

Modernizing Ohio's Civil Rules of Procedure: Proposed Amendments Allow for Remote Technology

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The Ohio Supreme Court has proposed a number of significant changes to the Ohio Rules of Civil Procedure that seek to utilize remote technology, pursuant to its rulemaking authority under the Ohio Constitution. The amendments, if adopted, would take effect July 1, 2022, making civil litigation more efficient and cost-effective for litigants.

Allowing for Virtual Appearances

The proposed amendments authorize courts and litigants to utilize remote technology (such as live two-way video or telephone conferences) in place of requiring personal attendance at a hearing or proceeding. The proposed amendments do make clear that the use of such technology is entirely at the court's discretion. See Am. to Civ.R. 1. Civ.R. 16, regarding pre-trial conferences, also would be amended to explicitly allow the conference to be held remotely, at the court's discretion.

Similarly, the proposed amendments drastically expand the scope of Civ.R. 39 (regarding trials) and Civ.R. 43 (taking testimony) by permitting a party to request that a trial or hearing be conducted remotely, in whole or in part, utilizing two-way video or audio conference technology. Such a request will have to be made by a deadline set in the court's scheduling, or thirty days prior to trial or the hearing. The oath or affirmation of a witness who is to testify remotely may also be administered remotely and requires an affirmation on the record that they have submitted to the jurisdiction of the court. See Am. to Civ.R. 43(D). Absent unanimous consent by all parties, the court will not be able to require a trial by jury to be conducted without the jurors physically present in the courtroom.

Factors that courts should consider in deciding whether to permit a trial to be conducted remotely include:

1. the age and any disabilities or special needs of witnesses
2. whether language translation will be needed
3. procedures for handling exhibits
4. arrangements for making and ruling on objections or sidebar conferences

5. limitations upon persons who may be present in the location where a witness testifies
6. whether any technological issues involving remote testimony may affect the ability to create a clear record for appeal

The discovery rules would be amended as well, including the addition of language to clarify that depositions may be taken of witnesses located out-of-state via remote means. The amendments make clear that when a deposition is being held remotely, it will be considered taken in the jurisdiction where the case is pending. *See* Am. to Civ.R. 30(B)(6).

These amendments recognize the current reality of litigation during the COVID-19 pandemic, wherein many courts and litigants successfully utilized remote technology in lieu of personal attendance at pre-trials, scheduling conferences, and mediations.

Updating the Manner and Method of Service

The proposed amendments also would authorize service not only to be made via email but, upon agreement in writing by all parties, by “any other electronic media platform(s).” *See* Am. to Civ.R. 5(2)(f). The proposed rules do not yet define what constitutes “other electronic media platform(s)” for purposes of service.

Authorizing Electronic Signatures

Finally, Civ.R. 11 would be amended to explicitly authorize the use of an electronic signature when signing a pleading, motion, or document by an attorney.

These amendments would provide courts and litigants with the flexibility to determine when, and if, to utilize remote technology during the course of a lawsuit. While in-person appearances and testimony may still be preferred by parties and courts alike (especially for a trial), the Supreme Court’s proposed amendments would not only streamline civil litigation in Ohio, but could possibly save parties significant time and costs associated with travel and appearance at hearings, proceedings, or trials.

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