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I. Introduction

In this article, we describe the issues with which forensic economists should be familiar if they wish to properly estimate economic damages in personal injury and wrongful death cases filed under state law in the state of Ohio. The paper is organized as follows: Section II describes the legal framework in Ohio. This section includes the relevant statutes and other applicable rules and procedures. Section III addresses non-economic damages, including the admissibility of hedonic damages testimony in Ohio, as well as the court’s view of economic testimony regarding punitive damages. Section IV describes the usual issues that arise in estimating economic damages in personal injury and wrongful death cases. Section V concludes the paper by discussing some additional issues related to the practice of forensic economics in Ohio.

II. The Legal Framework

A. Ohio Court System

Ohio has 88 counties, each of which is home to a court of common pleas, the place in which most personal injury and wrongful death cases are first heard. There are also municipal courts, county courts, and mayor’s courts that can hear minor civil actions, and a court of claims that handles claims against the state, which can include personal injury and wrongful death cases. The number of common pleas court judges varies by county for a host of reasons, including the substantial variability in county population. County residents elect common pleas court judges for six-year terms.

The appellate system is comprised of 12 courts of appeals and the Ohio Supreme Court. The number of judges in each appellate district varies from three to 12. As of 2002, there were a total of 68 appeals court judges in Ohio. The Ohio Supreme Court is comprised of seven Justices, including one Chief Justice, all elected for six-year terms. Two Justices are chosen during the general election in even-numbered years, except when the Chief Justice runs, when three members of the court are elected.

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B. Statutes

The Ohio legislature expanded the scope of pecuniary damages when it significantly revised Ohio’s wrongful death statute in 1982. The unrevised statute permitted only pecuniary damages. The major change can be found in the list of permissible damages that appears in Section 2125.02 (B) of the Ohio Revised Code (O.R.C):

(B) Compensatory damages may be awarded in an action for wrongful death and may include damages for the following:

1. Loss of support from the reasonably expected earning capacity of the decedent;
2. Loss of services of the decedent;
3. Loss of the society of the decedent, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, suffered by the surviving spouse, minor children, parents, or next of kin;
4. Loss of prospective inheritance to the decedent’s heirs at law at the time of the decedent’s death;
5. The mental anguish incurred by the surviving spouse, minor children, parents, or next of kin.

The revised statute generally extended such non-economic damages as lost society and companionship and mental anguish that had been awarded in personal injury cases to the survivors of the deceased victim. More recently, the Ohio legislature has attempted to set limits on non-economic damage awards. Its efforts, however, have been mostly thwarted by the Ohio Supreme Court, which has found most of these acts unconstitutional. The primary rationale is that the Ohio constitution protects trial by jury and, therefore, limitations on the damages a jury may award is unconstitutional because it interferes with that right.

In *Galayda v. Lake County Memorial Hospitals* (1994), the Court found O.R.C. 2323.57, which required a trial court upon the request of either party to order that any future damages award in excess of $200,000 be paid in a series of periodic payments, unconstitutional while it also found O.R.C. 1343.03(C), which authorizes an award of prejudgment interest in a tort action, constitutional. The same year, the Ohio Supreme Court declared collateral damage offsets against awards under O.R.C. 2317.45 also unconstitutional. *(Sorrell v. Thevenir, 1994)* However, it subsequently determined in *Buchman v. Board of Education* (1995) that collateral damage offsets in awards against political subdivisions set down in O.R.C. 2744.05(B) were constitutional.

In another heroic attempt to set limits on court awards, the Ohio legislature passed Amended H.B. No. 350. The Act authorized collateral source and punitive damages offsets and placed caps on punitive and non-economic damages. This only succeeded in increasing the ire of the Supreme Court which

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1. *OHIO REV. CODE ANN. § 2125.01-.03*

At the time of this writing, the Ohio legislature has again passed a tort reform statute. Amended Ohio Senate Bill 80 passed the Senate in December 2004 and became effective in April 2005. It is too soon to firmly predict how the new tort reform legislation will affect Ohio court decisions. However, the Ohio Supreme Court is considerably less liberal than when the constitutionality of previous tort reform legislation was successfully challenged. Key provisions that might impact on forensic economists include limitations on punitive damages, limitations on non-economic damages for non-catastrophic losses and modifications in the collateral source rule.

Under the new statute, punitive damages for unintentional torts recoverable from large employers are limited to two times compensatory damages. Punitive damages recoverable from small employers, those with no more than 500 employees, or individuals are limited to the lesser of two times compensatory damages, 10% of the employer’s or individual’s net worth, or $350,000.

Non-economic damages awarded for non-catastrophic injuries are limited to the greater of $250,000 or an amount equal to three times the amount of economic damages up to $350,000 for each plaintiff or $500,000 for each occurrence. There is no limit on non-economic damages for physical injuries that satisfy a threshold definition contained in the statute. The statute explicitly prohibits using evidence of the defendant’s wealth or financial resources for establishing non-economic damages.

The defendant may introduce evidence of any dollar benefit to the plaintiff that is due to the tort. However, the defendant is prohibited from introducing subrogated benefits, or life insurance and disability benefits, unless the plaintiff’s employer paid for the benefits and the employer is the defendant in the tort case. If the defendant chooses to introduce this evidence, the plaintiff may present information on amounts the plaintiff contributed toward the benefits.

The remainder of this paper is based upon a pre-Am. S.B. 80 analysis. It is not clear as of this writing whether the act will be deemed constitutional or how it might affect future damage awards.

C. Ohio Jury Instructions

The Ohio Jury Instructions (OJI) were first published and distributed among members of the Ohio Common Pleas Judges Association in 1958. They have been periodically updated since then, with the most recent adaptation published in four volumes in 2003. Like so-called “pattern” jury instructions published in other states, the OJI are “brief, accurate and complete statement[s] in simple and understandable language covering a single situation, purpose, or point of law. Interest and comprehension by the jury is the first consideration.” (Preface to Volume One, 1968) Of particular relevance is Chapter 23 in Volume 1, which covers damages.
D. Ohio Rules of Evidence and Civil Procedure

Rules governing expert testimony are contained in Ohio Rules of Evidence. While largely following Daubert, Rule 702 of the Ohio Rules of Evidence sets down a flexible standard for the admissibility of testimony by expert witnesses.

A witness may testify as an expert if all of the following apply:

(A) The witness’ testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

(C) The witness’ testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:

   (1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;
   (2) The design of the procedure, test, or experiment reliably implements the theory;
   (3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.

Ohio decisions have rejected the Frye standard by stating that general acceptance is not a necessary precondition to the admissibility of scientific evidence. The courts are more concerned with the qualifications of the expert and whether the testimony rests upon a reliable foundation and is relevant. Judges do not generally base admissibility on their view of the argument’s validity. As discussed under the hedonic damages section of this paper, this leaves considerable discretion to trial judges. In State v. Nemeth (1998), the Supreme Court stated that,

... scientific opinions need not enjoy 'general acceptance' in the relevant scientific community in order to satisfy the reliability requirement of Evid.R. 702. Further, there need not be any agreement in the scientific community regarding the expert's actual opinion or conclusion. The credibility of the conclusion and the relative weight it should enjoy are determinations left to the trier of fact. (p. 210)

Rule 703 provides the basis for opinions by an expert with “the facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by him or admitted in evidence at the hearing.”

The Staff Notes to Rule 703 indicate that the opinion of the expert must be based upon facts perceived by the expert from data or upon facts or data made

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3These rules are accessible at http://www.sconet.state.oh.us/Rules/evidence/.
4The history of Rule 702 and its relation to Daubert is examined in Todaro (1998).
known to the expert at the hearing. This differs from Federal Rule 703, which places, “... no limitations on the sources of the facts and no limitations upon the methods of making them known.” Hypothetical assumptions on which an expert may express an opinion must also be consistent with facts that satisfy Rule 703.

Other rules that affect forensic economists are Rule 615 that provides for the separation and exclusion of witnesses and Rule 705 that requires the disclosure of underlying data and facts before opinions are rendered. However, failure to pre-disclose information has been held to be harmless error if the underlying facts are eventually submitted.

Litigation support by experts must also satisfy Ohio’s Rules of Civil Procedure. Rule 26 governs discovery. It also mandates that the expert is entitled to a “reasonable fee” in responding to discovery. Any party may discover facts and opinions held by the expert that may be presented at trial. This includes all relevant notes, documents and reports. However, discovery should be limited to opinions previously given by the expert or which will be given at trial. Undisclosed testimony that creates the likelihood of unfair surprise may be excluded at trial under Rule 37.

Experts specifically retained for litigation support, but not as testifying experts, are not subject to discovery unless

... the party seeking discovery is unable without undue hardship to obtain facts and opinions on the same subject by other means or upon a showing of other exceptional circumstances indicating that denial of discovery would cause manifest injustice. (Rule 26B, 4(a))

Local rules govern the identification of witnesses and the exchanges of reports. There are no state-wide rules that mandate the timing and order of discovery.

III. Estimating Economic Damages: Relevant Issues

A. Lost Earnings vs. Lost Earning Capacity

The standards for economic damages in personal injury cases in Ohio are well established by case law and are now reflected in specific language contained in Ohio Jury Instructions (OJI). OJI 23.20 §1 addresses the standard for past economic damages, which is actual lost earnings stating “you will consider whatever loss of earnings the evidence shows that the plaintiff sustained as a proximate result of the injury.”

By contrast, and consistent with most other states, the standard for future economic damages is lost earning capacity. This is also part of a standard jury instruction, as indicated by OJI 23.20 §2:

You will also consider whatever loss (if any) of earnings the plaintiff will, with reasonable certainty, sustain in the future as a proximate cause of the injury. The measure of such damage is what the evidence shows with reasonable certainty to be the difference between the amount he was capable of earning before he was injured and the amount he is capable of earning in the future in his injured condition. (emphasis added)
Using estimated earning capacity as the yardstick to measure future economic damages (as opposed to estimated actual earnings) was established in Ohio as early as 1925 in the case of Hanna v. Stoll. The court concluded, in part,

The measure of damages for impairment of earning capacity is the difference between the amount which the plaintiff was capable of earning before his injury and that which he is capable of earning thereafter. (p. 352)

In Power v. Kirkpatrick (2000), the court held that to sufficiently establish future loss of earning capacity, the plaintiff’s evidence must demonstrate with reasonable certainty that the plaintiff’s injury or condition prevents the plaintiff from finding work at the pre-injury wage. While testimony from expert witnesses, including economists, may not be speculative, courts in Ohio have recognized that estimating future economic damages is not done with certainty. Rather, expert witness testimony is guided by Ohio Rules of Evidence Rule 703: “The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by him or admitted in evidence at the hearing.” In Kraner v. Coastal Tank Lines, Inc. (1971), the court held that an expert witness must base his opinion upon facts within his personal knowledge or upon facts shown by the evidence. As long as the expert meets these standards, courts have tended to leave to the jury the question of just how accurate an economist’s projections might or might not be.

In wrongful death cases, lost earning capacity is offset by personal consumption. However, there seems to be no specific rule in Ohio as to how the decedent’s personal consumption should be calculated. Remarriage may also be taken into consideration in determining damages for a surviving spouse. However, remarriage may not be used as a reason for reducing damages for children, parents or next of kin. (Pena v. Northeast Ohio Emergency Affiliates, 1995)

Although not mentioned explicitly in the Ohio Jury Instructions, employer provided fringe benefits, where appropriate, are generally included as part of past and future earnings capacity. To estimate the value of these benefits, expert witness economists can rely on any of the standard, generally accepted methodologies.5

B. Present Value

As in most states, in Ohio future damages must be reduced to present value. This is well established in the case law. In Maus, Appellee, v. The New York, Chicago & St. Louis Rd. Co., Appellant (1956), the court held that,

In determining the amount of damages due a plaintiff who has suffered a wrongful personal injury resulting in loss of future earning power, the jury should take into consideration the loss of future

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5See, for example, Martin (2003), Ireland, Horner and Rodgers (2002), or Frasca (1992).
earnings which it finds with reasonable certainty will result from the injury and also the earning power of money; and the amount awarded for future earnings should be reduced to its present value as a lump sum payable at the time of the verdict. (p. 2)

Likewise, in *Willie F. Reeder and Letteria Ann Reeder, Co-Administrators of The Estate of Willie J. Reeder, Deceased, Plaintiff-Appellant, v. James P. Suggs, Defendant-Appellee* (1982), the court held that testimony by an expert witness was properly excluded because the witness did not reduce future damages to present value.

Reducing future damages to present value is now part of standard jury instructions, where appropriate. OJI 23.77 §1 states that,

In the event you find for the plaintiff, the measure of any future damage is the present loss in dollars in which the plaintiff with reasonable certainty will sustain in the future, and which is capable of measurement by the present value of money.

In personal injury cases in Ohio, interest *qua* interest, as an integral part of the damages, cannot be allowed, but the jury may, in estimating the damages, take into consideration the length of time which has elapsed since the accident occurred. See *Zipperlein v. P.C. & St. L. Ry. Co.*, 8 Ohio Dec. 587 (1898). Plaintiff counsel may, however, file a motion requesting separate payment of prejudgment interest, the rate of which is predetermined by statute in Ohio Revised Code §1343.03(A). This portion of the O.R.C. has recently been updated. Prior to June 2, 2004, the fixed rate was 10% per year, unless stipulated otherwise. The updated statute ties the prejudgment interest rate to yields on short-term government securities. Current O.R.C. §1343.03(A) reads as follows:

... upon all judgments, decrees, and orders of any judicial tribunal for the payment of money arising out of tortious conduct or a contract or other transaction, the creditor is entitled to interest at the rate per annum determined pursuant to section 5703.47 of the Revised Code, unless a written contract provides a different rate of interest in relation to the money that becomes due and payable, in which case the creditor is entitled to interest at the rate provided in that contract...

§5703.47 defines the appropriate interest rate.

(A) As used in this section, “federal short-term rate” means the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the “Internal Revenue Code of 1986”, 100 Stat. 2085, 26 U.S.C. 1274, for July of the current year.

(B) On the fifteenth day of October of each year, the tax commissioner shall determine the federal short-term rate. For purposes of any section of the Revised Code requiring interest to be computed at the rate per annum required by this section, the rate determined by
the commissioner under this section, rounded to the nearest whole number per cent, plus three per cent shall be the interest rate per annum used in making the computation for interest that accrues during the following calendar year.

(C) (Effective 6-2-04) Within ten days after the interest rate per annum is determined under this section, the tax commissioner shall notify the auditor of each county in writing of that rate of interest.

C. Taxes

_Norfolk & Western Ry Co. v. Liepelt_ (1980) holds, as a matter of federal law, that the jury should be instructed in Federal Employer’s Liability Act (FELA) cases to consider the effect of taxes in awarding damages. In Ohio, _Kaiser v. Ohio Bell Telephone Company_ (1981) limits _Liepelt_ to FELA cases. As a result, evidence of the effect of income taxes should not be admitted in cases filed under Ohio law. This conclusion is made explicit in OJI 23.77 §2 with “You may not consider federal, state, or city income taxes. In no event may you add to, or subtract from, an award because of taxes.” This instruction is generally not given, and is only offered in response to improper evidence or argument, or a question from a member of the jury.

D. Household Services

Lost Household services that would have benefited survivors are also an additional element of damages. This was established in _Terveer v. Baschnagel_ (1982):

> At a minimum, damages should have been awarded for the loss of decedent’s services in helping her parents with their rental properties, cutting her brothers’ hair, and cleaning her family’s teeth, for the loss of rental and related expenses to her sister, and for the loss from her inability, as a result of her death, to repay the loans her parents had made to her. (p. 313)

Moreover, it is irrelevant that these services may have been performed gratuitously.

> While a jury of one’s peers may believe that some of the services provided by the decedent to members of her family represent gestures of friendship found in close family relationships, it is not for the jury to decide that such gestures, which clearly have a pecuniary value, may not be the basis for an award of damages. (p. 314)

E. Collateral Sources

In general, economic damages in personal injury and wrongful death cases filed under Ohio law are not reduced by revenue from collateral sources. In _Pryor, et al., Appellants, v. Webber, Appellee_ (1970), the court held that:
....we are of the view that wages or other benefits paid to an employee by a private employer, whether gratuitously or by reason of contract, while he is unable to perform any work due to a disability caused by the negligent act of a third party, are collateral in nature and do not bar a recovery by the employee from such third party of the wages he would have earned had he been able to work and perform services for his employer... The compensation which an employee receives when he is off work and performing no services for his employer, is comparable to the proceeds of a policy of insurance to which he has contributed. As with insurance proceeds, generally, such payments should not inure to the benefit of the wrongdoer and diminish his liability. (pp. 112-113)

Other collateral benefits mentioned in the opinion that can not offset economic damages include pension payments, medical expenses paid by a third party, and proceeds from an accident insurance policy.

There is one noteworthy exception to this rule. Damages in tort actions brought against “political subdivisions” can be offset by Social Security and Medicare benefits. O.R.C. §2744.01(F) defines a political subdivision as “a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.” In Buchman, Appellant and Cross-Appellee, et al., v. Board of Education of the Wayne Trace Local School District, Appellee and Cross-Appellant (1995), the court held that future collateral benefits, to the extent they can be determined with a reasonable degree of certainty, can be deducted from a jury's verdict against a political subdivision. However, a collateral benefit is deductible only to the extent that the loss for which it compensates is actually included within the jury's damages award.

It must be restated that recent Ohio tort reform legislation may change the allowable collateral sources introduced at trial.

IV. Non-Economic Damages

In some states economists have provided testimony on the value of hedonic damages and punitive damages. In Ohio the admissibility of testimony by economists for the purpose of valuing hedonic damages is presently in flux, while the economist's role in determining punitive damages appears minimal.

The Supreme Court of Ohio has not yet issued a definitive opinion on the admissibility of expert testimony on hedonic damages. Several appeals court decisions have stated that the admissibility of testimony on the value of hedonic testimony is at the discretion of the trial court. In Fantozzi v. Sandusky Cement Products Co. (1992), the Ohio Supreme Court permitted damages for lost enjoyment of life. In Lewis v. Alfa Lava Separation (1998), the trial court admitted expert testimony from an economist on the plaintiff's lost enjoyment of life's pleasurable activities and defined hedonic losses to include the inability to perform the plaintiff's usual specific activities which had given pleasure to this particular plaintiff, such as playing
golf, dancing, bowling, playing musical instruments, and engaging in specific outdoor sports. (p. 212)

The plaintiff had suffered permanent damage to his ear and auditory system. The economist opined on the hedonic value of life and then asserted that the injury had approximately reduced the plaintiff's enjoyment of life by about 6 to 9% of that value. The trial court awarded significant damages and the defendant on appeal claimed that the testimony failed both parts of the test enunciated in Daubert v. Merrell-Dow Pharmaceuticals, Inc., (1993); it was not based upon scientific knowledge and it did not assist the trier of fact to understand or determine a fact in issue as required by Ohio Evidence Rule 702.

The Court of Appeals decided that the admission of the hedonic testimony did not rise to an abuse of discretion by the trial court in exercising its gatekeeper function under Daubert. Although the Court found notable reasons for excluding this testimony, the Court stated that, "the evidence in question falls into the 'shaky but admissible' category of evidence envisioned in Daubert." To rise to an abuse of discretion, the court's attitude must be, "... unreasonable, arbitrary, or unconscionable." Two more recent appeals court decisions have supported the trial court's exclusion of similar testimony. In Abbott v. Jarrett Reclamation Services (1999), a wrongful death action, and McGarry v. Horlacher (2002), a personal injury action, two different appeals courts have upheld the trial court's decision to exclude testimony on hedonic damages by economists. Consequently, it appears that the inclusion or exclusion of testimony on hedonic damages is currently at the sole discretion of the trial court. This is in line with other applications of Ohio Evidence Rule 702.

We can find no court decision indicating that economic testimony for the purpose of assessing punitive damages was either permitted or excluded at trial in Ohio. However, in several cases in which punitive damages were awarded at trial and upheld by higher courts, economists participated in assessing the underlying compensatory damages. In Bishop v. Grdina (1985), the Ohio Supreme Court decided that actual damages must be a predicate for punitive damages. This same court in Williams v. Aetna Finance Company (1998), upheld a punitive damage award that was 100 times compensatory damages. As support for the award the court referred to the guideposts for excessiveness set down by the U.S. Supreme Court in BMW v. Gore (1996). The three indicia are (1) the degree of reprehensibility of the defendant's conduct, (2) the disparity between the harm or potential harm to the plaintiff and the amount of the punitive damages, and (3) the difference between the amount of punitive damages awarded and the civil or criminal sanctions available to be imposed for similar misconduct.

In a subsequent case, Dardinger v. Anthem Blue Cross and Blue Shield (2002), the Ohio Supreme Court stated that, "The loss of Anthem’s license to engage in the business of insurance in Ohio would certainly be a catastrophic punishment far outstripping the award in this case." However, after reviewing the guideposts, it determined that while not grossly excessive the $49 million award was excessive under Ohio law. In light of previous punitive damages levied in Ohio, the Court decided that punitive damages of $30 million would be enough to deter Anthem from engaging in its previous actions. "We simply
believe that a figure that equals one-sixth of annual net earnings, that is more in line with the history of punitive damages awards in Ohio to be more appropriate.” The Court also noted that in order to deter future misconduct it is not necessary for the award to go to the plaintiff. In a novel action, it was ordered that only $10 million of the punitive damages should go to Dardinger. The remainder should be used to fund cancer research at the Ohio State University.

The new tort reform legislation places limits on punitive damages and non-economic damages. A previously stated, the Ohio courts have yet to address the constitutionality of the new legislation.

V. Practice Issues in Ohio

In our experience, in Ohio forensic economists are much more likely to be retained by plaintiff counsel than by defense counsel. In those circumstances in which the defense does wish to utilize an economist, he or she may either be retained as a disclosed expert or as an independent consultant. When retained as a consultant, the economist usually does not author a written report. Sometimes the attorney will just want an analysis without any narrative (i.e., a “bottom line” number), and other times defense counsel will hire an economist solely to provide a critique and commentary on plaintiff counsel’s report as a non-testifying expert. When retained by the plaintiff, the economist is typically expected to provide a formal report on all elements of damages that may be presented at trial. Economists retained by the defendant as testifying experts usually have the opportunity to review the plaintiff’s report before providing their own.

Depositions in personal injury and wrongful death cases occur relatively infrequently in Ohio. Our experience has been that roughly one quarter of all retentions result in a deposition. These depositions are usually relatively short, lasting on average about one hour. During the deposition, the expert witness is generally asked to review and explain all estimates of damages that will be presented at trial. The retaining attorney should be immediately informed of any subsequent changes in estimates or methodology. Live testimony at trial is even less frequent. About 10% of the cases in which we have been retained have resulted in one of us testifying live at trial. Trial testimony has been almost exclusively for the plaintiff.

Courtroom procedures and protocols vary fairly dramatically in Ohio, primarily because of the large disparity in county population. As of July 1, 2002, county population in Ohio varied from over 1.3 million (Cuyahoga County, home of Cleveland) to roughly 13,000. A forensic economist practicing in Ohio should be prepared for both inner city and rural settings and juries.

On rare occasions, a judge may ask a question of an expert witness. Moreover, in Ohio some courts permit jurors to ask questions of an expert witness. When juror questions are allowed, they are usually submitted to the judge in written form, who then asks the question of the witness. A specific jury instruction along these lines is contained in 1 OJI 2.53 §2:

Jurors are permitted to submit questions for the witnesses to answer. If you have an important question, wait until the end of the
witness’s testimony. Do not interrupt the questioning by the lawyers. When that is finished, raise your hand. You will be furnished with pencil and paper so that you may write your question. The written question will be delivered to me for consideration, and I will decide whether the question may be asked of the witness and in what form, in accordance with the law.

An expert may attend the deposition of an opposing witness, but this is unusual. In the courtroom, separation of witnesses is strictly enforced. The forensic economist can expect to wait outside the courtroom before being called to testify.

Lawyers in Ohio are generally accommodating when there are conflicts in schedules. Depositions are typically scheduled by consensus. If you cannot appear at trial because of a serious previous commitment, video-taped testimony may be presented.

References


Ohio Jury Instructions, Vol. 1, Chapter 23.


Cases

Abbott v. Jarrett Reclamation Services, 128 Ohio App. 3d 200 (6th Cir. 1999).


Dardinger v. Anthem Blue Cross and Blue Shield, 98 Ohio St. 3d 77 (2002).


Fantozzi v. Sandusky Cement Products Co. 64 Ohio St. 3d 601(1992).

Galayda v. Lake County Memorial Hospitals (1994).


Lewis v. Alfa Lava Separation, 128 Ohio App. 3d 200 (4th Cir. 1998).


McGarry v. Horlacher, 2002 Ohio 3161 (2nd Cir. 2002).

Pena v. Northeast Ohio Emergency Affiliates, 108 Ohio App. 3d 96 (9th Cir. 1995).
Sorrell v. Thevenir, 69 Ohio St. 3d 415 (1994).
State ex rel. Ohio Academy of Trial Lawyers et al. v. Sheward, 87 Ohio St. 3d 1409 (1999).
Terveer v. Bashnagel, 3 Ohio App. 3d 312 (10th Cir. 1982).