

## PUBLICATION UPDATE

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# Ohio Forms of Pleading and Practice

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Publication 502

Release 125

July 2023

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### HIGHLIGHTS

#### New and Revised Forms

- Plaintiff Purchaser's Motion for Summary Judgment Based on Defendant's Failure to Deliver Goods, with Supporting Memorandum
- Affidavit in Support of Plaintiff Purchaser's Motion for Summary Judgment Based on Defendant's Failure to Deliver Goods, with Supporting Memorandum
- Defendant's Motion for Summary Judgment Based on Sovereign Immunity in Slip- and-Fall Action, with Supporting Memorandum
- Civil Fee Waiver Affidavit and Order

#### Amendments to Ohio Rules of Civil Procedure

Rule 4.7 amended regarding waiver of service of summons made

inapplicable to domestic relations cases.

Rule 5 amended regarding the filing of court documents by electronic means.

Rule 11 was amended in 2022 to make reference to electronic signatures.

Rule 26(B)(3)(a)(i) amended to provide for initial disclosure of e-mail addresses.

Rule 28(B) was amended to provide that depositions may be taken of witnesses located outside this state via remote means before a person authorized to administer any oath by the laws of Ohio.

Rule 31(B) was amended regarding delivery of the deposition by electronic means,

#### Statutory Amendments

Ohio Rev. Code Ann. § 119.12

amended by G.A. 134, Am. Sub. H. B. 286 with regard to venue for appeal from government agency orders to the court of common pleas.

Ohio Rev. Code Ann. § 153.81, added by G.A. 134, S.B. 56, eff. Mar. 14, 2023, authorizes a public authority to include, in a public improvement contract, a requirement that a professional design firm providing professional design services indemnify the public authority and its officers and employees with regard to liability to a third party stemming from those services.

Ohio Rev. Code Ann. § 2125.02(B)(1), (2), and (3), amended by G.A. 134, H.B. 279, eff. April 4, 2023, identifies who is considered an interested party for the purposes of a wrongful death claim and, in effect, limits the time within which extended family are entitled to assert a claim.

Ohio Rev. Code Ann. §§ 5311.081(B)(2) and 5312.06(D), amended by G.A. 134, S.B. 61, eff. Sept. 13, 2022, regarding condominium or homeowners association participation in litigation.

Ohio Rev. Code Ann. § 101.55 was added by G.A. 134, Am. Sub. H. B. 286, to provide that, in any action or proceeding in state or federal court that involves a challenge to the validity, applicability, or constitutionality of the constitution or laws of Ohio, the house of representatives, the senate, and the general assembly may intervene in the action or proceeding at any time as a matter of right.

Ohio Rev. Code Ann. § 111.46 amended by G.A. 134, H.B. 93, eff. Apr. 29, 2022, to provide that a program participant in the “Safe at Home” program who is a parent, guardian, or legal custodian and is a party to a child custody or child support proceeding is entitled to notice and an opportunity for a hearing before the participant’s confidential address or telephone number may be disclosed.

Ohio Rev. Code Ann. § 2131.031, added by G.A. 134, S.B. 202, eff. Apr. 3, 2023, prohibits a court or children services agency from denying or limiting a person from any of the following solely on the basis that the person has a disability: exercising custody, parenting time, or visitation rights with a minor; adopting a minor; serving as a foster caregiver for a minor; or appointment as a guardian for a minor.

Ohio Rev. Code Ann. § 2317.023 added by G.A. 134, H.B. 545, eff. Apr. 6, 2023, regarding confidentiality of communication with peer support team members.

## **Amendments to Ohio Rules of Evidence**

Rule 404 amended with respect to notice of presentation of evidence of other crimes, wrongs, or acts.

Rule 502 added, governing attorney-client privilege and work product, and limitations on waiver.

Rule 606 amended with respect to competency of a juror to give testimony.

## **Amendments to Supreme Court Rules of Practice**

Rule 3.02 amended with respect to filing of audio and video exhibits and files that cannot be converted into PDF format

Rule 3.03 amended with respect to requirements for filing of copies of documents

Rule 3.13 amended with respect to time for filing of corrections or additions to documents

Rules 5.08 and 14.03 amended with regard to redistricting cases

Rule 7.06 amended with respect to filing amicus memoranda on appeal

Rule 12.06 amended with respect to filing rebuttal evidence in an original action in the supreme court

Rule 12.08 amended with regard to expedited election cases

Rule 14.01 amended with regard to procedures in petition challenge cases

Rules 16.02–16.04 amended with regard to page limits of briefs

## **Amendments to Rules for the Government of the Bar**

Rule I Section 13 amended regarding factors affecting character and fitness

Rule VI amended in relation to attorney registration fees

Rule VIII amended with regard to the Board of Commissioners of the Lawyers' Fund for Client Protection

Rule X and Appendix I, relating to continuing legal education, extensively amended with regard to credit hours, exemptions, precinct election

official training and enforcement procedures

## **Amendments to Rules for the Government of the Judiciary**

Rule IV relating to continuing legal education for the judiciary extensively amended with regard to orientation programs, continuing education for magistrates, and compliance periods

## **Case Law Developments**

Ohio Patrolmen's Benevolent Ass'n v. City of Cleveland, 2022-Ohio-1403, 2022 Ohio App. LEXIS 1283 (8th Dist.) (failure to comply with statutory requirements for challenging arbitration award by filing complaint instead of motion).

Total Quality Logistics, LLC v. Tucker, Albin and Assocs., 2022-Ohio-1802, 2022 Ohio App. LEXIS 1666 (12th Dist.) (efforts to collect on a debt owed by freight broker to trucking company by contacting customer that received the shipment did not give rise to a claim for interference with business or contractual relations).

Sal's Heating & Cooling, Inc. v. Bers Acquisition Co., 2022-Ohio-1756, 2022 Ohio App. LEXIS 1633 (8th Dist.) (determining whether a state law claim is preempted by the Trade Secrets Act).

Fonce v. Champion Twp., 2022-Ohio-1278, 2022 Ohio App. LEXIS 1173 (11th Dist.) (factors to consider when determining whether an employment action was materially adverse).

Coomer v. Opportunities, 2022-

Ohio-1819, 2022 Ohio Misc. LEXIS 53 (Ct. Cl.) (employment discrimination claims sound in tort and civil actions based on tortious conduct are not entitled to post-judgment interest).

WSB Rehab. Servs. v. Cent. Accounting Sys., 2022-Ohio-2160, 2022 Ohio App. LEXIS 2050 (1st Dist.) (anti-waiver clause in contract did not operate to prevent waiver of a condition precedent).

Weidman v. Hildebrandt, 2022-Ohio-1708, 2022 Ohio App. LEXIS 1575 (12th Dist.) (discovery rule applies to those libel actions where the publication of the defamatory statements was secretive, concealed, or otherwise inherently unknowable).

Dover Chem. Corp. v. City of Dover, 2022-Ohio-2307, 2022 Ohio App. LEXIS 2159 (5th Dist.) (once absolute immunity has been established under another statutory provision, it cannot be defeated by application of the “malicious purpose, bad faith” qualified immunity provisions of R.C. 2744.03(A)(6)).

Woods v. Sharkin, 2022-Ohio-1949, 2022 Ohio App. LEXIS 1820 (8th Dist.) (giving an inaccurate slant to an otherwise accurate news report does not make it actionable).

Girdler v. Libassi, 2022-Ohio-1846, 2022 Ohio App. LEXIS 1709 (8th Dist.) (circumstances exposing adjacent property owners to liability for injuries sustained on public sidewalks).

Morrison v. City of Warrensville Heights, 2022-Ohio-1489, 2022 Ohio

App. LEXIS 1394 (8th Dist.) (conduct of emergency service employees who were delayed when they arrived at the wrong address while responding to a call regarding a severe asthma attack, which ultimately resulted in the victim’s death may have been acting recklessly).

Harris v. Hilderbrand, 2022-Ohio-1555, 2022 Ohio App. LEXIS 1449 (7th Dist.) (K-9 dog biting guest at officer’s residence not an activity falling outside scope of the employee’s employment or official responsibilities).

Meehan v. Smith, 2022-Ohio-2359, 2022 Ohio App. LEXIS 2232 (8th Dist.) (determining whether a putative client’s belief that an attorney-client relationship was created is reasonable).

Merritt v. Sanbar, LLC, 2022-Ohio-2344, 2022 Ohio App. LEXIS 2208 (5th Dist.) (letter contemplating a further written purchase agreement constituted an intention to sell, and not an actual sale, and specific performance would not be ordered).

Fowerbaugh v. Sliman, 2022-Ohio-1314, 2022 Ohio App. LEXIS 1215 (8th Dist.) (opportunity to conduct home inspection would not preclude seller from liability for seller’s fraudulent concealment of and misrepresentations relating to material, latent defects and code violations).

Fast Tract Title Servs. v. Barry, 2022-Ohio-1943, 2022 Ohio App. LEXIS 1810 (8th Dist.) (when a cause of action seeks to pierce the corporate veil on the basis of fraud, it

is subject to the heightened pleading requirements imposed by Civ.R. 9(B)).

Tabbaa v. Nouraldin, 2022-Ohio-1172, 2022 Ohio App. LEXIS 1076 (8th Dist.) (copy of contract need not accompany pleading where defendant has kept all copies of all documents regarding the transaction and has refused to provide them to plaintiff).

Welsh-Huggins v. Jefferson Cty. Prosecutor's Office, 163 Ohio St. 3d 337, 2020-Ohio-5371, 170 N.E.3d 768 (public-records-access proceedings in the Court of Claims must be consistent with the standards that are applicable to mandamus-enforcement actions).

Barack v. Thalman, 2022-Ohio-1614, 2022 Ohio Misc. LEXIS 44 (Ct. Cl.) (requester must establish entitlement to the extraordinary writ of mandamus by clear and convincing evidence).

Schafer v. Ohio Dep't of Nat. Res., 2022-Ohio-1829, 2022 Ohio App. LEXIS 1695 (10th Dist.) (Ohio Department of Natural Resources was immune from liability for fatal injuries sustained by plaintiff's decedent at a state park, when other recreational users rolled logs off a cliff striking decedent).

Favri v. Favri, 2022-Ohio-2063, 2022 Ohio App. LEXIS 1952 (7th Dist.) (commingling of separate property with other property does not destroy the separate property status as long as the separate property can be traced).

Lewis v. Lewis, 2022-Ohio-2090, 2022 Ohio App. LEXIS 1970 (3d Dist.) (trial court's decision pertaining to the valuation of property will be reviewed under a manifest weight of the evidence standard and will not be reversed so long as it is supported by some competent and credible evidence).

Cusack v. Cusack, 2022-Ohio-2248, 2022 Ohio App. LEXIS 2113 (9th Dist.) (where division of certain assets has not been resolved, judgment is not considered final, and appeal from the judgment will be dismissed).

Huffman v. Huffman, 2022-Ohio-2020, 2022 Ohio App. LEXIS 1892 (4th Dist.) (court need not engage in in-depth questioning of parties regarding their understanding of a separation agreement before incorporating it into a decree).

Raymont v. Raymont, 2022-Ohio-2389, 2022 Ohio App. LEXIS 2260 (5th Dis.) (no imputation of income although support obligor discharged from employment for cause).

Krasik v. Newstate, 2022-Ohio-1775, 2022 Ohio App. LEXIS 1657 (1st Dist.) (income imputed to support obligor who gave up gainful employment to start his own business).

Blevins v. Figueroa, 2022-Ohio-1907, 2022 Ohio App. LEXIS 1778 (5th Dist.) (relocation of mother and child permitted in best interests of child).

Grant v. Ohio Dep't of Rehab. & Corr., 2022-Ohio-1619, 2022 Ohio

Misc. LEXIS 48 (Ct. Cl.) (where court found that Public Records Act proceeding would benefit from civil discovery and less restrictive timelines, available through a mandamus action, the case was dismissed without prejudice).

State ex rel. Demora v. Larose, 2022-Ohio-2173, 2022 Ohio LEXIS 1268 (writ of mandamus granted directing secretary of state to instruct county election boards to certify candidates on the ballot).

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# Ohio Forms of Pleading and Practice

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Publication 502    Release 125

July 2023

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