

## **New Rules of Practice and Procedure**

**Effective July 1, 2020**

A series of rule changes regarding practice and procedure in Ohio's courts take effect July 1, 2020. The amendments alter several rules governing civil, criminal, appellate, and juvenile proceedings, and rules of evidence.

Those practicing in Probate Court should be particularly aware of the changes in Civil Rules 4 (Service of Process), 16 (Pretrial Procedures), and 26 (General Discovery Provisions). Rule 53 (Jury Trials before Magistrates), Ev. R. 601 (General Rule of Competency) and Ev. R. 902 (Self-Authentication of Documents) have also been modified. The full text can be found on the Ohio Supreme Court website, { [HYPERLINK](http://www.supremecourtsohio.gov/ruleamendments/documents/4.22.20%20Posting.pdf) "http://www.supremecourtsohio.gov/ruleamendments/documents/4.22.20%20Posting.pdf" }.

**Rule 4.7 (Waiver of Service)** is a new rule which allows for the Plaintiff to notify a Defendant that an action has been filed and to ask the Defendant to waive service. The timelines for notice, response, and answer as well as the forms for filing and responding to the waiver request are set forth in the new rule. **If the Defendant fails, without good cause, to agree to the waiver of service, the court may impose the expenses of service and reasonable expenses, including attorney fees, “of any motions required to collect those service expenses.”** Based on the Federal Rules, this rule appears to be intended to place the duty on the Defendant to avoid costs associated with service.

**Rule 16 (Pretrial Procedures)** 1) Imposes a duty of good faith on attorneys, clients, and self-represented litigants to agree on schedules required by the rules. 2) The court must issue a scheduling order early in the case; the earlier of 60 days after answer or 90 days after service. This order can set time limits for adding parties, completing discovery, filing motions, and setting pretrial and trial dates. It can require a party to seek a conference with the court before filing discovery motions. It also sets out a list of matters that the court shall consider and take appropriate action on at the pretrial conference set forth in Civ. R. 16(C)(2). Civ.R.16(C)(1) recognizes a party to authorize its attorney to make stipulations and admissions about all matters that can be reasonably anticipated for discussion at a pretrial conference.

**Rule 26(F) (Conference of the Parties; Planning for Discovery)** is a new rule which requires the parties to confer “as soon as practicable” and no later than 21 days before a scheduling conference. The parties are to develop a proposed discovery plan and to file it within 14 days of the parties’ conference. The Rule provides nine [Civ. R. 26(F)(3)(a)-(i)] categories of issues concerning the scope of scheduling and deadlines for discovery. A party must provide to the other party 1) Names and contact information or each individual likely to have discoverable information along with the subjects of that information that the disclosing party may use to support its claims or defenses. (Civ. R. 26 (B)(3)(a). (2) A copy or description of all documents tangible or electronically stored that may be used in the litigation. 3) A computation of damages and evidentiary material in support. This must all be done before the scheduling conference and without waiting for a discovery request.

**Rule 53( Jury Trials before Magistrates)** Notwithstanding any other provision of these rules, in jury trials presided over by magistrates, the factual findings of the jury shall be conclusive as in any trial before a judge. All motions presented following the unanimous written consent of the parties, including those under Civ.R. 26, 37, 50, 51, 56, 59, 60, and 62, shall be heard and decided by the magistrate. No objections shall be entertained to the factual findings of a jury, or to the motion or legal rulings made by the magistrate except on appeal to the appropriate appellate court after entry of a final judgment or final appealable order. The trial judge to whom the matter was originally assigned before the parties consented to trial before a magistrate shall enter judgment consistent with the magistrate's journalized entry pursuant to Civ.R. 58, but shall not otherwise review the magistrate's rulings or a jury's factual findings in a jury trial before a magistrate.

**Ev. R. 601 (General Rule of Competency)** The general rule now is that every person is competent to be a witness except as otherwise provided in these rules. (B) Disqualification of witness in general. A person is disqualified to testify as a witness when the court determines that the person is: (1) Incapable of expressing himself or herself concerning the matter as to be understood, either directly or through interpretation by one who can understand him or her; or (2) Incapable of understanding the duty of a witness to tell the truth.

**Ev. R. 902 (Self-Authentication of Documents)** Self-Authenticating documents now includes the following in addition to the currently listed ten: 11) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of Evid.R. 803(6), as shown by a certification of the custodian or another qualified person that complies with an Ohio statute or a rule prescribed by the Supreme Court of Ohio. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record - and must make the record and certification available for inspection so that the party has a fair opportunity to challenge them.12 ) Certified Foreign Records of a Regularly Conducted Activity. In a civil case the original or a copy of a foreign record that meets the requirements of Evid.R. 902(11), modified as follows: the certification, rather than complying with an Ohio statute or Supreme Court of Ohio rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Evid.R. 902(11). Certified Records Generated by an Electronic Process or System.13) A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Evid.R. 902(11) or (12). The proponent must also meet the notice requirements of Evid.R. 902(11). 14) Certified Data Copied from an Electronic Device, Storage Medium, or File. Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Evid.R. 902(11) or (12). The proponent also must meet the notice requirements of Evid.R. 902(11).