

IMPORTANT CHANGES TO THE OHIO CIVIL RULES OF PROCEDURE FOR LITIGATORS

On July 1, 2019, certain important amendments to the Civil Rules of Procedure became effective. For those that practice litigation, the most important changes are summarized below.

Briefing Schedule for Motions

Until July 1, 2019, the Ohio Civil Rules of Procedure left it to each county's local rules to establish when briefs in oppositions had to be filed. Also, counties had different rules on whether a party had to request leave to file a reply brief. Therefore, a litigator had to consult with each county's local rules every time a motion was filed. This frustrating practice has been eliminated.

Civ.R. 6(C)(1) now governs the response time for all motions, including motions for summary judgment. In short, the rule now provides as follows:

- (1) All Motions (other than Motions for Summary Judgment):
 - a. **Brief in Opposition** is due **14 days** after motion is filed;
 - b. **Reply Brief** is due **7 days** after the Brief in Opposition is filed (leave not required)

- (2) Motions for Summary Judgment:
 - a. **Brief in Opposition** is due **28 days** after motion is filed;
 - b. **Reply Brief** is due **7 days** after the Brief in Opposition is filed (leave not required)

The Staff Notes to these amendments make their purposes clear. These Notes state as follows:

The provisions of Division (C)(1) **supersede and replace** the differing deadlines for responding to motions imposed by the numerous local rules of Ohio trial courts, thereby eliminating confusion and creating consistency by providing uniform statewide deadlines. The division establishes a twenty-eight day deadline for service of responses to motions for summary judgment, and a fourteen-day deadline for service of responses to all other motions. A movant's reply to a response to any motion may be served within seven days after service of the response

(Emphasis added.)

In case these amendments (and Staff Notes) were not clear, the Rules were further amended in additional ways to ensure these standard deadlines are mandatory. For example, Civ.R. 6(C)(3) governs when these deadlines can be modified. It provides as follows:

(3) Modification for good cause upon motion. Upon motion of a party in an action, and for good cause, the court may reduce or enlarge the periods of time provided in divisions (C)(1) and (C)(2) of this rule.

Therefore, a modification to the deadlines can only be made (1) by motion and (2) for good cause.

Lastly, Civ.R. 7, which governs “Pleadings and Motions” was amended to provide as follows:

To expedite its business, the court may make provision by rule or order **not inconsistent with these rules** for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

(Emphasis added.)

The Staff Notes indicate the purpose of this amendment is to “ensure that any local rule or order of the court relating to the submission and determination of motions is not inconsistent with the provisions of any other Rule of Civil Procedure (e.g., Civ.R. 6).” Therefore, this amendment expressly prohibits local rules from conflicting with the above deadlines.

Prehearing and Pretrial Motion

Civ.R. 6(C)(2) also addresses motions that are filed in anticipation of a scheduled hearing or a trial. These rules are **not mandatory** and can be modified by “court order.” Therefore, if a judge has a standard pretrial procedure, one should still consult that or, at least, clarify with the court which applies. The default rules are now as follows:

- (1) **Prehearing Motions** must be filed **14 days** before the hearing;
- (2) **Pretrial Motions** must be filed **28 days** before the trial
- (3) **Briefs in Opposition** may be filed **14 days** after the motion is filed (note: this creates a problem because, technically, a brief in opposition to a prehearing motion is due on the day of the hearing. We would therefore recommend using 7 days as the deadline for filing a brief in opposition to a prehearing motion).
- (4) **Reply Briefs** are **not permitted**;
- (5) Civ.R. 6(C)(3) also allows for a court to modify these deadlines upon motion and for good cause.

Other Changes

While the above amendments are the most significant, several other changes to the Civil Rules also became effective on July 1, 2019.

Materials in Support of MSJ

One minor amendment to Civ.R. 56(C) now specifies that materials in support of a motion for summary judgment **must** be served at the same time of the motion. This is already a typical practice among litigators. However, one area of caution: The changes to this rule would not allow a litigator to file an unexecuted affidavit and then later serve the executed version.

Method for Serving Discovery Requests

There were several minor amendments to certain discovery rules to make it clear that discovery requests should be sent in an “editable” form (i.e., in Word). This is already a common practice among litigators.

Alternative Jurors

Civ.R. 47(D), which governs alternative jurors, was amended to clarify whether an alternate juror can replace a juror **during deliberations**. The rule now allows a “retained” alternate juror to replace a deliberating juror who cannot fulfill his/her duties, but it does not allow a “discharged” alternate juror to be “recalled” to replace a deliberating juror. The difference between a “retained” and “discharged” alternate juror is that a “retained” juror is still subject to the court’s admonitions to not discuss the case, while a “discharged” juror is not. The Staff Notes indicates that it remains in the court’s discretion as to whether a “retained” alternate juror must remain in the courthouse. However, the Notes indicate it is “good practice” to have the alternate “readily available.” The amended part of the rule now provides as follows:

(2) Retention; discharge. The court may retain alternate jurors after the jury retires. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. If the court does not retain alternate jurors after the jury retires and instead discharges the alternate jurors, the alternate jurors cannot be recalled as jurors.

The above summaries are only intended to provide an overview of the recent amendments to the Ohio Civil Rules of Procedure. Attorneys should always consult the Rules themselves to determine the proper procedure for any given situation.