

Substantive Amendments to Ohio's Civil Rules of Procedure: A Summary

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This article was written by James Sandy (Member) and Taylor Bennington (Summer Associate) in McGlinchey's Cleveland Office.

After years of complaints that civil litigation costs too much and was too time-consuming, the United States Supreme Court adopted the most comprehensive amendments to the Federal Rules of Civil Procedure since their enactment on December 1, 2015. The aspirational goal of those amendments was to increase cooperation among parties, reduce costs, and resolve case and discovery disputes quickly and efficiently. The results thus far have been a mixed bag and have in many respects become court and judge-specific.

In an effort to mirror the Federal Rules of Civil Procedure, on July 1, 2020, the Ohio Supreme Court enacted a series of substantive changes to the Ohio Rules of Civil Procedure.[1] Like its federal counterpart, the amendments to the Ohio Civil Rules of Procedure appear to have a number of aspirational goals in mind: (a) to increase cooperation among parties, (b) reduce the burden and expense of litigation, (c) promote fairer and more efficient case management and discovery practice, and (d) resolve cases more quickly and efficiently.

This article highlights a few of the substantive amendments.

Amendments to the Discovery Rules

Discovery is one of the most costly and time-consuming aspects of civil litigation, and when left unchecked, can spiral out of control. Recognizing this, the amendments to the Civil Rules of Procedure substantially overhauled the rules pertaining to discovery with the hopes of more judicial involvement and oversight, more cooperation among parties, and a better road map for handling expert witnesses and electronically stored information (ESI). Of particular note:

Initial Disclosures. For the first time, Ohio now requires a party to provide initial disclosures no later than the first pre-trial or case management conference or as set by the court.[2]

Proportionality. Like the amendments to the Federal Rules, discovery under the Ohio Civil Rules of Procedure must now be “proportional to the needs of the case.”[3]

ESI. Gives a court the opportunity to limit or even outright bar ESI discovery if the cost of producing the information is too high or it is not easily accessible.[4]

Expert Witnesses. Experts must now provide written reports, whereas before the Civil Rules did not explicitly require them.[5]

Meet and Confer. Parties must now meet and confer to go over a case/discovery plan at least twenty-one days prior to a scheduling conference.[6]

In trying to mitigate the cost of ESI discovery, in particular, the Supreme Court has possibly opened the door for additional litigation regarding proportionality and the nebulous “good cause” standard (which, along with considerations of the financial situation of a party claiming to be unable to afford the ESI, and the reliance of the request, has the potential to create further delays — exactly what the rule was designed to prevent).

Service of Summons and Complaint

Likewise, and with an eye towards cooperation among the parties and reducing costs, the Civil Rules have been substantially amended with respect to the service of a Summons. Civ.R. 4.7 has been added to provide a defendant with the ability to waive service (and the costs associated with it), as in the Federal Rules of Civil Procedure. The Rule also provides a form notice and waiver to be sent to a defendant to accomplish this.

As in the federal rules, waiver is encouraged and incentivized. If service is waived defendants are granted a 60 day period to answer rather than the standard 28 days. However, a greater incentive might be the new cost-shifting mechanism that failure to waive service could create. Pursuant to Civ.R. 4.7(C), if a defendant fails to waive service without good cause, the cost of service may be imposed on the defendant. This cost could include the opposing party's attorney's fees for having to collect service-related expenses. The Staff Notes to the Rule make clear that these costs could also include the “cost of enforcement” for attempting to obtain service.[7]

In addition, the new amendments also permit the waiver form to be sent not only by first class mail but by “other reliable means” to a defendant.[8] While the Staff Notes do not specifically define “other reliable means,” it does indicate approval for both facsimile and electronic mail to serve the waiver notice upon a defendant.[9]

Pre-Trial Procedures

Finally, Civil Rule 16 related to pre-trial procedures has been substantially overhauled in an effort to promote greater consistency and transparency for both attorneys and the public at large. The new amendments attempt to mimic the Federal Rules and, while still permissive, outline in exhaustive detail the purpose of a pre-trial conference (once an afterthought), as well as content and items that can be discussed at a pre-trial conference and/or included in a scheduling order. For example, the new amendments:

1. In most cases **require** the court to issue a scheduling order within 90 days after service on any defendant, or 60 days after any defendant has responded to the complaint, whichever is earlier.[10]

2. Require counsel to be able to make stipulations and admissions about “all matters” on behalf of his or her client, and give the court the option of requiring client availability and attendance.[11]
3. Provide an outline of items for a court to include in a scheduling order after a pre-trial or case management conference.[12]
4. Provide a roadmap of 16 broad categories of discussion for the parties at a pre-trial conference.[13]

While not explicitly stated in the Staff Notes, it is clear that these revisions to Civ.R. 16 (similar to other amendments) were made in an effort to avoid delays, reduce costs, and ultimately promote settlement and the fair, expedient resolution of lawsuits.

As with the Federal Rules, time will tell whether the significant amendments to the Ohio Civil Rules of Procedure live up to their lofty goals.

Taylor Bennington is a Law Clerk and student at the University of Akron School of Law. He is McGlinchey's current Leadership Counsel on Legal Diversity Scholar, working in the Cleveland office.

James Sandy is a trial and appellate lawyer who represents national mortgage servicing companies, national banks, national auto finance companies, and small businesses in civil and commercial litigation. He is a Member in McGlinchey's Cleveland office.

[1] Ohio Supreme Court, *Amendments to the Ohio Rules of Practice and Procedure 1* (2020).

[2] Civ.R. 26(B)(3).

[3] Civ.R. 26(B)(1).

[4] Civ.R. 26(B)(5).

[5] Civ.R. 26(B)(7).

[6] Civ.R. 26(F).

[7] Staff Note to Civ.R. 4.7.

[8] *Id.*

[9] *Id.*

[10] Civ.R. 16(B)(1).

[11] Civ.R. 16(C)(1).

[12] Civ.R. 16(B)(3).

[13] Civ.R. 16(C)(2)(a)-(p).

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Jim Sandy

Taylor Bennington