

ANDERSON'S OHIO PRACTICE MANUAL SERIES

WEISSENBERGER'S

Ohio Evidence Courtroom Manual

Including Complete Coverage of the Ohio Rules of Evidence
through June 30, 2015

Glen Weissenberger
A.J. Stephani

2015 EDITION



LexisNexis

OHIO EVIDENCE

2015 Courtroom Manual

GLEN WEISSENBERGER

Professor of Law Emeritus, University of Cincinnati

Former Dean, DePaul University College of Law

A.J. STEPHANI

Adjunct Professor, University of Cincinnati College of Law

Adjunct Professor, Xavier University

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call:

Jacqueline M. Morris, Esq. at (937) 610-5168

Email: jacqueline.m.morris@lexisnexus.com

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Service Department at (800) 833-9844

Outside the United States and Canada, please call (518) 487-3000

Fax number (518) 487-3584

For information on other Matthew Bender publications, please call

Your account manager or (800) 223-1940

Outside the United States and Canada, please call (518) 487-3000

ISSN: 1084-4449

ISBN: 978-1-6328-0986-5 (print)

ISBN: 978-1-6328-0987-2 (eBook)

Cite this publication as:

Weissenberger, Weissenberger's Ohio Evidence Courtroom Manual, Chapter ____ (LexisNexis Matthew Bender)

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks and Michie is a trademark of Reed Elsevier Properties Inc., used under license. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2014 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 25¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

Editorial Offices
630 Central Ave., New Providence, NJ 07974 (908) 464-6800
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200
www.lexisnexus.com

MATTHEW  BENDER

Acknowledgments

Professor Weissenberger would like to acknowledge the assistance of his colleague, Barbara McFarland, and his student research editors, Darcy Deddeus, Doug Schwartz, Joe Stegbauer, Elizabeth Fox, Paul F. Haffner, Lori A. VonderBrink, Jeffrey R. Teeters, Nancy E. Whitacre, Sarah A. Barlage, Robert K. Larson, Jr., Michael Frey and Cassandra Wambaugh. Professor Weissenberger also expresses his appreciation to Connie Miller and Melissa Wehmeyer, who typed the manuscript for this manual.

Using This Publication

Over the past decade, *Weissenberger's Ohio Evidence* has become firmly established as the definitive authority on the law of evidence in Ohio. The Treatise has become an almost indispensable resource for the Ohio jurist and practitioner. As an exhaustive study of a complex subject, however, it sacrifices brevity for the sake of thoroughness. It is not, and was not intended to be, a courtroom reference. With the publication of *Weissenberger's Ohio Evidence Courtroom Manual*, Professor Weissenberger brought into the courtroom the authority, precision, and insight which have characterized the principal Treatise. This publication quickly found a place on counsel tables and on the bench in courtrooms throughout the state, as well as in law offices, libraries, and CLE programs.

As its title indicates, this has been designed specifically for courtroom use; its purpose is to provide fast, authoritative answers to the questions which arise throughout the course of trials and hearings. It accomplishes this through a unique combination of features, which are discussed below.

Locating a Topic

Index—This publication's Index is located inside the front cover. It refers the user directly to the evidence rule covering each topic. When you are uncertain which rule covers an issue, this is the place to begin.

Rules—In a separate section in the back of the publication, the Ohio Rules of Evidence are collected. They are preceded by a complete Table of Contents.

Finding an Answer

Rules—If your question can be answered simply by reading the applicable rule, you can find the language of the rule either in the separate section in the back of the publication where all the rules are collected, or at the beginning of the chapter in which the rule is discussed. The Section Locator on the back cover will guide you.

Commentary—Perhaps the most important part of this publication, the author's Commentary provides a quick overview of the rule under discussion, authoritative guidance in interpreting the rule, and pointers for applying the rule in actual practice. The Commentary also contains special features such as Illustrations, Constitutional Considerations, and Current Trends.

Incorporated Statutes—Some rules require reference to sections of the Ohio Revised Code. When this is the case, the incorporated statutes appear in the appropriate chapter.

Authority—Following each chapter's Commentary, additional authorities are cited. These give the user a starting point for additional research.

Comparison to Federal Rule—A brief comparison of the Ohio and federal rules in each chapter provides additional insight.

Cases—Recent significant cases are summarized at the end of each chapter. These provide support for argument and decisions required during the course of proceedings.

Weissenberger's Ohio Evidence Courtroom Manual is published annually. Ohio Evidence eAdvance Case Summaries, delivered via e-mail, are available to subscribers to *Weissenberger's Ohio Evidence Library* or *Weissenberger's Ohio Evidence* Treatise. The summaries include evidence cases from the Ohio Supreme Court, Ohio Court of Appeals, Ohio County Courts, Ohio Municipal Courts, U.S. Sixth Circuit Court of Appeals and U.S. District Courts in the Sixth Circuit. Consult the Case Summaries for cases construing the Rules of Evidence.

The comments and suggestions of users are welcome.

Ohio Online Resource Directory*

For questions on how to begin your research through lexis.com®, contact LexisNexis® Customer Support at 1-800-543-6862.

Researching case law?

- Determine the relevance of a case quickly and concisely by using **LexisNexis® Case Summaries**.
- Review headnotes written in the exact language of the court-not an interpretation-by using **LexisNexis® Headnotes**.
- Utilize the citations service most trusted by the courts by using **Shepard's®**.
- See one screen that pulls together case law, treatises, law reviews, and legal news for your topic by using **Lexis® Search Advisor**.
- Get a snapshot of the opinion that helps you pinpoint relevant cases and determine whether they're good law by using the **Power Cite List**.

Looking for docket information?

- Find current docket information, and file or process legal documents with online access to the nation's courts by using **LexisNexis® CourtLink®**.

Performing public records research?

- Make logical connections between the vast collections of LexisNexis® public records for faster, easier searching by using **LexisNexis® SmartLinx™**.

Locating public and private company information?

- Conduct in-depth research on 10,000,000 public and private companies by using **LexisNexis® Company Analyzer**.

* LexisNexis, the Knowledge Burst logo, lexis.com, Shepard's, Martindale-Hubbell and Lexis are registered trademarks of Reed Elsevier Properties Inc., used under license. SmartLinx is a trademark of LexisNexis, a division of Reed Elsevier Inc. CourtLink is a registered trademark of LexisNexis CourtLink, Inc. Other products and services may be trademarks or registered trademarks of their respective companies. Copyright 2013 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

Search a vast collection of Ohio sources through lexis.com[®]:

Litigation Sources

- Ohio and Federal cases
- Ohio Court Rules
- Ohio Local Federal District Court and U.S. Bankruptcy Court Rules
- Ohio Jury Instructions
- Ohio Trial Reporter (Verdicts and Settlements)
- Martindale-Hubbell[®] Law Directory-Experts & Services

Legislative Sources

- Page's Ohio Revised Code Annotated
- United States Code Service
- Ohio Constitution
- Ohio Advance Legislative Service
- Full text of pending Ohio bills
- Tracking of pending Ohio bills
- Ohio legislative archive

Agency and Administrative Sources

- Ohio Administrative Code
- The Register of Ohio
- Ohio regulation tracking
- Ohio Regulation Alert
- Ohio Attorney General opinions
- Ohio Tax Commission opinions
- Ohio Board of Tax Appeals
- Ohio Civil Rights Commission
- Ohio Division of Securities
- Ohio Elections Commission Advisory Opinions
- Ohio Insurance Notices and Bulletins
- Ohio Public Utilities Commission
- Ohio Environmental Review Appeals Commission decisions
- Ohio Public Employees Reporter
- Ohio Workers' Compensation decisions
- Ohio Board of Commissioners on Grievances and Discipline
- Ohio ethics opinions

Public Records and Filings

- Ohio judgment and lien filings

Search a vast collection of Ohio sources through lexis.com[®]:

- Ohio Uniform Commercial Code lien filings
- Ohio federal & state tax liens
- Ohio United States District Court civil and criminal docket summaries
- Ohio fictitious business name filings
- Ohio Secretary of State corporation and limited partnership filings
- Ohio person locator
- Ohio professional licenses
- Ohio property records and deed transfer records (selected counties)
- Ohio archival tax assessor records
- Ohio liquor licenses
- Ohio lottery sales agents
- Ohio inmates index
- Ohio bankruptcy filings
- Ohio drivers license records
- Ohio voter registrations

Newspapers and Magazines

- AP State & Regional Wires—Ohio Stories
- Akron Beacon Journal
- Bucyrus Telegraph Forum
- Chillicothe Gazette
- The Cincinnati Enquirer
- Cleveland Scene
- The Columbus Dispatch
- Coshocton Tribune
- Crain's Cleveland Business
- Dayton Daily News
- Lancaster Eagle Gazette
- Mansfield News Journal
- Marion Star
- Mealey's Ohio Litigation News
- Newark Advocate
- News Herald (Port Clinton, Ohio)
- The News-Messenger (Fremont, Ohio)
- The Plain Dealer
- Toledo Blade
- Zanesville Times-Recorder

Law Reviews

- Akron Law Review
- Akron Tax Journal
- Canada-United States Law Journal
- Capital University Law Review

Search a vast collection of Ohio sources through lexis.com[®]:

- Case Western Reserve Journal of International Law
- Case Western Reserve Law Review
- Cleveland State Law Review
- Health Matrix
- I/S: A Journal of Law and Policy for the Information Society
- Ohio Northern Law Review
- Ohio State Journal of Criminal Law
- The Ohio State Journal on Dispute Resolution
- Ohio State Law Journal
- The Toledo Journal of Great Lakes' Law, Science & Policy
- Toledo Law Review
- University of Cincinnati Law Review
- University of Dayton Law Review

Ethics Analysis

- Anderson's Law of Professional Responsibility in Ohio
- Jones Day Ohio Legal Ethics Narrative

Treatises and Practice Manuals

- 40 Ohio analytical sources covering a wide range of practice areas. See the Ohio Product Directory for a list of titles. Visit the LexisNexis[®] Bookstore at <http://bookstore.lexis.com/bookstore/catalog> for information on specific titles.

Ohio Product Directory*

LexisNexis® covers Ohio and National practice like no one else, with timely coverage of new legislation and developing trends.

Visit the LexisNexis® Bookstore at <http://bookstore.lexis.com/bookstore/catalog> for information on specific titles.

These materials are also available online on LexisNexis® at lexis.com®. Call your local sales representative or 1-877-810-5324 for more details.

Bankruptcy Law

- Anderson's Ohio Bankruptcy Handbook
- Collier Bankruptcy Manual
- Collier Consumer Bankruptcy Practice Guide
- Collier On Bankruptcy
- Collier TopForm™ Bankruptcy Filing Program

Business Entities

- Anderson's Ohio Business Entities Handbook
- Anderson's Ohio Corporation Law Handbook
- Ohio Business Entities
- Business Organizations with Tax Planning
- Corporate Governance: Law and Practice
- Current Legal Forms with Tax Analysis
- Liability of Corporate Officers and Directors
- Warren's Forms of Agreements, Fern's Desk Edition

Cases, Codes and Court Rules

- Page's Ohio Revised Code Annotated
- Anderson's Ohio Primary Law on CD-ROM
- Anderson's Annotated Rules Governing the Courts of Ohio
- City of Akron, Ohio Code of Ordinances
- Columbus, Ohio Code

Civil Procedure

- Anderson's Ohio Civil Laws and Rules Handbook
- Anderson's Ohio Civil Practice with Forms
- Anderson's Ohio Civil Rules Practice with Forms
- Weissenberger's Ohio Civil Procedure Litigation Manual
- Anderson's Appellate Practice and Procedure in Ohio
- Anderson's Ohio Pretrial Litigation Practice Manual
- Anderson's Sixth Circuit Practice Manual

* LexisNexis, the Knowledge Burst logo, lexis.com, Shepard's and Lexis are registered trademarks of Reed Elsevier Properties Inc., used under license. Collier TopForm is a trademark of Matthew Bender & Company, Inc. Copyright 2013 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

Ohio Product Directory

- Bender's Federal Practice Forms
- Bender's Forms of Discovery
- Federal Litigation Guide
- Moore's Federal Practice
- Pozner & Dodd, Cross-Examination: Science and Techniques, Second Edition

Commercial Law

- Anderson's Ohio Annotated Commercial Law Handbook
- Anderson's Ohio Consumer Law Manual
- Anderson's Ohio Creditors' Rights
- Asset Based Financing
- Commercial Law and Practice Guide
- Commercial Damages Reporter
- Consumer Credit Law Manual
- Corbin on Contracts
- Forms and Procedures Under the UCC
- Jury Instructions in Commercial Litigation
- Sales & Bulk Transfers Under the UCC
- Secured Transactions Under the UCC

Criminal Law & Procedure

- Anderson's Ohio Criminal Law Handbook
- Anderson's Ohio Traffic Law Handbook
- Anderson's Ohio Manual of Criminal Complaints & Indictments
- Anderson's Ohio Criminal Practice and Procedure
- Anderson's Ohio Search Warrant Manual
- Ohio Liquor Laws and Rules
- Sixth Circuit Criminal Handbook
- Search and Seizure
- Criminal Defense Techniques

Education Law

- Anderson's Ohio School Law Guide
- Anderson's Ohio School Law Manual
- Anderson's Ohio School Finance
- Rapp, Education Law

Environmental Law

- Anderson's OhioEPA Laws and Regulations with CD-ROM
- Environmental Law Practice Guide
- Brownfields Law and Practice
- Grad, Treatise on Environmental Law

Elder, Estate, Gift and Trust Law

- Anderson's Ohio Probate Law Handbook

Ohio Product Directory

- Anderson's Ohio Probate Practice and Procedure
- Anderson's The Simple Will in Ohio
- Anderson's Ohio Elder Law Practice Manual
- Modern Estate Planning
- Tax, Estate & Financial Planning for the Elderly
- Murphy's Will Clauses: Annotations and Forms with Tax Effects

Evidence

- Weissenberger's Ohio Evidence Treatise
- Weissenberger's Ohio Evidence Courtroom Manual
- Weinstein's Federal Evidence

Family Law

- Anderson's Ohio Family Law Handbook
- Anderson's Ohio Juvenile Law Handbook
- Anderson's Ohio Family Law
- Anderson's Ohio Domestic Relations Practice Manual
- Family Law & Practice
- Lindey & Parley on Separation Agreements & Antenuptial Contracts 2d Ed.

Forms

- Anderson's Ohio Online Forms
- Anderson's Ohio Forms on CD-ROM
- Ohio Forms of Pleading and Practice
- Ohio Forms of Pleading and Practice on CD-ROM
- Ohio Transaction Guide
- Ohio Transaction Guide on CD-ROM
- Couse's Ohio Form Book
- Anderson's Legal Forms

Insurance Law

- Anderson's Ohio Insurance Law Handbook
- Appleman on Insurance
- Law of Liability Insurance
- Law of Life and Health Insurance

Jury Instructions

- Ohio Jury Instructions
- Ohio Jury Instructions on CD-ROM

Labor & Employment Law

- Anderson's Ohio Employment Law Handbook
- Employment in Ohio: A Guide to Employment Laws, Regulations and Practice
- Labor and Employment Law
- Larson on Employment Discrimination

Ohio Product Directory

Personal Injury

- Damages in Tort Actions
- Medical Malpractice
- Personal Injury: Actions, Defenses, Damages

Real Estate Law

- Anderson's Ohio Real Estate Law Handbook
- Anderson's Ohio Residential Real Estate Manual
- Ohio Real Property Law and Practice
- Construction Law
- Nichols on Eminent Domain
- Powell on Real Property

Securities Law

- Anderson's Ohio Securities Law Handbook
- Anderson's Ohio Securities Law and Practice
- Anderson's Ohio Investment Adviser Manual
- Blue Sky Regulation
- Federal Securities Act of 1933
- Federal Securities Exchange Act of 1934
- Investment Advisers: Law and Compliance
- Securities Law Techniques

Shepard's

- Shepard's Ohio Citations

Tax Law

- Anderson's Ohio Tax Law Handbook
- Federal Income Taxation of Corporations Filing Consolidated Returns
- Federal Tax Practice & Procedure
- How to Save Time & Taxes Preparing Fiduciary Income Tax Returns

Workers' Compensation and SSDI

- Anderson's Ohio Workers' Compensation Law Handbook
- Fulton's Ohio Workers' Compensation Law
- Larson's Workers' Compensation, Desk Edition
- Social Security Practice Guide

Table of Contents

Acknowledgments

Using This Publication

Ohio Online Resource Directory

Ohio Product Directory

ARTICLE I GENERAL PROVISIONS

Chapter

- | | |
|------|---|
| 101. | Scope of Rules: Applicability; Privileges; Exceptions |
| 102. | Purpose and Construction; Supplementary Principles |
| 103. | Rulings on Evidence |
| 104. | Preliminary Questions |
| 105. | Limited Admissibility |
| 106. | Remainder of or Related Writings or Recorded Statements |

ARTICLE II JUDICIAL NOTICE

Chapter

- | | |
|------|---------------------------------------|
| 201. | Judicial Notice of Adjudicative Facts |
|------|---------------------------------------|

ARTICLE III PRESUMPTIONS

Chapter

- | | |
|------|--|
| 301. | Presumptions in General in Civil Actions and Proceedings |
| 302. | [Reserved] |

ARTICLE IV RELEVANCY AND ITS LIMITS

Chapter

- | | |
|------|---|
| 401. | Definition of "Relevant Evidence" |
| 402. | Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible |
| 403. | Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay |
| 404. | Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes |
| 405. | Methods of Proving Character |
| 406. | Habit; Routine Practice |
| 407. | Subsequent Remedial Measures |
| 408. | Compromise and Offers to Compromise |
| 409. | Payment of Medical and Similar Expenses |
| 410. | Inadmissibility of Pleas, Offers of Pleas, and Related Statements |

Table of Contents

411. Liability Insurance

ARTICLE V PRIVILEGES

Chapter

501. General Rule

ARTICLE VI WITNESSES

Chapter

601. General
602. Lack of Personal Knowledge
603. Oath or Affirmation
604. Interpreters
605. Competency of Judge as Witness
606. Competency of Juror as Witness
607. Impeachment
608. Evidence of Character and Conduct of Witness
609. Impeachment by Evidence of Conviction of Crime
610. Religious Beliefs or Opinions
611. Mode and Order of Interrogation and Presentation
612. Writing Used to Refresh Memory
613. Impeachment by Self-Contradiction
614. Calling and Interrogation of Witnesses by Court
615. Separation and Exclusion of Witnesses
616. Methods of Impeachment

ARTICLE VII OPINIONS AND EXPERT TESTIMONY

Chapter

701. Opinion Testimony by Lay Witnesses
702. Testimony by Experts
703. Bases of Opinion Testimony by Experts
704. Opinion on Ultimate Issue
705. Disclosure of Facts or Data Underlying Expert Opinion
706. Learned Treatises for Impeachment [Repealed July 1, 2006]

ARTICLE VIII HEARSAY

Chapter

801. Definitions
802. Hearsay Rule
803. Hearsay Exceptions; Availability of Declarant Immaterial

Table of Contents

| | |
|------|---|
| 804. | Hearsay Exceptions; Declarant Unavailable |
| 805. | Hearsay Within Hearsay |
| 806. | Attacking and Supporting Credibility of Declarant |
| 807. | Hearsay Exceptions; Child Statements in Abuse Cases |

ARTICLE IX AUTHENTICATION AND IDENTIFICATION

Chapter

| | |
|------|---|
| 901. | Requirement of Authentication or Identification |
| 902. | Self-Authentication |
| 903. | Subscribing Witness' Testimony Unnecessary |

ARTICLE X CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

Chapter

| | |
|-------|---|
| 1001. | Definitions |
| 1002. | Requirement of Original |
| 1003. | Admissibility of Duplicates |
| 1004. | Admissibility of Other Evidence of Contents |
| 1005. | Public Records |
| 1006. | Summaries |
| 1007. | Testimony or Written Admission of Party |
| 1008. | Functions of Court and Jury |

ARTICLE XI MISCELLANEOUS RULES

Chapter

| | |
|-------|----------------|
| 1101. | [Reserved] |
| 1102. | Effective Date |
| 1103. | Title |

APPENDIX I OHIO RULES OF EVIDENCE

APPENDIX II STAFF NOTES TO THE OHIO RULES OF EVIDENCE

ARTICLE I

GENERAL PROVISIONS

Chapter

- 101. Scope of Rules: Applicability; Privileges; Exceptions
- 102. Purpose and Construction; Supplementary Principles
- 103. Rulings on Evidence
- 104. Preliminary Questions
- 105. Limited Admissibility
- 106. Remainder of or Related Writings or Recorded Statements