

BALDWIN'S
OHIO PRACTICE

GIANNELLI

EVIDENCE

Fourth Edition

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Rules 101 to 616

Paul C. Giannelli



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Foreword to the Fourth Edition

The Ohio Rules of Evidence were adopted in 1980. They were patterned after the Federal Rules of Evidence, which were enacted in 1975. There are, however, significant differences between the two sets of rules, as noted in Chart A, Comparison of Federal & Ohio Rules.

The Federal Rules resulted in a sea of change in evidence law, which had been for the most part a common law subject prior to the adoption of the Rules. In addition to Ohio, over forty jurisdictions have adopted the Federal Rules in one form or another. Moreover, a generation of law students have been trained in the Federal Rules. Neither the Ohio nor federal rules have remained static. Both have been amended numerous times. Changes to Ohio evidence laws and rules are summarized in Charts B and C. Amendments to Federal Rules of Evidence are noted in Chart D.

Since the last edition, the Ohio Supreme Court has amended twelve evidence rules, including two in 2020: (1) Rule 601 (competency of witnesses) to clarify the general rule on witness competency, and (2) Rule 902 (self-authentication) by adding certification procedures for domestic business records, foreign business records, electronic records, and copies of electronic records. In addition, courts have produced hundreds of judicial opinions interpreting the Rules of Evidence during this period, including numerous decisions by the Ohio Supreme Court. Accordingly, sections on the hearsay rule have been greatly expanded. Moreover, due to statutory amendments and court rulings, the sections on privilege have been extensively revised.

During this period, several of the Federal Rules were amended. Indeed, the Federal Rules were completely restyled.

Thank you for subscribing to Evidence, 4th (Baldwin's Ohio Practice). We hope you find this book an invaluable tool for your practice.

Dedication

To Marjorie C. and William J. Giannelli

Acknowledgment

President Barbara Snyder, Case Western Reserve University, my coauthor on prior editions of this book is no longer an author. For over fifteen years as my coauthor she provided insightful analysis and made tireless efforts to ensure the quality of the book. Her contributions were invaluable.

The author wishes to acknowledge the research assistance of Jayant Haksar and Asheton Carter, students at Case Western Reserve University School of Law, and Robert Brady and Kathy Joseph, students at the Ohio State University College of Law, who spent many hours assisting in the preparation of the 1996 edition. He would also like to acknowledge the research and editorial assistance of two former students, Robert M. Ingersoll and Laura B. Chisolm, who devoted many hours and much effort in the preparation of the 1982 edition of this text.

About the Author

Paul C. Giannelli is a Distinguished University Professor Emeritus and the Albert J. Weatherhead III & Richard W. Weatherhead Professor of Law Emeritus at Case Western Reserve University. He received his J.D. in 1970 from the University of Virginia, where he served as Articles Editor of the Virginia Law Review. His other degrees include an LL.M. from the University of Virginia and an M.S. in Forensic Science from George Washington University.

Professor Giannelli has written extensively in the field of evidence and criminal procedure, especially on the topic of scientific evidence. He has published articles in the Columbia, Virginia, Cornell, Vanderbilt, Illinois, North Carolina, Fordham, Ohio State, Capital, Cleveland State, Wisconsin, Cardozo, and Case Western Reserve law reviews, as well as in the *Journal of Criminal Law & Criminology* (Northwestern University), *Criminal Law Bulletin*, and the *American Criminal Law Review* (Georgetown University). He has also published in interdisciplinary journals, such as the *International Journal of Clinical & Experimental Hypnosis*, the *New Biologist*, and the *Journal of Forensic Science*.

Professor Giannelli authors Rules of Evidence Handbook, 2020 ed. (Baldwin's Ohio Practice) and Ohio Criminal Laws and Rules, 2020 ed. (Baldwin's Ohio Practice). He also has written or co-authored several other criminal and evidentiary titles, including Katz & Giannelli Criminal Law, 3d (Baldwin's Ohio Practice).

Professor Giannelli's works have been cited thousands of times in court opinions and the legal literature, including seven decisions by the U.S. Supreme Court. The New York Times referred to him as an "expert on scientific evidence." He has authored an op-ed piece for the Times: "When the Evidence Is a Matter of Life and Death," New York Times, Week in Review Op-Ed, Aug. 21, 1994, p. E15.

He is also co-author of a chapter on forensic science in Federal Judicial Center/National Academy of Sciences, Reference Manual on Scientific Evidence (3d ed. 2011). Professor Giannelli's work has been cited in nearly 800 judicial opinions throughout this country (including eight decisions of the U.S. Supreme Court), as well as in foreign courts. In addition, he has testified before the U.S. Senate Judiciary Committee and served as: Commissioner, National Commission on Forensic Science; Reporter, American Bar Association Criminal Justice Standards on DNA Evidence; co-chair of the ABA Ad Hoc Committee on Innocence; and member, National Academy of Sciences, Bullet Lead Elemental Composition Comparison Committee.

Before the Rules were adopted, he wrote: *The Proposed Ohio Rules of Evidence: The General Assembly, Evidence, and Rulemaking*, 29 *Case Western Reserve Law Review* 16 (1978). Professor Giannelli has also served as: Special Counsel, Joint Select Evidence Committee, Ohio General Assembly (1978-79); Member, Ohio Supreme Court Rules Advisory Committee (1985-88); and Counsel for Rules of Evidence, Ohio Supreme Court Rules Advisory Committee (1990-2001).

Table of Abbreviations

Akron L. Rev.	Akron Law Review
ALC	Alcohol
A.L.R.3d	American Law Reports Annotated, Third Series
ALS	Administrative license suspension
Am. Crim. L. Rev.	American Criminal Law Review
App.	Appellate Court
Ark.	Arkansas Reports
Ariz.	Arizona Reports
BAC	Blood or breath alcohol content
Bankr.	United States Bankruptcy Court
BMV	Bureau of Motor Vehicles
Cal. App.3d	California Appellate Reports, Third Series
Cal. Rptr.	West's California Reporter
Capital L. Rev.	Capital University Law Review
Case W.R. L. Rev.	Case Western Reserve Law Review
CDL	Commercial Drivers License
Ch.	Chapter
Cir.	Circuit Court
Civ. R.	Rules of Civil Procedure
Clev. St. L. Rev.	Cleveland State Law Review
CLJO	Criminal Law Journal of Ohio
Co.	Company
Corp.	Corporation
C.P.	Common Pleas Court
Crim. L. Bull.	Criminal Law Bulletin
Crim. R.	Rules of Criminal Procedure
Ct.	Court
Dep't	Department
DIP	Driver intervention program
Dist.	District
Div.	Division
DOH	Department of Health
D.U.I.	Driving under the influence
Duke L.J.	Duke Law Journal
DUS	Driving under suspension
D.W.I.	Driving while intoxicated
Ed.	Education
ed.	edition
eff.	effective

EMHA	Electronically monitored house arrest
Evid. R.	Ohio Rules of Evidence
F.	Federal Reporter
F.2d	Federal Reporter, Second Series
F.3d	Federal Reporter, Third Series
FRA	Financial Responsibility Act
F.Supp.	Federal Supplement
F. Supp. 2d	Federal Supplement, Second Series
G.C.	General Code of Ohio
Geo. L.J.	Georgetown Law Journal
GMS	Grams
HAEM	House arrest with electronic monitoring
Harv. J. Law & Public Policy	Harvard Journal of Law and Public Policy
H.B.	House Bill
HF	High frequency
HGN	Horizontal gaze nystagmus
Ill. App.3d	Illinois Appellate Court Reports, Third Series
Inc.	Incorporated
J. Crim. L.	Journal of Criminal Law and Criminology
J. Legal Medicine	Journal of Legal Medicine
J. Police Sci. & Ad.	Journal of Police Science and Administration
Kan. App.2d	Kansas Court of Appeals Reports, Second Series
Law & Fact	Law & Fact, Cuyahoga County Bar Association
LBR	Liters of breath
L. Ed. 2d	Lawyers' Edition, United States Supreme Court Reports, Second Series
MADD	Mothers Against Drunk Drivers
Mfg.	Manufacturing
Mich.	Michigan Reports
Muni.	Municipal Court
N.D.	Northern District
N.E.2d	Northeastern Reporter, Second Series
N.H.	New Hampshire Reports
N.M.	New Mexico Reports
Nor. Ky. L. Rev.	Northern Kentucky Law Review
N.W. L. Rev.	Northwestern Law Review
OAC	Ohio Administrative Code
OBR	Ohio Bar Reports
O. Const.	Ohio Constitution
Ohio App.	Ohio Appellate Reports
Ohio App. 2d	Ohio Appellate Reports, Second Series
Ohio App. 3d	Ohio Appellate Reports, Third Series
Ohio Bar	Ohio State Bar Association Reports
Ohio Misc.	Ohio Miscellaneous Reports

TABLE OF ABBREVIATIONS

Ohio Misc. 2d	Ohio Miscellaneous Reports, Second Series
Ohio North L. Rev.	Ohio Northern University Law Review
Ohio St.	Ohio State Reports
Ohio St. 2d	Ohio State Reports, Second Series
Ohio St. 3d	Ohio State Reports, Third Series
OJI	Ohio Jury Instructions
OUTT	Ohio Uniform Traffic Ticket
OVI	Operating a Vehicle under the Influence
OVUAC	Operating a Vehicle after Underage Alcohol Consumption
P.2d	Pacific Reporter, Second Series
PBT	Portable breath test
Prac. Law.	Practical Lawyer
RC	Revised Code of Ohio
RFI	Radio frequency interference
S.B.	Senate Bill
S. Ct.	United States Supreme Court Reporter
S.D.	Southern District
Search & Seizure L. Rep.	Search & Seizure Law Report
Sub.	Substitute
Supp.	Supplement
Sup. R.	Rules of Superintendence for the Courts of Ohio
S.W.2d	Southwestern Reporter, Second Series
Tex. L. Rev.	Texas Law Review
Traf. R.	Ohio Traffic Rules
U. Cin. L. Rev.	University of Cincinnati Law Review
UCLA L. Rev.	UCLA Law Review
UHF	Ultra-high frequency
U.S.	United States Supreme Court Reports
U.S.C.A.	United States Code Annotated
U.S. Const.	United States Constitution
U. Tol. L. Rev.	University of Toledo Law Review
v.	versus
VHF	Very high frequency
Wayne L. Rev.	Wayne Law Review
W.D.	Western District
WGT	Weight
WL	Westlaw



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Ohio Administrative Law Handbook and Agency Directory
Nick and Patton (Eds.)
Baldwin's Ohio Monthly Record
Administrative Law and Practice 2d
Administrative Law: Practice and Procedure

GENERAL LEGAL REFERENCES

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American Law Reports
Corpus Juris Secundum

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Sowald and Morganstern

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Adrine, Ruden and Miday

Ohio Elder Law
Kreiner

Domestic Relations Journal of Ohio
Morganstern

PROBATE AND JUVENILE LAW

Baldwin's Ohio Practice, Merrick-Rippner Probate Law 7th

Ohio Probate Code Annotated

Probate Law Journal of Ohio
Brucken

Ohio Juvenile Law

Yeomans Salvador

REAL ESTATE

Ohio Landlord Tenant Law

White

Baldwin's Ohio Practice, Ohio Real Estate Law 3d

Kuehnle and Levey

Ohio Condominium Law

Kuehnle and Williams

BUSINESS AND LEGAL

Baldwin's Ohio Practice, Business Organizations 2d

Blackford

Baldwin's Ohio Practice, Business Organizations Laws & Rules

Ohio Consumer Law

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Ohio Forms and Transactions

Ohio Jurisprudence Pleading and Practice Forms

West's Legal Forms, 2d

TAX LAW

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Ebersole

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GOVERNMENT

Baldwin's Ohio Practice, Local Government Law—Township

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