

# The Supreme Court of Ohio

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## House Bill 260 Testimony Ohio House Judiciary Committee

Submitted By:  
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Chairman Thomas, Vice-Chair Swearingen, Ranking Member Isaacsohn, and Members of the House Judiciary Committee: My name is Rick Schuster, and I am the Chief Legal Officer for the Supreme Court of Ohio. On behalf of Chief Justice Kennedy and the Justices, thank you for allowing me to provide proponent testimony on House Bill 260.

In summary, this legislation would repeal sections of the Revised Code that overlap or conflict with rules that have been adopted by the Supreme Court pursuant to its constitutional authority. To give a better understanding of the need for this legislation, I would like to offer a brief history on the 1968 Modern Courts Amendment and a summary of the current process by which the Rules of Practice and Procedure and the Rules of Superintendence are enacted.

### *The Modern Courts Amendment*

In 1968, the citizens of Ohio approved an amendment to the Ohio Constitution commonly referred to as the “Modern Courts Amendment.” This amendment enacted a series of changes regarding Ohio’s judicial system, in particular the powers and duties of the Supreme Court.

One of the amendment’s primary changes was to grant the Supreme Court the power to adopt rules governing superintendence of the local courts. Specifically, Article IV, Section 5 (A)(1) of the Ohio Constitution provides the following:

[T]he supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the Supreme Court.

Prior to the grant of this authority, Ohio's courts operated on an entirely independent basis, with no unified standards for the administrative operation of the courts. Pursuant to this authority, the Supreme Court has adopted the Rules of Superintendence for the Courts of Ohio, which allows for more consistency in the operation of Ohio's courts.

The Modern Courts Amendment also granted the Supreme Court authority to adopt rules governing case-related practice and procedure matters in the courts. Prior to the grant of this authority, there were limited statutory standards for practice and procedure matters in Ohio courts. Pursuant to this authority, the Supreme Court has promulgated the Ohio Rules of Evidence, the Ohio Rules of Civil Procedure, the Ohio Rules of Criminal Procedure, the Ohio Rules of Juvenile Procedure, and the Ohio Rules of Appellate Procedure, which we collectively call the "Rules of Practice and Procedure."

Lastly, I would note that amendments to the Rules of Practice and Procedure must be filed with the General Assembly by every fifteenth of January, with final amendments filed no later than May first. The General Assembly then has the constitutional authority to disapprove of any proposed amendments by July first of the same year. Absent such disapproval, the amendments take immediate effect. Furthermore, the Ohio Constitution provides that "all laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." Ohio Const. Article IV, Section 5(B).

### ***The separate roles of the Judiciary and Legislature in rulemaking***

Since the enactment of the Modern Courts Amendment, the Supreme Court has established the Commission on the Rules of Superintendence and the Commission on the Rules of Practice and Procedure to review and provide recommendations to the Justices on amendments to these rules. In addition to the consideration of rule amendments by these commissions, proposed rules are regularly released for a period of public comment to allow practitioners, judges, and members of the public to provide their input.

It is important to note that the Modern Courts Amendment was careful to limit the Supreme Court's rulemaking power and warns that practice and procedure related rules may not abridge, enlarge, or modify any substantive right. This distinction is important and aligns with common sense. Under our republican system of government, the separation of powers requires that the legislature *make* laws and the judiciary *interpret* such laws. So as to not wade into the waters of lawmaking, the Supreme Court oversees matters that are strictly practice and procedure or superintendence related. Further, as the General Assembly is given the opportunity every year to disapprove of any proposed practice and procedure related rule amendments, once those amendments take effect, any conflicting law in the Revised Code is considered void. House bill 260 is carrying out the intentions of the constitution by doing just that – repealing those statutes for matters that are now properly governed by Supreme Court rules.

***The Statutes and Rules in the Bill***

H.B. 260 repeals or amends the following sections of the Revised Code:

- 1901.14 – Corresponding Superintendence Rule 5, Local Rules of the Court
- 1901.16 - Corresponding Superintendence Rule 4.02 , Actions of Administrative Judge
- 1901.021, 1901.41, 1907.20, 1907.21, 1907.231, 2101.12, 2101.121, 2101.14, 2101.141, 2111.011, 2301.141 – Corresponding Superintendence Rule 26, Court Records Management and Retention
- 1901.22 – Corresponding Civil Rule 13 (A) Compulsory counterclaims
- 2307.23 – Corresponding Civil Rule 15 Amended and Supplemental Pleadings
- 2317.03 – Corresponding Evidence Rules 601 & 804, Competency and Hearsay Exceptions
- 2317.40 and 2317.422 – Corresponding Evidence Rule 803, Hearsay Exceptions
- 2939.02, 2939.03, 2939.06, 2939.11, 2939.19, 2939.20 – Corresponding Criminal Rule 6, The Grand Jury
- 2945.41 – Corresponding Evidence Rule 101, Scope of Rules
- 2941.021 and 2941.61 – Corresponding Criminal Rule 7, Indictment information
- 2943.02 – Corresponding Criminal Rule 10, Arraignment
- 2943.03 and 2943.04 – Corresponding Criminal Rule 11, Pleas and Rights Upon Plea
- 2945.12 – Corresponding Criminal Rule 43, Presence of the Defendant
- 2945.45 – Corresponding Criminal Rule 17, Subpoena
- 2945.50, 2945.51, 2945.52, 2945.53, and 2945.54 – Corresponding Criminal Rule 15, Depositions
- 2945.30, 2945.31, 2945.33, 2945.34 – Corresponding Criminal Rule 24, Trial by Jurors

I would like to thank Representative Odioso and Representative Mathews for sponsoring this important legislation. Chairman Thomas and Members, thank you again for allowing me to provide this testimony. I am pleased to answer any questions you might have at this time.