

PUBLICATION UPDATE

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Ohio Forms of Pleading and Practice

Publication 502

Release 123

July 2021

HIGHLIGHTS

Release 123 Highlights

New and Revised Forms

- Notice of a Lawsuit and Request to Waive Service of Summons
- Waiver of the Service of Summons
- Complaint Against Accountant for Fraud, Promissory Estoppel and Professional Negligence
- Motion by Estate Beneficiary to Compel Discovery of Documents Relating to Inventory by Estate Fiduciary
- Memorandum Opposing Motion for Approval of Bill of Costs Associated with Deposition Transcript Expenses
- Motion by Plaintiff Execu-

tor for Summary Judgment in Action to Declare Ownership of Bonds Held by Decedent

- Defendant Real Estate Agents' Motion for Summary Judgment and Memorandum in Buyer's Action for Fraud and Unjust Enrichment
- Motion to Dismiss Action in Mandamus Prohibition and Procedendo
- Respondent's Reply Brief on Motion to Dismiss Action in Mandamus Prohibition and Procedendo

Revised Uniform Domestic Relations Forms

- Affidavit of Basic Information, Income and Expenses
- Affidavit of Property and Debt
- Parenting Proceeding Affidavit

- Health Insurance Affidavit
- Motion and Affidavit or Counter Affidavit for Temporary Orders Without Oral Hearing
- Complaint for Divorce Without Children
- Complaint for Divorce With Children
- Counterclaim for Divorce Without Children
- Counterclaim for Divorce With Children
- Answer to Complaint for Divorce Without Children
- Answer to Complaint for Divorce With Children
- Reply to Counterclaim for Divorce Without Children
- Reply to Counterclaim for Divorce With Children
- Judgment Entry—Decree of Divorce Without Children
- Judgment Entry—Decree of Divorce With Children
- Judgment Entry Converting Interest in Real Estate
- Petition for Dissolution of Marriage and Waiver of Service of Summons
- Judgment Entry—Decree of Dissolution of Marriage
- Separation Agreement
- Shared Parenting Plan
- Parenting Plan
- Parenting Judgment Entry
- Complaint for Parentage, Allocation of Parental Rights and Responsibilities and Parenting Time
- Motion for Contempt, Affidavit, and Instructions for Service
- Show Cause Order and Notice
- Motion for Change of Parenting Time (Companionship and Visitation)
- Motion for Change of Parental Rights and Responsibilities (Custody)
- Motion for Change of Child Support, Medical Support, Tax Exemption, or Other Child-related Expenses
- Explanation of Health Care Bills
- Waiver of Service of Summons
- Request for Service

Amendments to Ohio Rules of Civil Procedure

Ohio Civ.R. 4(D) and 4.1 were amended to include reference to the specific provisions for waiver of service of summons provided for in new Civ.R. 4.7.

New Rule 4.7 provides procedures for waiver of service of a summons. Rule 4.7 is based on the federal rule permitting waiver of service.

Civ. R. 16, regarding scheduling conferences has been amended to bring the Ohio rule closer to the federal rule. The amendment addresses the requirement of issuing scheduling orders and their timing and content.

Civ. R. 26 has been amended to bring the Ohio rule closer to the federal rule with regard to scope of discovery, initial disclosure obligations, court modification of frequency and extent of discovery, written report from expert witnesses, and

conferences regarding discovery.

Civ. R. 53 is amended to streamline the procedure following jury trials conducted by magistrates upon unanimous consent of the parties.

Statutory Amendments

Ohio Rev. Code Ann. § 2307.382(C) was amended by 133rd General Assembly, HB 272, eff. Dec. 16, 2020, to extend the exercise of a court's personal jurisdiction such that, in addition to the actions listed in the statute, a court may exercise personal jurisdiction over a person on any basis consistent with the Ohio Constitution and the U.S. Constitution.

Ohio Rev. Code Ann. § 4112.052, enacted by 133rd General Assembly, Sub HB 352, eff. April 15, 2021, requires claimants, except in specified circumstances, to obtain a notice of right to sue from the Ohio Civil Rights Commission before filing a lawsuit that alleges an unlawful discriminatory practice relating to employment. The amendment also excludes managers, supervisors, and employees from the definition of "employer" under Ohio Rev. Code Ann. § 4112.01(A)(2), thereby excluding them from personal liability under the Ohio Civil Rights Law for unlawful discriminatory practices relating to employment, unless the allegation is based on retaliation, aiding, or obstructing. Ohio Rev. Code Ann. § 4112.054, also enacted by the amendment, prescribes what an employer must prove, by a preponderance of the evidence, to raise an affirmative defense to a claim for

vicarious liability in which an employee alleges that a supervisor with immediate or successively higher authority over the employee created a hostile work environment through sexually harassing behavior.

Statutes of limitation for contracts in writing (Ohio Rev. Code Ann. § 2305.06) and for contracts not in writing (Ohio Rev. Code Ann. § 2305.07) were amended by 134th General Assembly, SB 13, eff. June 16, 2021.

Ohio Rev. Code Ann. § 2305.11 was amended by 134th General Assembly, SB 13, eff. June 16, 2021, to expressly provide that the one year statute applies to "an action for legal malpractice against an attorney or a law firm or legal professional association." A four-year statute of repose was also instituted, together with a three-year discovery rule, permitting suit to be brought within one year of the discovery.

Amendments to Ohio Rules of Evidence

- Rule 601 amended with regard to disqualification of witnesses.
- Rule 902 amended with regard to authenticity of certain certified documents.

Amendments to Ohio Appellate Rules

- Rule 3(C) amended to clarify when a notice of cross-appeal is required.
- Rule 21(C) amended regarding time allowed for oral argument; 21(D) amended to provide that the open-

and-close rule does not apply to cross-appeals; and 21(E) amended with respect to sharing of time between separate appellants or appellees.

Amendments to Supreme Court Rules of Practice

- Section 3 amended with regard to time for filing documents, security for costs, filing and service of electronic documents.
- Section 12 amended with regard to motions filed in expedited election cases.
- Section 13 amended with regard to briefs filed in support of objections or an answer.

Amendments to Rules for the Government of the Bar

- Rule I amended regarding admission to practice.
- Rule V amended regarding disciplinary procedures.
- Rule VI amended regarding attorney registration.

Amendments to Rules for the Government of the Judiciary

- Rule II amended regarding review of grievances by review panels and special disciplinary counsel, and retention of records.

Amendments to Ohio Code of Judicial Conduct

- Canon 4 amended regarding political campaigns and campaign contributions.

Case Law Developments

Admissibility of parol evidence to

identify a principal and to subject the principal to liability on a contract made by an agent. *Bd. of Educ. v. Am. Energy Utica, LLC*, 2020-Ohio-586, 2020 Ohio App. LEXIS 556 (7th Dist.).

Abuse of discretion for trial court, instead of ordering the proceeding to be stayed until the end of arbitration, to only grant a stay until a specified date. *Paul v. WH Midwest, LLC*, 2020-Ohio-1417, 2020 Ohio App. LEXIS 1398 (6th Dist.).

The concepts of novelty, uniqueness, and obviousness may be considered by a court tasked with determining whether information is worthy of trade secret status. *Key Realty, Ltd. v. Hall*, 2021-Ohio-26, 2021 Ohio App. LEXIS 21 (6th Dist.).

Although Ohio statute does not expressly include sexual orientation as a protected category, the U.S. Supreme Court held in 2020 that it is a violation of Title VII of the federal Civil Rights Act of 1964 for an employer to discriminate against an individual for being homosexual or transgender. *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020).

Necessary elements to establish discrimination where an employee is laid off as part of a reduction-in-force. *Thompson v. Fresh Prods., LLC*, 2021 U.S. App. LEXIS 1162 (6th Cir.).

Validity of contract where the parties' email exchanges contain requisite elements of offer, acceptance,

and consideration sufficient to establish “meeting of the minds.” *North Side Bank & Trust Co. v. Trinity Aviation LLC*, 2020-Ohio-1470, 2020 Ohio App. LEXIS 1442 (1st Dist.).

Before a mechanic’s lien attaches, strict compliance with filing deadlines is required. *SRS Distrib. v. Axis All., LLC*, 2020-Ohio-1529, 2020 Ohio App. LEXIS 1487 (2d Dist.).

Court’s discretion when considering fair and equitable distribution of pension or retirement benefits in a divorce. *Boolchand v. Boolchand*, 2020-Ohio-6951, 2020 Ohio App. LEXIS 4799 (1st Dist.).

Vested pension plan accumulated during marriage as a marital asset that must be considered in arriving at an equitable division of property. *Johnson v. Johnson*, 2021-Ohio-16, 2021 Ohio App. LEXIS 10 (2d Dist.).

R.C. § 3105.171(I) does not prohibit a court from vacating a property order or decree on grounds of mistake or for other reasons justifying relief from the judgment. *Ouellette v. Ouellette*, 2020-Ohio-705, 2020 Ohio App. LEXIS 645 (6th Dist.).

An ex parte divorce decree entered in another state is entitled to full faith and credit in Ohio, but only insofar as it dissolved the marital relationship. It does not preclude an Ohio court may exercise in personam jurisdiction to adjudicate property and spousal support rights between the parties after ex parte divorce decree entered in another state. *Radwan v. Radwan*, 2020-Ohio-1613, 2020 Ohio App.

LEXIS 1556 (8th Dist.).

Factors in determining whether a continuation of shared parenting is or is not in the best interest of the child. *Facemyer v. Facemyer*, 2021-Ohio-48, 2021 Ohio App. LEXIS 44 (7th Dist.).

Requirement that the court interview children regarding their wishes and concerns with respect to custody and visitation. *Hill v. French*, 2021-Ohio-24, 2021 Ohio App. LEXIS 24 (6th Dist.); *Saleh v. Yassen*, 2020-Ohio-2719, 2020 Ohio App. LEXIS 1671 (8th Dist.).

Imputation of potential income for purposes of determining child support. *Whitaker v. Whitaker*, 2020-Ohio-2774, 2020 Ohio App. LEXIS 1740 (12th Dist.); *Graham v. Graham*, 2020-Ohio-1435, 2020 Ohio App. LEXIS 1405 (3d Dist.).

Actions for contempt for failure to comply with support orders. *Dimalanta v. Dimalanta*, 2020-Ohio-6992, 2020 Ohio App. LEXIS 4837 (8th Dist.); *Matter of I.L.J.*, 2020-Ohio-5434, 2020 Ohio App. LEXIS 4283 (8th Dist.).

Effect of failure to file shared-parenting plan within statutory deadline. *Rummelhoff v. Rummelhoff*, 2020-Ohio-2928, 2020 Ohio App. LEXIS 1901(1st Dist.).

Drastic nature of award terminating parental rights and awarding custody to another. *In re B.B.*, 2020-Ohio-1619, 2020 Ohio App. LEXIS 1543 (8th Dist.).

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Publication 502 Release 123

July 2021

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