabus of an opinion, or a summary under Rules 6(C) and 10(C) of these rules by a court other than the Supreme Court, is not the controlling statement of the points of law decided, but is merely a research and indexing aid.

(D) All opinions of the Supreme Court shall have paragraphs of text and footnotes consecutively numbered or lettered to assist in the “pinpoint” citation of specific portions of the opinion in electronic format. Numbering and lettering shall exclude paragraphs of the syllabus and editorial content from legal publishers. In all respects, the format of opinions shall conform to the conventions adopted by the Supreme Court Reporter.

**Commentary (May 1, 2002)**

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

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

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

Rationale. It was the Committee’s view, and that of some courts of appeals judges, that the Supreme Court’s historic “syllabus rule” may have outlived its usefulness. Over the last decade, there appears to have been declining use of the “syllabus” by some members of the Court, and one frequently finds much “good law” in an opinion – including even footnotes – which is never reflected in any syllabus paragraphs. If there is “disharmony” between the syllabus and the text, the syllabus would

control. See *State v. Walker* (1999), 134 Ohio App. 3d 89 for an example of the problem with the syllabus rule.

- c. The syllabus or any summary of an opinion from any other court is not controlling and is only a research tool.
- d. All Supreme Court opinions shall have the paragraphs of text and footnotes numbered or lettered to facilitate citation to specific portions of the opinion in electronic format.

Previous rule:

- a. All Supreme Court opinions were reported in the Official Reports.
- b. The syllabus of a Supreme Court opinion stated the controlling points of law.
- c. The syllabus of a court of appeals or trial court opinion was not controlling, and the points of law were contained within the text of the opinion.

**Rule 2. Opinions Shall Be Promptly Published and Posted.**

Opinions shall be published in the Ohio Official Reports and posted to the Supreme Court website as promptly as reasonably possible after their announcement. Posting and publication of opinions shall not be delayed by the filing of motions for reconsideration or by pending appeals.

**Commentary (May 1, 2002)**

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

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

Previous rule. Opinions of the courts of appeals were not reported in the Ohio Official Reports (1) if the case was pending before the Supreme Court or the Supreme Court had ruled upon the merits of the case; (2) if a motion to certify the record or a motion for leave to appeal was pending before the Court; or (3) until 70 days had passed since the court of appeals judgment was journalized.

**Rule 3. Opinions of the Courts of Appeals.**

(A) For purposes of these rules, opinions of the courts of appeals do not include orders on procedural matters, orders without opinions, memorandum decisions, and judgment entries under Rule 11.1(E) of the Rules of Appellate Procedure.

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

- (1) It is so designated by the Supreme Court Reporter;
- (2) The majority of the court of appeals panel deciding the case agrees.

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

**Commentary (May 1, 2002)**

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

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

**Rule 4. “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 be cited as legal authority and weighted as deemed 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 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.

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 (8<sup>th</sup> 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:

- (A) Does the opinion construe, apply, or clarify recently enacted statutory law or administrative rules?
- (B) Does the opinion explain, modify, criticize, or overrule an existing rule of law?
- (C) Does the opinion apply an established rule of law to facts significantly different from those in previously published decisions?
- (C) Does the opinion otherwise contribute significantly to the development of the law?

### **Commentary (May 1, 2002)**

The standard for designating an opinion for print-publication is that the opinion meets any of the following criteria:

- a. Construes, applies, or clarifies recently enacted statutory law or administrative rules;
- b. Explains, modifies, criticizes, or overrules an existing rule of law;
- c. Applies a rule of law to facts significantly different from those in previously published decisions;
- d. Otherwise contributes significantly to the development of the law.

Rationale. The new rule is substantively similar to the previous rule. Criteria (a) – (c) above are essentially the same as the previous criteria noted in (a) – (d) below. Also, (e), (f), (g), and (h) below from the previous rule either are not needed or are adequately addressed in the new criteria “Otherwise contributes to the development of the law.”

Previous rule. The standards for reporting were that the opinion met any of the following criteria:

- a. Established a new rule of law;
- b. Altered, modified, or overruled an existing rule of law;
- c. Applied a rule of law to facts different from those in previously published decisions;
- d. Explained, criticized, or reviewed the history of an existing rule of law;
- e. Created or resolved a conflict of authority, or reversed or overruled a published opinion of a lower court or administrative agency;
- f. Concerned factual or legal issues of significant public interest;

- g. Concerned a significant legal issue and has a concurring or dissenting opinion;
- h. Concerned a significant legal issue upon remand from the Ohio or United States Supreme Court.

**Rule 6. Form of Opinions of the Courts of Appeals.**

(A) Court of appeals opinions shall indicate the number and caption of the case, the character of the proceeding (e.g., mandamus, habeas corpus, criminal appeal from common pleas court, civil appeal from municipal court), the court deciding the case, the counsel for all parties, and the date the judgment was journalized.

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

(C) All court of appeals opinions shall be formatted in accordance with Rule 1(D) of these rules, and be accompanied by a standardized information sheet and a succinct summary of the legal issues decided for use on the Supreme Court website.

**Commentary (May 1, 2002)**

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

Previous rule:

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

**Rule 7. Form of Citation.**

(A) Opinions shall be cited in accordance with the Manual of Citations adopted by the Supreme Court Reporter.

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

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

**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. Failure to Print-Publish an Opinion in the Ohio Official Reports; Failure to Allow 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. Posting Trial and Appellate Court Opinions on the Supreme Court Website.**

(A) Beginning May 1, 2002, court of appeals and trial court opinions will be posted on the Supreme Court website pursuant to a protocol to be developed by the Court. Thereafter, opinions posted to the Supreme Court website pursuant to this rule shall be kept permanently on the website for access by the public.

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

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

**Commentary (May 1, 2002)**

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

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

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

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

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

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

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

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

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

**Commentary (May 1, 2002)**

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

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

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

**Rule 11. Accuracy.**

All opinions reported in the bound volumes of the Ohio Official Reports control as to accuracy over the same opinions as reported in any advance sheets, or posted to the Supreme Court website or any other electronic database. All publishers of opinions shall conform to paragraph numbering and footnote lettering used by the courts in the actual opinion and shall include editorial revision, if any, by the Supreme Court Reporter as found on the Supreme Court website.

**Commentary (May 1, 2002)**

- a. Opinions reported in the bound volumes of the Ohio Official Reports control over any other version of the opinion, including the version on the Court's website.
- b. All publishers of opinions shall conform to the paragraph and footnote numbering or lettering used by the courts in the actual opinion and shall include editorial revision, if any, by the Supreme Court Reporter as found on the Supreme Court website.

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

Previous rule. Not addressed in the previous rules.

**Rule 12.      Effective Date.**

These rules shall be effective on and after May 1, 2002.

**Commentary (May 1, 2002)**

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