

Recent Changes to the Ohio Rules Address Remote Attendance, Discovery Disputes, and Service of Process

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The following highlights several of the changes to the Ohio Rules of Civil Procedure that went into effect on July 1, 2023. The changes impact, among other things, physical and remote appearance, the rules governing discovery, and service of process. Please contact any of the listed attorneys if you would like more information on the changes.

Remote Presence—Use in Depositions, Hearings, and Trial

The civil rules are still catching up to clarify the limits on the use of remote technology after the COVID-19 pandemic forced attorneys and parties to appear remotely. The recent amendments to the Ohio Rules of Civil Procedure, which are aimed at making the use of technology in courts more “prevalent” and “effective,” offer some uniformity in the use of remote presence at depositions and court hearings.

One change to the civil rules provides for uniformity of jurisdiction. Using remote presence, a witness testifying from another state is now subjecting himself to the jurisdiction of Ohio courts—i.e., regardless of the witness’s location, the testimony is deemed taken in the jurisdiction in which the case is pending.

Remote depositions may continue to be conducted by telephone (i.e., audio only). However, remote hearings must be conducted using live two-way audio and video.

Remote attendance at a deposition is allowed upon stipulation or court order. Remote appearance at hearings requires a request filed 30 days before the hearing and should be allowed only “for good cause and with appropriate safeguards.” The rule alleviates the need for “compelling circumstances,” which was previously required by the rules.

The changes go so far as to permit a party to request a bench trial be conducted remotely. The decision whether to allow a bench trial to be conducted using remote presence is within the court’s discretion. This rule is limited to bench trials and does not apply to jury trials.

Despite the changes noted above, the rules make clear that any option in the rules to appear remotely does not limit the power of a court to order anyone to physically appear at a proceeding.

Discovery Changes – Interrogatories and Meet-and-Confer Requirement

Civil Rule 33(A) currently limits litigants to 40 interrogatories. Though courts previously had authority to *expand* the number of interrogatories for good cause shown, the new rules also permit courts to *restrict* that number using the same good cause standard. The rule does not provide any lower bound limit for the number of interrogatories and does not make clear whether courts may prohibit the use of interrogatories altogether.

The duty to exchange discovery via email has been lessened for parties who do not have access to email. Parties affected by this change—mostly pro-se litigants—are no longer required to seek a court order to avoid service by email. Additionally, unrepresented parties must receive paper copies of interrogatories and requests for admissions.

Since 2020, Rule 26(F) required parties to meet and set a plan for the process of discovery in the case at least 21 days before the scheduling conference with the court. Changes to Rule 26(F) now allow courts to make local rules abolishing the requirement of a 26(F) conference in cases where little discovery is anticipated. For all other cases, the rules now predict sanctions for failure to comply with the Rule 26 requirements.

Rule 30(B)(5) requires a “meet and confer” to occur before any deposition of a corporate representative takes place. Failure to meet and confer may result in sanctions.

Service of Process

New rules for process servers require greater scrutiny of a person who is to make personal service of process. The amendment precludes those with felony convictions and other enumerated offenses from qualifying as a personal service process service. This change comes in response to concerns over the security of respondents and to promote uniformity and public safety.

Another amendment clarifies that service via commercial server, such as FedEx and UPS, is in all respects treated the same as service via certified or express mail, including in situations when service is returned unclaimed.

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